

At a Special Term of the Supreme Court of  
the State of New York, held in and for  
Albany County at the Albany County  
Courthouse, Albany, New York, on the  
\_\_\_\_\_th day of \_\_\_\_\_, 2006

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of

**SAVE THE PINE BUSH Inc.; LYNNE JACKSON  
REZSIN ADAMS; JOHN WOLCOTT; LUCY CLARK;  
SANDRA CAMP; DAVE CAMP; LARRY LESSNER;  
RUSSELL ZIEMBA; and ANNE SOMBOR,**

Petitioners,

Index No.

For a judgment pursuant to Article 78 of the CPLR

-Against-

**THE COMMON COUNCIL OF THE CITY OF ALBANY;  
and DAUGHTERS OF SARAH JEWISH FOUNDATION,**

Respondents

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**ORDER TO SHOW CAUSE**

**UPON** the annexed Petition verified by Lynne Jackson, and the annexed Affidavit of  
Lynne Jackson together with accompanying Exhibits.

**LET** the Respondents show cause before this Court at the Albany County Courthouse,  
Columbia and Eagle Streets, Albany, New York, on \_\_\_\_\_ 2006,  
at \_\_\_\_\_ why a judgment should not be entered in favor of Petitioners  
for the relief demanded in the Petition, and for such other and further relief as the court  
may deem proper; and

**SERVICE** of a copy of this order and a copy of the papers upon which it is granted may be made by personal service upon the Respondents on or before \_\_\_\_\_,

**SO ORDERED:**

Dated: Albany, New York

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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RUSSELL ZIEMBA and ANNE SOMBOR**

Petitioners;

For a judgment pursuant to Article 78 of the CPLR

-Against -

**AFFIDAVIT**

**THE COMMON COUNCIL OF THE CITY OF ALBANY;  
and DAUGHTERS OF SARAH JEWISH FOUNDATION,**

**Index No.**

Respondents.

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State of New York

SS:

County of Albany

**LYNNE JACKSON**, being duly sworn deposes and says:

1. I am a petitioner in the above entitle action, and live at 223 South Swan Street, Albany, N.Y.
2. This is an action pursuant to Article 78 of the CPLR, which seeks to vacate and annul a negative declaration by the City of Albany Common Council, as lead agent pursuant to the State Environmental Quality Review Act, (Article 8 of the New York State Environmental Conservation Law, and 6 NYCRR Part 617, hereinafter "SEQRA"), which permitted a parcel of land in the Albany Pine Bush to be rezoned for the construction of an office park. The Common Council decided to grant a negative declaration for the rezoning application, and to delay the environmental review until the construction of the office park, which violated SEQRA's prohibition against "segmentation", and arbitrarily failed consider the adverse environmental impact of the

project on a plot of land within the construction zone designated as fully protected Preserve land.

3. I am a founder and Secretary of Save The Pine Bush Inc., that for the last 28 years has been the preeminent force in protecting the unique habitat of the Albany Pine Bush, and the rare, threatened and endangered plant and animal species that live there, including the Karner Blue Butterfly. I frequently hike in the Pine Bush for enjoyment and to study the rare plant and animal species living there.

4. Save The Pine Bush is a not-for-profit corporation organized under the laws of the State of New York, with a place of business at 33 Central Ave., Albany, N.Y., to promote and preserve the Albany Pine Bush. The organization has brought numerous law suits on behalf of the Pine Bush and the endangered species found there, and won a number of key decisions in the Court of Appeals and in the lower courts which lead to the creation of the Albany Pine Bush Commission and the Albany Pine Bush Preserve. (See for example, Save The Pine Bush v. City of Albany, 70 NY2d 193, 518 NYS2d 943 (1987); Save The Pine Bush, Inc. v. Common Council of the City of Albany, 188 AD2d 969, 591 NYS2d 897 (3<sup>rd</sup> Dept. 1992)). The Court of Appeals, in Save the Pine Bush v. City of Albany, 70 NY2d 193,201(1987) expressly upheld the standing of Save The Pine Bush Inc., to assert claims similar to the instant proceeding, and the corporation has never been denied standing to sue in any prior or subsequent proceedings.

5. Petitioners Rezsine Adams, who lives at 112 Chestnut Street, Albany, N.Y., is President of Save the Pine Bush; John Wolcott, who lives at 344 Sheridan Ave., Albany, N.Y., is Vice-President; Lucy Clark who lives with Anne Sombor, at 2348 Cayuna Road, Niskayuna, is Treasurer; and Russell Ziemba, who lives at 1813 Highland Ave, Troy, N.Y., is a member of the Board of Directors. Petitioners Sandra Camp and Dave Camp, who live at 13 Gipp Road, Albany, and Larry Lessner, who lives at 26 Wilan Lane are members of Save The Pine Bush, and live near the site of the proposed office park. All of the Petitioners have been very active in the SEQRA process involving the proposed hotel. All of the Petitioners recreate in the Pine Bush and are active in their use, study and

enjoyment of this unique area. The Petitioners own their own homes at the above addresses.

6. On or about, January 26, 2005, the Daughters of Sarah Jewish Foundation filed with the City of Albany a Full Environmental Assessment Form, (hereinafter EAF) in connection with a plan to construct an office park on 6.65 acres of land at 170-180 Washington Avenue Extension, (hereinafter “office park project”). A copy of the EAF for this proposed project is attached as Exhibit 1.

7. On November 17, 2005 the Planning, Economic Development and Land Use Committee of the Common Council decided that as a preliminary step in the office park project, it would recommend the approval of a change in zoning from R-1B (Single Family Medium Density Residential Zoning District), to C-2 (Highway Commercial Zoning District), for a .69 acre parcel of land in the office park project.

8. On November 25, 2005, the Common Council filed a Notice of Negative Declaration with respect to this application, a copy of which is attached as Exhibit 2, which stated in part as follows:

*Current action involves **only** rezoning a small (.69 acre) area from R-1B (Single-Family Medium Density Residential) to C-PB (Commercial Pine Bush) so it may be incorporated into the adjacent parcel to the west (5.28 acres that was rezoned C-PB in 1989) on which the applicant proposes eventually to construct a small office park. The City Planning Board will conduct a separate review of that project. It has been determined that the rezoning of this small area will **not** result in any potentially large environmental impacts.*

9. Under SEQRA, the Common Council may not defer a full environmental review of the project until sometime after the rezoning of the land, because this would constitute segmentation. The Common Council clearly indicated that the rezoning was the initial step in a series of steps leading to the proposed construction of an office park. SEQRA’s

policy of early and comprehensive planning requires that the environmental consequences of the whole action be considered at the earliest possible time. Pursuant to 6 NYCRR 617.2(ag), "Segmentation" is defined as "*the division of the environmental review of an action such that various activities or stages are addressed under this part as though they were independent unrelated activities needing individual determination of significance*". Pursuant to 6 NYCRR 617.3(g), "Action" is defined as consisting of "a set of activities or steps. *The entire set of activities or steps must be considered the action, whether the agency decision making related to the actions as a whole or only a part of it....Considering on a part or segment of the action is contrary to the intent of SEQRA.*" Breaking a whole action, (the construction of an office park), into individual actions, (separately rezoning portions of the land), is forbidden under SEQRA. Thus in Defreestville Area Neighborhood Ass. v. Town Board of the Town of North Greenbush, 299 AD2d 631; 750 NYS2d 164 (3<sup>rd</sup> Dept. 2002), the Court struck down an attempt to rezone a parcel of land prior to considering the environmental consequences of the proposed construction to follow. The Court stated;

*"In sum the approach taken by the Board runs afoul of SEQRA's fundamental policy to inject environmental considerations directly into governmental decision-making at the earliest possible time so that agencies conduct their affairs in a manner which will protect the environment."*

10. Here the whole action to be considered is the construction of an office park of which the rezoning of a plot of land is only the first step. Clearly then the rezoning cannot be segmented off from the subsequent construction, and the actions of the Common Council in doing so are obviously a violation of SEQRA.

11. Moreover, the rezoning of the land and construction of an office park raise serious environmental concerns which absolutely require the filing of a full Environmental Impact Statement. A map showing the entire business park proposal is attached as Exhibit 3. A map showing the plot of land (APBPC Protection Area 40) that has been designated for full environmental protection by the Pine Bush Preserve Commission is

attached as Exhibit 4. The area to be re-zoned is shown on a map a copy of which is attached as Exhibit 5. It is obvious from the three maps that the land being rezoned, the land protected in Area 40 and the proposed business park all share the same land and are intimately connected.

12. The Pine Bush Preserve Commission was created by the New York State Legislature in 1988, by the passage of Article 46 of the Environmental Conservation Law, after a series of law suits by Save the Pine Bush resulted in court decisions that required the City to set aside a significant portion of land in the Albany Pine Bush for the protection of rare and engendered species that live there, including the Karner Blue butterfly. Subsequent court and administrative decisions held that the Pine Bush Preserve must include more than 2000 acres of land suitable for the preservation of the Karner Blue butterfly, and that the land must be configured in such a way as to permit periodic burnings of a portion of the preserve, to regenerate the native Pine Bush habitat. At present the Pine Bush Preserve has about 1,850 “fire manageable” acres. The eventual size and configuration of the Pine Bush Preserve have still to be decided. Pursuant to court and administrative decisions, until such a preserve suitable for the preservation of the Karner Blue butterfly is established, development of the Albany Pine Bush must be curtailed on land that could contribute to the Preserve or to the welfare of the Karner Blue butterfly. (See, Save the Pine Bush, Inc v. Common Council of the City of Albany, 188 AD2d 969,591 NYS2d 897 (3<sup>rd</sup> Dept. 1992)).

13. Pursuant to its authority from the Legislature, the Pine Bush Commission designates land necessary for the creation of the Pine Bush Preserve or for the protection of the rare species in the Pine Bush. The Commission’s 2002 Management Plan, designates a portion of the 5.28 acre parcel, (Area 40), as fully protected land because the site contains habitat for rare species, as indicated on the Commission’s map.

14. On November 7, 2005, Neil Gifford, Conservation Director of the Albany Pine Bush Commission, opposed the re-zoning proposal for the Daughters of Sarah Foundation before the Common Council on the grounds that the Albany Pine Bush

Preserve Commission was not notified of the proposed action in accordance with the Commission's Management Plan and SEQRA's requirement of coordinated review, and because the office park project was located in an area (Area 40) given full protection by the Commission as the result of its habitat for rare species. A copy of Mr. Gifford's comments to the Common Council is attached as Exhibit 6.

15. Notwithstanding Mr. Gifford's opposition, the Common Council approved the zoning change without requiring a full environmental review, by granting a negative declaration with a note that "the City Planning Board will conduct a separate review of that [the office park] project."

16. Thus in addition to improperly segmenting the action, the decision by the Common Council to rezone this land without an Environmental Impact Statement violates SEQRA's requirement that the lead agency identify all relevant environmental concerns as soon as possible, and taking a "hard look" at how the proposed action will affect the environment. It is inconceivable on its face, that an office park, built on land so environmentally sensitive that it was designated for full protection, will not have any significant affect on the environment. In Matter of NY City Coalition to End Lead Poisoning v. Vallone, 100 NY2d 337, 763 NYS2d 530 (2003), the Court of Appeals held that a lead agency must first identify the relevant areas of environmental concern, then take a "hard look" at them, and make a "reasoned elaboration in writing" about the basis of its determination. Obviously, the existence of fully protected land in the property to be developed into an office park, raises significant environmental issues. The Common Council cannot disregard these issues. Early and comprehensive planning requires that such obvious conflicts be considered and resolved through a full Environmental Impact Statement.

17. It is important to note that the Karner Blue butterfly is but one species in the unique habitat of the Pine Bush that is known to support numerous rare or unusual species including, but not be limited to the Hognosed Snake (Special Concern), the Worm Snake (Special Concern), the Eastern Spadefoot Toad (Special Concern), the

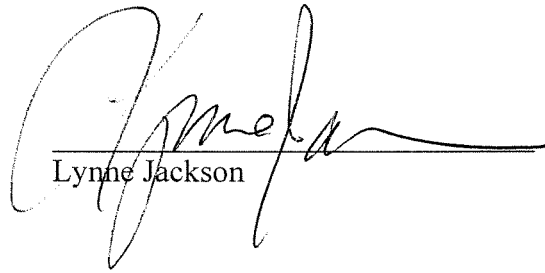


Frosted Elfin (State Threatened), the Adder's Mouth Orchid (State Endangered), and the Buck Moth. Regardless of whether the Karner Blue butterfly, or the Frosted Elfin butterfly, or some other rare species, or no rare species at all, is presently occupying Area 40, (the fully protected site), a full environmental impact statement is necessary to assess the potential habitat value of the site, and the damage that development near or on the site would cause. The largest population of Karner Blue butterflies south of Thruway lives only a few hundred meters to the East on Crossgates Hill. I have personally seen Karner Blue butterflies at the Daughter of Sarah site in the past, and I know that the land in the protected site is typical Albany Pine Bush that is capable of sustaining populations of rare or endangered species now, as it has in the past.

18. Under the circumstances, rezoning the land here without a full environmental review was clearly segmentation in violation of SEQRA, and the violation is not a technicality in any sense because the land on which the office park will be built is so environmentally sensitive that a portion of it was declared to be land entitled to full protection by the Pine Bush Preserve Commission.

**WHEREFORE,** Petitioner requests that the court enter an order and judgment:

- 1) Imposing a Preliminary Injunction to prevent any steps being taken to develop the office park project pending a determination of this application; and
- 2) Vacating the Notice of Negative Declaration as arbitrary and capricious, unsubstantiated by the evidence and in violation of SEQRA,
- 3) Annulling the rezoning of the property in question, and
- 3) For such other a further relief as to this court seems just and proper.

  
Lynne Jackson

Sworn to before me  
This 8<sup>th</sup> day of March, 2006  
Stephen F. Downs  
Notary Public

**STEPHEN F. DOWNS**  
Notary Public, State of New York  
Qualified in Albany County  
No. 4682086  
Commission Expires November 30, 2008

State Environmental Quality Review  
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1: Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2: Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3: If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

DETERMINATION OF SIGNIFICANCE- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project:       Part 1       Part 2       Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that-

- A. The project will not result in any large and important impacts) and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.\***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared.**

\* A Conditioned Negative Declaration is only valid for Unlisted Actions

Daughter's of Sarah Proposed Office Park, Washington Avenue Extension, Albany (C), County of Albany

Name of Action

City of Albany Common Council

Name of Lead Agency

Helen R. Desfosses

President

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from responsible officer)

Date

## PART 1-PROJECT INFORMATION

Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

NAME OF ACTION <p style="text-align: center;">Daughter's of Sarah Proposed Office Park</p>			
LOCATION OF ACTION (include Street Address, Municipality and County) <p style="text-align: center;">170, 180, 184 &amp; 186 Washington Avenue Extension, Albany (C), County of Albany</p>			
NAME OF APPLICANT/SPONSOR <p style="text-align: center;">Daughter's of Sarah Jewish Foundation</p>		BUSINESS TELEPHONE <p style="text-align: center;">( 518 ) 456-7831</p>	
ADDRESS <p style="text-align: center;">180 Washington Avenue Extension</p>			
CITY/PO <p style="text-align: center;">Albany</p>		STATE <p style="text-align: center;">NY</p>	ZIP CODE <p style="text-align: center;">12203</p>
NAME OF OWNER (if different)		BUSINESS TELEPHONE <p style="text-align: center;">(     )</p>	
ADDRESS			
CITY/PO		STATE	ZIP CODE
DESCRIPTION OF ACTION  <p style="text-align: center;">Rezone a 0.69 acre portion of No. 170 &amp; 180 Washington Avenue Extension to Commercial-Pine Bush (to be consistent with the adjacent parcel, which is zoned C-PB) for the construction of two office buildings and parking.</p>			

**Please Complete Each Question- Indicate N.A. if not applicable**

### A. Site Description

Physical setting of overall project, both developed and undeveloped areas.

1. Present land use:     Urban     Industrial     Commercial     Residential (suburban)     Rural (non-farm)  
                                   Forest     Agriculture     Other Assisted Living Center, Vacant Land

2. Total acreage of project area: 5.97 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>1.2</u> acres	<u>0.2</u> acres
Forested	<u>0</u> acres	<u>0</u> acres
Agricultural (includes orchards, cropland, pasture, etc.)	<u>0</u> acres	<u>0</u> acres
Wetland (Freshwater or tidal as per Articles 24, 25 of ECL)	<u>0</u> acres	<u>0</u> acres
Water Surface Area	<u>0</u> acres	<u>0</u> acres
Unvegetated (Rock, earth or fill)	<u>0</u> acres	<u>0</u> acres
Roads, buildings and other paved surfaces	<u>0.4</u> acres	<u>4.37</u> acres
Other (Indicate type) <u>lawn area</u>	<u>4.37</u> acres	<u>1.4</u> acres

3. What is predominant soil type(s) on project site? Colonie and Elnora Sand

- a. Soil drainage:     Well drained 100 % of site     Moderately well drained \_\_\_\_\_ % of site  
                                   Poorly drained \_\_\_\_\_ % of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? 0 acres. (See 1 NYCRR 370).

4. Are there bedrock outcroppings on project site?     Yes     No

- a. What is depth to bedrock? More than 6' (USDA, SOIL CONS. SURVEY) (in feet)

5. Approximate percentage of proposed project site with slopes:  0-10% 60 %  10-15% 5 %  
 15% or greater 35 %
6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or the National Registers of Historic Places?  Yes  No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks?  Yes  No
8. What is the depth of the water table? 4'-6' (USDA, SOIL CONS. SURVEY) (in feet)
9. Is site located over a primary, principal, or sole source aquifer?  Yes  No
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area?  Yes  No
11. Does project site contain any species of plant or animal life that is identified as threatened or endangered?  
 Yes  No According to NYSDEC Endangered Species Unit  
Identify each species Karner Blue Butterfly
12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations)  
 Yes  No Describe Remnant of a sand dune exists on the site.
13. Is the project site presently used by the community or neighborhood as an open space or recreation area?  
 Yes  No If yes, explain \_\_\_\_\_
14. Does the present site include scenic views known to be important to the community?  
 Yes  No
15. Streams within or contiguous to project area: NONE  
a. Name of Stream and name of River to which it is tributary \_\_\_\_\_
16. Lakes, ponds, wetland areas within or contiguous to project area:  
a. Name NONE b. Size (In acres) \_\_\_\_\_
17. Is the site served by existing public utilities?  Yes  No  
a) If Yes, does sufficient capacity exist to allow connection?  Yes  No  
b) If Yes, will improvements be necessary to allow connection?  Yes  No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617?  Yes  No
20. Has the site ever been used for the disposal of solid or hazardous wastes?  Yes  No

## B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate)
- a. Total contiguous acreage owned or controlled by project sponsor 45+- acres.
- b. Project acreage to be developed: 6.65 acres initially; 6.65 acres ultimately.
- c. Project acreage to remain undeveloped 0 acres.
- d. Length of project, in miles: N.A. (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed N/A %;
- f. Number of off-street parking spaces existing 0, proposed 275
- g. Maximum vehicular trips generated per hour 105 (upon' completion of project)?
- h. If residential: Number and type of housing units:
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | <u>N/A</u> | _____      | _____           | _____       |
| Ultimately | <u>N/A</u> | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure 35' height; 275' width; 110' length.
1. Linear feet of frontage along a public thoroughfare project will occupy is? 1010 ft.

ITE LUC #710 - PM Peak Hour- 18 VPH entering, 87VPH exiting

2. How much natural material (i.e., rock, earth, etc.) will be removed from the site? 0 tons/cubic yards
3. Will disturbed areas be reclaimed?  Yes  No  N/A
- a. If yes, for what intended purpose is the site being reclaimed? Lawns and Landscaped Area
- b. Will topsoil be stockpiled for reclamation?  Yes  No
- c. Will upper subsoil be stockpiled for reclamation?  Yes  No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 1.0 acres.
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?  
 Yes  No
6. If single phase project: Anticipated period of construction 24 months, (including demolition).
7. If multi-phased:
- a. Total number of phases anticipated N/A (number).
- b. Anticipated date of commencement phase 1 N/A month \_\_\_\_\_ year, (including demolition).
- c. Approximate completion date of final phase N/A month \_\_\_\_\_ year.
- d. Is phase 1 functionally dependent on subsequent phases?  Yes  No
8. Will blasting occur during construction?  Yes  No
9. Number of jobs generated: during construction 50, after project is complete 210
10. Number of jobs eliminated by this project None
11. Will project require relocation of any projects or facilities?  Yes  No If yes, explain \_\_\_\_\_
12. Is surface liquid waste disposal involved?  Yes  No
- a. If yes, indicate type of waste (sewage, industrial, etc.) and amount \_\_\_\_\_
- b. Name of water body into which effluent will be discharged \_\_\_\_\_
13. Is subsurface liquid waste disposal involved?  Yes  No Type \_\_\_\_\_
14. Will surface area of an existing water body increase or decrease by proposal?  Yes  No  
Explain N/A
15. Is project or any portion of project located in a 100 year flood plain?  Yes  No
16. Will the project generate solid waste?  Yes  No
- a. If yes, what is the amount per month 10.5 tons
- b. If yes, will an existing solid waste facility be used?  Yes  No
- c. If yes, give name By Private Haulers, location To be determined
- d. Will any wastes not go into a sewage disposal system or into a sanitary landfill?  Yes  No
- e. If Yes, explain \_\_\_\_\_
17. Will the project involve the disposal of solid waste?  Yes  No
- a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.
- b. If yes, what is the anticipated site life? \_\_\_\_\_ years.
18. Will project use herbicides or pesticides?  Yes  No
19. Will project routinely produce odors (more than one hour per day)?  Yes  No
20. Will project produce operating noise exceeding the local ambient noise levels?  Yes  No
21. Will project result in an increase in energy use?  Yes  No  
If yes, indicate type(s) Gas & electric for heating, cooling & lighting.
22. If water supply is from wells, indicate pumping capacity None gallons/minute.
23. Total anticipated water usage per day 7,050 gallons/day.
24. Does project involve Local, State or Federal funding?  Yes  No  
If Yes, explain \_\_\_\_\_

**25. Approvals Required:**

		Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Common Council-Zoning Amendment	January 2005
City, Town, Village Planning Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Site Plan Approval	February 2005
City, Town Zoning Board	<input type="checkbox"/> Yes <input type="checkbox"/> No		
City, County Health Department	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Other Local Agencies <u>City Bldg. Dept.</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Building Permit	March 2005
Other Regional Agencies <u>Alb. Cty. Plan Bd.</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	239 Submittal	February 2005
State Agencies <u>NYS Dept. of Env. Conserv.</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	SPDES General Permit # GP 02-01	March 2005
Federal Agencies	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**C. Zoning and Planning Information**

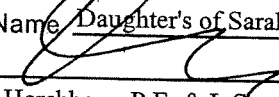
- Does proposed action involve a planning or zoning decision?  Yes  No  
 If Yes, indicate decision required:  
 zoning amendment  zoning variance  special use permit  subdivision  site plan  
 new/revision of master plan  resource management plan  other \_\_\_\_\_
- What is the zoning classification(s) of the site? C-PB, R1B
- What is the maximum potential development of the site if developed as permitted by the present zoning?  
60,000 S.F. of offices and 2 dwelling units
- What is the proposed zoning of the site? C-PB Commercial Pine Bush
- What is the maximum potential development of the site if developed as permitted by the proposed zoning?  
70,500 s.f. of commercial office space
- Is the proposed action consistent with the recommended uses in adopted local land use plans?  Yes  No
- What are the predominant land use(s) and zoning classifications within a 1/4 mile radius of proposed action?  
Land Uses - Commercial and Residential/ Zoning Classifications C-PB, R1B
- Is the proposed action compatible with adjoining/surrounding land uses within a 1/4 mile?  Yes  No
- If the proposed action is the subdivision of land, how many lots are proposed? N/A  
 a. What is the minimum lot size proposed? \_\_\_\_\_
- Will proposed action require any authorization(s) for the formation of sewer or water districts?  Yes  No
- Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?  Yes  No  
 a. If yes, is existing capacity sufficient to handle projected demand?  Yes  No
- Will the proposed action result in the generation of traffic significantly above present levels?  Yes  No  
 a. If yes, is the existing road network adequate to handle the additional traffic?  Yes  No

**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Daughter's of Sarah Date 01/26/05  
 Signature  Title Engineer for the Applicant  
Daniel R. Hershberg, P.E. & L.S.

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

## Part 2-PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

**General Information (Read Carefully)**

- In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.
- The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- The number of examples per question does not indicate the importance of each question.
- In identifying impacts, consider long term, short term and cumulative effects.

**Instructions (Read carefully)**

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. **Maybe answers should be considered as Yes answers.**
- c. If **answering Yes** to a question then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

**IMPACT ON LAND**

1 Will the proposed action result in a physical change to the project site?  
 NO     YES

Examples that would apply to column 2

- Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.
- **Construction on land where the depth to the water table is less than 3 feet.**
- Construction of paved parking area for 1,000 or more vehicles.
- Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.
- Construction that will continue for more than 1 year or involve more than one phase or stage.
- Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.
- Construction or expansion of a sanitary landfill.
- Construction in a designated floodway.
- Other impacts \_\_\_\_\_

2 - Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)  NO     YES

• Specific land forms: \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No



**IMPACT ON WATER**

3. Will proposed action affect any water body designated as protected?  
(Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)  
 NO  YES

Examples that would apply to column 2

- Developable area of site contains a protected water body.
- Dredging more than 100 cubic yards of material from channel of a protected stream.
- Extension of utility distribution facilities through a protected water body.
- Construction in a designated freshwater or tidal wetland.
- Other impacts: \_\_\_\_\_

4. Will proposed action affect any non-protected existing or new body of water?  
 NO  YES

Examples that would apply to column 2

- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.
- Construction of a body of water that exceeds 10 acres of surface area.
- Other impacts: \_\_\_\_\_

5. Will Proposed Action affect surface or groundwater quality or quantity?  
 NO  YES

Examples that would apply to column 2

- Proposed Action will require a discharge permit.
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.
- Construction or operation causing any contamination of a water supply system.
- Proposed Action will adversely affect groundwater.
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.
- Proposed Action would use water in excess of 20,000 gallons per day,
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.
- Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.
- Proposed Action will allow residential uses in areas without water and/or sewer services.
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.
- Other impacts: \_\_\_\_\_

6. Will proposed action alter drainage flow or patterns, or surface water runoff?  
 NO  YES

Examples that would apply to column 2

- Proposed Action would change flood water flows.

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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**IMPACT ON CRITICAL ENVIRONMENTAL AREAS**

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6 NYCRR 617.14(g) ? NO YES  
 List the environmental characteristics that caused the designation of the CEA.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Examples** that would apply to column 2

- Proposed Action to locate within the CEA?
- Proposed Action will result in a reduction in the quantity of the resource?
- Proposed Action will result in a reduction in the quality of the resource?
- Proposed Action will impact the use, function or enjoyment of the resource?
- Other impacts: \_\_\_\_\_  
 \_\_\_\_\_

**IMPACT ON TRANSPORTATION**

15. Will there be an effect to existing transportation systems? NO YES

**Examples** that would apply to column 2

- Alteration of present patterns of movement of people and/or goods.
- Proposed Action will result in major traffic problems,
- Other impacts: \_\_\_\_\_  
 \_\_\_\_\_

**IMPACT ON ENERGY**

16. Will proposed action affect the community's sources of fuel or energy supply? NO YES

**Examples** that Would apply to column 2

- Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.
- Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.
- Other impacts: \_\_\_\_\_  
 \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
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**NOISE AND ODOR IMPACTS**

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action? NO YES

Examples that would apply to column 2

- Blasting within 1,500 feet of a hospital, school or other sensitive facility.
- Odors will occur routinely (more than one hour per day).
- Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.
- Proposed Action will remove natural barriers that would act as a noise screen.
- Other impacts- \_\_\_\_\_

**IMPACT ON PUBLIC HEALTH**

18. Will Proposed Action affect public health and safety? NO YES

Examples that would apply to column 2

- Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.
- Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)
- Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.
- Proposed action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.
- Other impacts: \_\_\_\_\_

**IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD**

19. Will proposed action affect the character of the existing community? NO YES

Examples that would apply to column 2

- The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.
- The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.
- Proposed action will conflict with officially adopted plans or goals.
- Proposed action will cause a change in the density of land use.
- Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.
- Development will create a demand for additional community services (e.g. schools, police and fire, etc.)
- Proposed Action will set an important precedent for future projects.
- Proposed Action will create or eliminate employment.
- Other impacts- \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
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20. Is there, or is there likely to be, public controversy related to potential adverse environmental impacts? NO YES

If any action in Part 2 is identified as a potential large impact or if you cannot determine the magnitude of impact, proceed to Part 3

## NOTICE OF NEGATIVE DECLARATION – UNLISTED ACTION

**DEC Region #** 4            **County:** Albany

**Project Title:**            Rezoning related to development of Daughters of Sarah Office Park

**Location:**                Parts of 170 & 180 Washington Avenue Extension  
Albany (City)

**Lead Agency:**            City of Albany Common Council (undertaking action without  
coordinated review)

**Address:**                 City Hall  
Albany, New York 12207

**Project Description:**    Current action involves **only** rezoning a small (.69 acre) area from R-1B (Single-Family Medium-Density Residential) to C-PB (Commercial Pine Bush) so it may be incorporated into the adjacent parcel to the west (5.28 acres that was rezoned C-PB in 1989) on which the applicant proposes eventually to construct a small office park. The City Planning Board will conduct a separate review of that project. It has been determined that the rezoning of this small area will **not** result in any potentially large environmental impacts.

Additional information is available from:

**Contact Person:** Richard Nicholson, Senior Planner

**Address:**                 Department of Development & Planning  
21 Lodge Street  
Albany, New York 12207

**Telephone Number:**    (518) 434-2532, ext. 29  
**Fax:**                        (518) 434-9846  
**E-mail:**                    nichor@ci.albany.ny.us

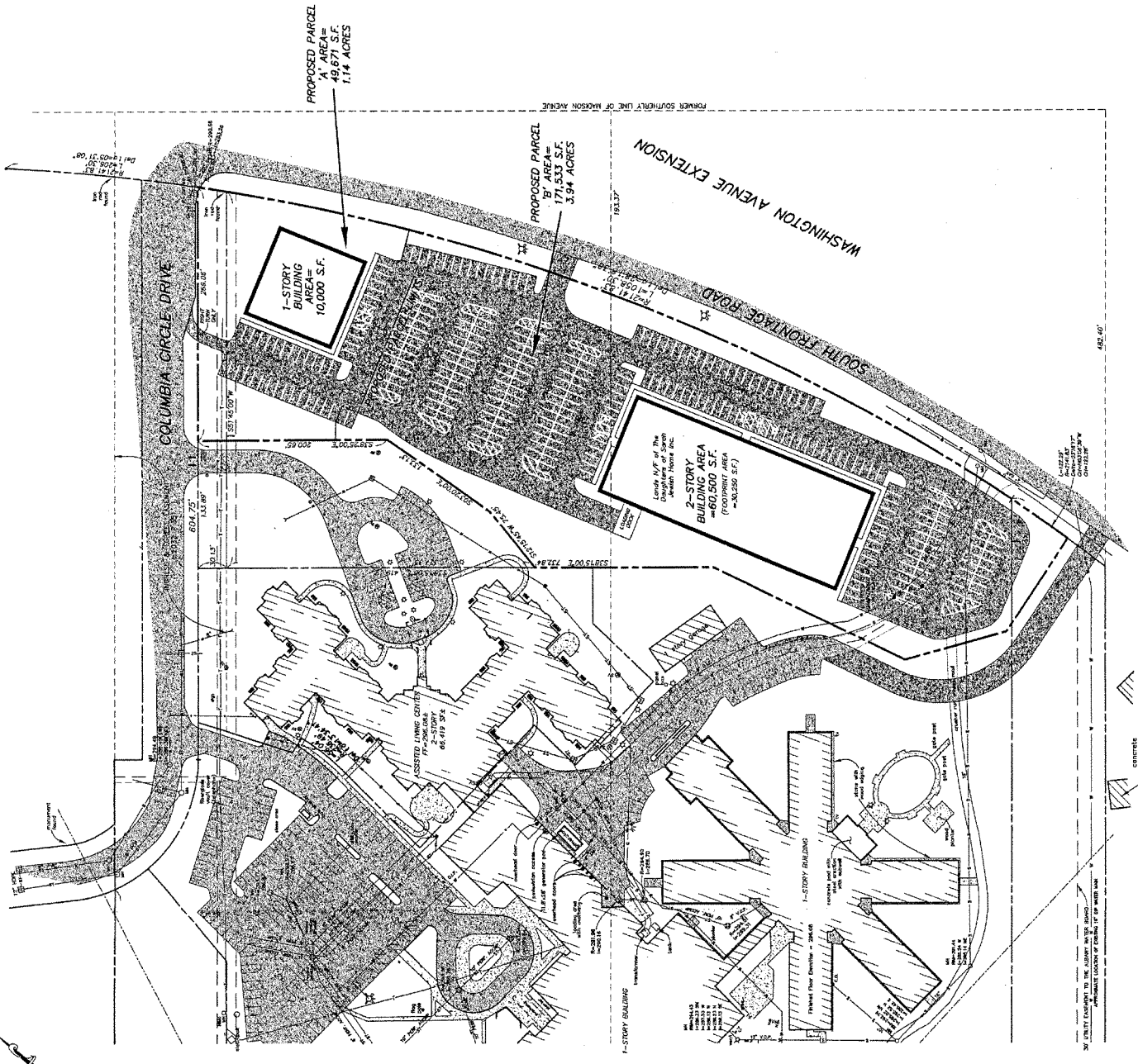
This notice has been prepared in accordance with Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

1 OF 1  
 Schematic Plan for  
 Daughters of Sarah  
 Washington Avenue Extension Frontage Revision  
 City of Albany, New York

REVISIONS	DATE

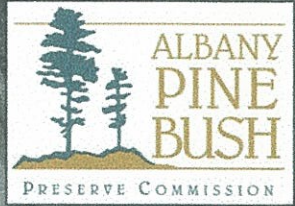


ALBANY, NEW YORK  
 40 State Street  
 Albany, New York 12242



1 OF 1  
 Schematic Plan for  
 Daughters of Sarah  
 Washington Avenue Extension Frontage Revision  
 City of Albany, New York  
 HERSCHEG & HERSCHEG  
 40 State Street  
 Albany, New York 12242  
 PROFESSIONAL ENGINEER  
 STATE OF NEW YORK  
 No. 12345  
 12/15/2024





# Albany Pine Bush Proposed Residence Inn Project Area



**AREA OF INGRESS/EGRESS  
& PARKING EASEMENT FOR  
THE MASSRY ASSISTED  
LIVING FACILITY  
AREA=38,820 S.F.  
0.89 ACRES**

Tax Map No.  
52.06-2-16  
Lands N/F of  
Daughters of Sarah  
Nursing Home  
Company, Inc. Liber  
2032 Page 351

Lands N/F of The  
Daughters of Sarah  
Jewish Home Inc.

**AREA CURRENTLY ZONED  
C-PB 'COMMERCIAL  
-PINE BUSH'  
AREA=230,155 S.F.  
5.28 ACRES**

**AREA TO BE REZONED  
TO C-PB 'COMMERCIAL  
-PINE BUSH'  
(CURRENTLY ZONED R-1B  
'SINGLE-FAMILY  
MEDIUM-DENSITY  
RESIDENTIAL)**

Tax Map No. 52.06-2-15  
Lands N/F of The Daughters of Sarah  
Jewish Home Inc. Liber 2026 Page 1100



1 OF 2



Consulting Engineers  
and Land Surveyors

40 Colvin Avenue  
Albany, New York 12206

MAP SHOWING AREA TO BE REZONED

# DAUGHTER'S OF SARAH

Nos. 170, 180, 184 & 186 WASHINGTON AVENUE EXTENSION

CITY OF ALBANY, COUNTY OF ALBANY, STATE OF NEW YORK

ALTERATION OF THIS DOCUMENT, EXCEPT BY A LICENSED PROFESSIONAL ENGINEER OR LAND SURVEYOR, IS ILLEGAL

REVISIONS:

DATE: 1/11/05

SCALE: N.T.S.

BY: MLW

CHK: GRT

MAP No.: 040343

**Daughters of Sarah Foundation  
Re-zone proposal**

**Common Council meeting  
November 7, 2005**

**Albany Pine Bush Preserve Commission (APBPC) Comments**

Presented by,  
Neil A. Gifford  
Conservation Director

1. The Albany Pine Bush Preserve Commission recommends that the Common Council reject the resolution to issue a Negative Declaration on the proposed rezone.
2. Albany Pine Bush Preserve Commission was not notified of the proposed action.  
Lack of notification is:
  - a. Contrary to the project review guidelines established in the 2002 Management Plan and Final Environmental Impact Statement, which was unanimously adopted by the Commission (including the City of Albany).
  - b. Inconsistent with State Environmental Quality Review Act (SEQRA), regarding the need for a Coordinated Review of the application, prior to Determining Significance of environmental impacts.
3. Project is located within an area recommended for Full Protection in the Commission's 2002 Management Plan and FEIS.
4. Site contains habitat for rare species, surveys for these species are needed to evaluate impacts and consider mitigative measures.
5. APBPC requests a copy of the project application, including the Environmental Assessment Form, so that the APBPC Technical Committee, of which the City is a member, can review the project consistent with both SEQRA and APB Project Review procedures.

Thank You,

Respectfully submitted by:  
Neil A. Gifford, Conservation Director  
Albany Pine Bush Preserve Commission

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the matter of the Application of

**SAVE THE PINE BUSH Inc.; LYNNE JACKSON;  
REZSIN ADAMS; JOHN WOLCOTT; LUCY CLARK;  
SANDRA CAMP; DAVE CAMP; LARRY LESSNER;  
RUSSELL ZIEMBA; and ANNE SOMBOR,**

Petitioners;

**VERIFIED  
PETITION**

- Against -

Index No.

**THE COMMON COUNCIL OF THE CITY OF ALBANY;  
and DAUGHTERS OF SARAH JEWISH FEDERATION,**

Respondents.

---

**PETITIONERS**, for their complaint against the respondents, make the following allegations:

1. This is an action pursuant to Article 78 of the CPLR, seeking to vacate and annul a determination of the City of Albany Common Council, pursuant to the State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law, and 6 NYCRR Part 617, (hereinafter SEQRA), that a parcel of land should be rezoned to permit the construction of a office park without a full environmental review. The Common Council's decision to issue a negative declaration, was arbitrary and capricious, in violation of SEQRA, and unsubstantiated by the evidence, since:

- A. The Common Council declared that an environmental review of the entire office park project would be conducted after the rezoning of the present portion of the site, thereby segmenting the planning of the office park, in violation of SEQRA's prohibition against "segmentation"; and

- B. The lands on which the office park will be built include land which has been designated for full environmental protection by the Albany Pine Bush Preserve Commission; the potential environmental impacts to the protected lands from the office park are so obvious and significant that it was arbitrary and capricious for the Common Council to find, by way of a negative declaration, that no significant environmental impacts could be identified.

## **THE PARTIES**

2. Save The Pine Bush is a not-for-profit corporation organized under the laws of the State of New York, with a place of business at 33 Central Ave., Albany N.Y., to promote and preserve the Albany Pine Bush. The organization has brought numerous law suits on behalf of the Pine Bush and the endangered species found there, and won a number of key decisions in the Court of Appeals and in the lower courts which lead to the creation of the Albany Pine Bush Commission and the Albany Pine Bush Preserve. The Court of Appeals, in Save The Pine Bush v. City of Albany, 70 NY2d 193, 201 (1987), expressly upheld the standing of Save The Pine Bush Inc. to assert claims similar to the instant proceeding, and the corporation has never been denied standing to sue in any of its many court proceedings.

3. Petitioners Rezsine Adams, who lives at 112 Chestnut Street, Albany, N.Y. is President of Save The Pine Bush; John Wolcott, who lives at 344 Sheridan Ave, Albany N.Y., is Vice President; Lynne Jackson, who lives at 223 South Swan Street, Albany, N.Y. is Secretary; Lucy Clark who lives with Anne Sombor, at 2348 Cayuna Road, Niskayuna, is Treasurer; and Russell Ziemba, who lives at 1813 Highland Avenue, Troy, N.Y. is a member of the Board of Directors. Sandra Camp and Dave Camp, who live at 13 Gipp Road, Albany, and Larry Lessner, who lives at 26 Wilan Lane, Albany, are members of Save The Pine Bush, living near the site of the office park. All of the Petitioners, use the Pine Bush for recreation, and to study and enjoy the unique habitat found there. All of the Petitioners have made extraordinary efforts over the years to protect the Pine Bush by speaking out at hearings, reviewing documents and development

plans, organizing fund raisers to fund law suits and in many other ways advocating on behalf of the Pine Bush. The Petitioners own their homes at the above addresses.

4. Daughters of Sarah Jewish Federation is a corporation, with an office and place of business at 180 Washington Avenue Extension, Albany, N.Y., which applied to the City of Albany to construct an office park at 170-180 Washington Avenue Extension, on approximately 6.65 acres of land.

5. The Common Council of the City of Albany (hereinafter “Common Council”) is a branch of the government of the City of Albany designated as the lead agency to conduct a review of the project pursuant to SEQRA.

6. In 1988, the Albany Pine Bush Preserve Commission was created by the New York State Legislature, pursuant to Article 46 of the Environmental Conservation Law, after a series of law suits by Save the Pine Bush resulted in court decisions that required the City to set aside a significant portion of land in the Albany Pine Bush for the protection of rare and endangered species that live there, including the Karner Blue butterfly. Subsequent court and administrative decisions held that the Pine Bush Preserve must include more than 2000 acres of land suitable for the preservation of the Karner Blue butterfly, and that the land must be configured in such a way as to permit periodic burnings of a portion of the preserve, to regenerate the native Pine Bush habitat. Until such a preserve has been achieved development must be curtailed on Pine Bush land that could be used to complete the preserve or protect the rare and endangered species living in the Pine Bush. Save The Pine Bush v. Common Council, 188 AD2d 969; 591 NYS2d 897 (3<sup>rd</sup> Dept. 1992).

7. The Albany Pine Bush Commission, pursuant to Section 46-0111 of the Environmental Conservation Law, is required to prepare management plans for the preserve which shall be the “fundamental document defining the protection and beneficial public use goals for the preserve and the means and techniques for their attainment.”

8. In its 2002 Management Plan the Albany Pine Bush Preserve Commission designated a plot of land (Area 40) in front of the Daughters of Sarah nursing home as land requiring full protection because of its sensitive environmental habitat, (hereinafter “the protected site”).

9. On or about January 26, 2005, the Daughters of Sarah Jewish Federation filed an Environmental Assessment Form in connection with its application to construct an office park on 6.65 acres at 170, 180, 184, and 186 Washington Ave, Extension, Albany.

10. The protected site (Area 40) is within the 6.65 acres that the Daughters of Sarah Jewish Foundation have applied to develop into an office park.

11. On November 25, 2005 the Common Council, approved a zoning change for a .69 acre plot of land within office park project from R-1B (Single Family Medium Density Residential Zoning District), to C-2 (Highway Commercial Zoning District), as a preliminary step in the development of the office park project, notwithstanding that no environmental impact statement had been filed for either the rezoning application or for the office park project. The Common Council stated that the negative declaration was granted in connection with the rezoning so that the parcel could:

“[B]e incorporated into the adjacent parcel to the west (5.28 acres that was rezoned C-PB in 1989) on which the applicant proposes eventually to construct a small office park. The City Planning Board will conduct a separate review of that project. It has been determined that the rezoning of this small area will **not** result in any potentially large environmental impacts.”

12. On November 7, 2005, Neil Gifford, Conservation Director of the Albany Pine Bush Preserve Commission opposed the negative declaration proposal on the grounds that the Albany Pine Bush Preserve Commission had not been notified of the proposed action as required by SEQRA’s mandate for coordinated review, and because the office

park project is located in an area recommended for full protection (Area 40), as a result of the site's habitat for rare species.

13. At present the Pine Bush Preserve has about 1,850 "fire manageable" acres.

14. Rare or endangered species that inhabit the Pine Bush include the Karner Blue Butterfly, the Frosted Elfin Butterfly, the Buck Moth, the Hognosed Snake, the Worm Snake, the Eastern Spadefoot Toad, and the Adder's Mouth Orchid.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

15. It was improper for the Common Council, in connection with a proposal to construct an office park, to grant a rezoning of a portion of the property, but postpone an environmental review pursuant to SEQRA until later, since this segmented the project into separate steps considered separately rather than comprehensively, and failed to provide planning at the earliest opportunity as required by SEQRA.

16. As a result Respondents violated SEQRA, and its regulations 6 NYCRR 617.1 (c) and (d) requiring comprehensive and early planning, and 6 NYCRR 617.3(g) and 617.2 (ag) that prohibits segmenting an action into separate parts considered separately.

#### **AS AND FOR A SECOND CAUSE OF ACTION**

17. It was arbitrary and capricious for the Common Council to grant a negative declaration on the rezoning of land that was part of an office park project, when the office park land included property presently designated for full protection by the Albany Pine Bush Preserve (Area 40). The impact of the rezoning and subsequent construction of an office park on the protected land would, under any circumstances, constitute a "significant adverse environmental impact" on the protected site and should have triggered a full environmental review pursuant to SEQRA, and its regulations 6 NYCRR 617.7(a)(2).

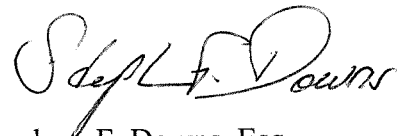
18. As a result, Respondents violated SEQRA and its regulations 6 NYCRR 617.7, which preclude an agency from issuing a negative declaration where there will be a significant adverse environmental impact .

**WHEREFORE,** Petitioners request that the court enter and order and judgment:

- 1) Vacating the Notice of Negative Declaration for the office park project as arbitrary and capricious, unsubstantiated by the evidence, and in violation of SEQRA, and
- 2) Granting a Preliminary Injunction against further construction of the office park project during the pendency of this action,
- 3) Annuling the rezoning of the property in question, and
- 4) For such other a further relief as to this court seems just and proper.

Dated: Albany, N.Y.

*March 9, 2006*

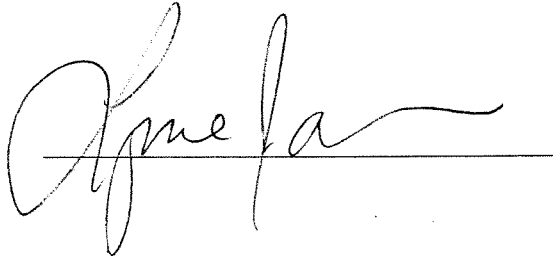


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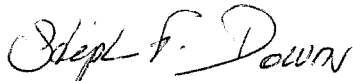


VERIFICATION

Lynne Jackson , being duly sworn, does hereby state that I am a Petitioner in the within action; that I have reviewed the foregoing complaint and am familiar with the contents of it; that the allegations of the complaint are true as to my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe the allegations to be true based upon documents I have observed and conversations I have had.

A handwritten signature in cursive script, appearing to read "Lynne Jackson", is written over a horizontal line.

Sworn to before me this <sup>9<sup>th</sup></sup> day of  
March, 2006

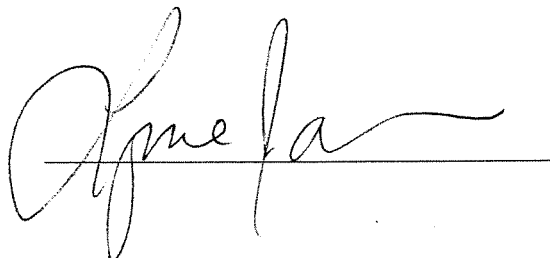
A handwritten signature in cursive script, appearing to read "Stephen F. Downs", is written over a horizontal line.

Notary

STEPHEN F. DOWNS  
Notary Public, State of New York  
Qualified in Albany County  
No. 4682086  
Commission Expires November 30, 2008

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