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ENVIRONMENTAL IMPACT COMMISSION
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MINUTES

March 23, 2005

Common Council Chambers

Next regularly scheduled meeting date **4/13/05 at 7 pm.**

REVISED AGENDA

March 23, 2005 - 7:30 pm

Common Council Chambers

Next regularly scheduled meeting: April 13, 2005

Meeting was opened at 7:38 pm by Chairman Benjamin Chianese.

Members Present: Chairman Benjamin Chianese, Bruce R. Lees,
William Mills, Tom Pinkham

Members Absent: Craig Westney, Sabrina Charney, Kevin Russell, Matt Rose, Keith
Prazeres

Staff Present: Scott LeRoy, Dept. of Health,
Patricia Lee, Secretary,
Corporation Counsel Daniel Casagrande

Thomas Pinkham, Jr. made a motion to accept tonight's agenda as presented. Mills seconded the motion and it carried unanimously. Chairman Chianese read the legal notice into the record regarding Stew Leonard's at 7:40 pm.

PUBLIC HEARING:

99 Federal Road

Regulated Activity # 533

Stew Leonard's

Assessors Lot # L08031, CG-20 Zone

3/9/05 Proposed stipulated agreement re: 4/04 denial for rear parking area. Public Hearing opens tonight. Corporation Council recommends a decision be made tonight. **[NOTE: THE REST OF THE AGENDA IS POSTPONED DUE TO ANTICIPATED INCLEMENT**

WEATHER.]

Chairman Chianese said Corporation Counsel will speak first presenting the stipulated agreement in detail. Then the applicant will have the opportunity to speak. Then the Public will be allowed to speak. Attorney Dan Casagrande introduced himself and said the Stipulated Judgment is the subject of negotiations. It is acceptable in its terms to the appellant, Stew Leonard's. The Environmental Impact Commission has not yet decided, Casagrande said. "I'll ask the Commission to make a decision tonight" after the Public Hearing, Casagrande said. If it is not accepted by the EIC, we will return to court. He read the Stipulated Judgment into the record at 7:43 pm, including all 22 paragraphs (see Stipulated Judgment, Docket No. CV-04-0352161S, Superior Court, Judicial District of Danbury at Danbury, STLJ, LLC v. Environmental Impact Commission of the City of Danbury, stamped Received on 3/23/05).

Chianese asked, when Casagrande finished reading, if the Commission had any questions. Being none, he turned the meeting over to the applicant. Ward J. Mazzucco, Attorney at Law, at 30 Main Street, Danbury, identified himself and said he is speaking on behalf of STLJ, LLC. I'm sure you're familiar, Mazzucco said, with the evolution of this proposal. It went from 207 parking spaces, to 166, to 137 spaces, and now to 95 parking spaces. The Stipulated Judgment contains many stipulations above and beyond a typical condition list, for which Mazzucco gave examples: the licensed environmental professional (LEP), the independent environmental professional (QEP), parking for employees only, gates, monitoring of storm events, planting plan, the two-year guarantee and cash bond, no tree cutting, and cause to remove the parking lot in the event of violations. This will be recorded on the land records. Doug Hempstead could not be here tonight due a death in the family, but he assures the EIC that any previous lapses are history, and Stew's looks forward to a cooperative relationship with the City of Danbury, "a new and different commitment", Mazzucco said. Are there any questions?

Ben Chianese asked, if the EIC approves this, can Stew Leonard's come back later and contest the stipulations? Dan Casagrande said, in my opinion, no because this becomes a contractual agreement and binding on future owners. Chianese had a question on the Conservation Easement: the hayrides are not a passive activity, "just so you're aware of that". Ward J. Mazzucco said down the road, the Health Department may approve some activities administratively, for example, educational trips. Chianese said hayrides, even if we have to state it separately, are not allowed. Scott T. LeRoy said that can be discussed. They have to come get a permit. The "longer projection", i.e., the Greenway, may have future activities that we have not foreseen. Chianese had a question on snow plowing and maintenance agreements. LeRoy replied that is all covered in the technical manuals; remember the rollers on the plows? Mazzucco said everything that was promised to be done in the original application "will be done". Chianese asked about the responsible employees, not just one employee. Mazzucco agreed and added there is security there 24 hours a day. Chianese asked will the lot be available during holidays only or all year round? Mazzucco answered all year round. Chianese asked it won't be open all the time? Casagrande said it's for employees only. Mazzucco said how often it will be used, I don't know. Lees had a concern about the wording for future applications, since "administrative approvals" don't come before the Commission, and he feels the same way as Ben about the hayrides. Mazzucco said I think Jack S. Kozuchowsky testified that a permit isn't even needed for hayrides. Lees continued, secondly, it does flood six to eight times a year. I'm concern about the fences and their integrity, the wooden trail path, when the area floods. Mazzucco said I think that's an item that can go before the department for an Administrative Approval, if it comes up. LeRoy added there's a "myriad of things" that may or may not happen which we cannot foresee. LeRoy, Lees and Mazzucco discussed the stability and security of the boardwalk, the fences, in case of flooding.

Ben Chianese asked would you have any objection if we changed the wording from Administrative Approval to Commission Approval. Ward J. Mazzucco answered, "I think I

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would." Who's going to determine an "emergency"? LeRoy said, "I'm not smart enough to go that far", and gave an example of an incident. Chianese said we're talking about activities. LeRoy replied they are already defined by statute, right, Dan? Atty. Casagrande discussed passive use activities saying not every activity is automatically regulated by this EIC. Pinkham asked where does a hayride fit in? Casagrande said, "I don't know". If it has no effect on the wetland and watercourses, that might be an Administrative Approval. Mazzucco said, "We want Scott LeRoy to be out there all the time" on a "regular basis". Mills asked for clarification of what he thought was to be a "holiday" parking area with 95 spaces and locking gates, and Mazzucco agreed. Mills said now look at the map: the locking gates will prevent access to the walking trails and boardwalk, since the gates will be open only for a minimal number of days. Mazzucco, Mills and LeRoy talked about this. Lees said the purpose of the locking gates was to prevent parking there during a flood (to Mr. Mills), was my understanding. We are fooling ourselves, Lees said, if we think they will be using this lot only 30 days per year. Chianese said they do have the right to use the lot 365 days a year, and he discussed the gates to prevent parking. Pinkham said on July 3rd, "It's insanity in its best form". Customers will park there if there's a spot. Lees asked about handicapped parking, and Mazzucco replied that there's plenty. Chianese said the time is now 8:25 pm, and we can have additional questions after the Public speaks. Are there any members of the audience who wish to speak for or in opposition to this application?

Mary Reynolds of Library Place signed in, identified herself, and opened her notes. She asked Chianese, "What? I can't talk?" Chianese said limit your comments to the issues before us tonight. Reynolds said I'm against it, the 95-space lot. We know the history of Stew Leonard's flaunting the rules once they get approved, and their "callous disregard" for the creatures. She used the tree cutting in 1993 as an example. 95 spaces should not be approved "when it has already been turned down so many times". 95 will turn into 100 spaces, and 100 will become 115 spaces. "The Leonards never comply", Reynolds said. "I feel that a great war has been lost" tonight. We owe our gratitude to Tom Saadi, Mrs. Basso, Joe Coco, Lynn Waller and Mr. and Mrs. Mitchell. Reynolds quoted then from a naturalist, "I have grown old fighting with them", she concluded at 8:30 pm. Chianese asked how many acres. Mazzucco guessed 95 spaces is about a 2/3-acre disturbance.

Lynn Waller next came forward, signed in and identified herself. She said you did consider some of my questions in this agreement. She read her letter, dated 3/23/05, into the record, indicating her deep disappointment "in the process that has taken this decision out of your hands and put it in a stipulated agreement". Waller's two-page letter talked about the Conservation Easement, passive recreation, Tarrywile, enforcement of such an easement, hayrides, mowing, flooding, violations requiring the removal of the parking lot, and "other viable, though expensive, solutions to their lack of parking." "Again, I ask you to stand firm and vote down this agreement." She expressed her disbelief in a Conservation Easement. "I hear waffling". I like paragraph 19. "I believe your original decision was correct," she concluded at 8:38 pm. Chairman Chianese said we'll address those Conservation Easement concerns of yours, and turned to Dan Casagrande. Casagrande said regarding Tarrywile, "You're right", the agreement there was a "lack of disagreement". Stew's "will have no freedom to disregard it", Casagrande said. Waller said I'm very concerned that the Health Department will let us down. They want the tax revenue. I know you've all worked hard, Waller said. Casagrande said to Ben Chianese, the Health Department will act as your agent. Chianese said this Commission will be watching Stew's, as well as the Health Department. Casagrande discussed paragraph 19, "You have certain rights and remedies", which will include legal fees. Chianese asked again are there any members of the audience who wish to speak for or in opposition?

Joseph Coco, Attorney, signed in and identified himself, saying, "I'm speaking against this proposal". I've been here numerous times since 2000. On 3/10/04, I handed out a packet of information containing a stipulation by the US Army Corps of Engineers, representing the EPA and FEMA, and Stew's agreement never to develop the flood plain in 1988. This breaks

that agreement. Also, Coco said, I discussed the parking pollution. The State DEP wrote a letter to the City of Danbury where 73 spaces with grass pavers was denied. Coco discussed the items in the Stipulated Judgment, especially 3©, Administrative Approval for hayrides. In educational activities, you walk. Administrative Approval was given to the hoedown, which lost 48 parking spaces, storage of materials, losing 80 spaces, and the garden center, losing 64 more spaces, Coco said. He sited the power outlet, tents, picnics, Halloween rides, and wondered about enforceability. In 2005, Coco said, Stew's dumped snow from their parking lot into the floodplain. That's a breach of the previous agreement. How quickly can cars be moved out of a parking lot during a storm event? He talked about paragraph 15, a three-year plant survival rate, and they get their bond back. Coco said this is the same promise they made in the early 90's, as Tom Saadi testified to you. Paragraph 19 refers to two or more violations. Where was the enforcement in 1/05 when Stew's was dumping snow into the floodplain? Coco said, since September 2004, this area has been under water for seven days. Coco said the Health Department is not enforcing the current stipulations. This offers no "positive" mitigation. The walkways, railings, gazebo will be built with pressure-treated wood, containing harmful carcinogens and arsenic. Coco discussed in detail some articles excerpts discussing what a "vehicle leaves behind" besides oil and petroleum. He referred to an article "Why Technical Pollution Is Going Global". This is "way beyond just oil and grease", Coco said. "You are our last line of defense", and he thanked the Commission. Chianese asked are they on the land records, those agreements? Coco replied they are not on the land records, but are public documents within your control. Casagrande asked are those agreements part of this record? Coco and Casagrande discussed an agreement with the Army Corps of Engineers taking precedence over this Stipulated Agreement. Coco said what Stew Leonard's built in 1988 and 1989 was supposed to be the limit of their development. They filled it in and utilized it all, he referred to the previous packet he'd submitted to the EIC. LeRoy said we received no complaints about moving snow in 2005 at Stew Leonard's. "We give out permits all the time", LeRoy said. It's up to the applicant to comply with State and Federal agreements. Chianese asked how would you monitor them? LeRoy said the same as with GDC (Shelter Rock Road), with "active investigations". We can't assume that the only people who will use the trails, LeRoy said, are those who can walk. My wife works with the disabled.

Mazzucco and Chianese discussed the previous agreements, the Army Corps of Engineers. Chianese asked three times if there are any members of the audience who wish to speak for or in opposition to this item, and there were none. Bruce R. Lees made a motion to close the Public Hearing. Pinkham seconded the motion and it carried unanimously at 9:05 pm. Atty. Casagrande suggested a motion be made to move this to a "decision-making process". Lees made a motion to move this to a decision-making process. Mills seconded the motion and it carried unanimously. Chianese said decision-making is part of our agenda now. Lees asked Casagrande for clarification if this passes or if it fails. Casagrande said if it passes then it will be adopted in Court on the first Monday in April. If it fails, the City of Danbury will be given time, maybe 30 days, to file its brief. The appellant has already filed their brief. If there's a tie in voting, the motion fails. Lees said, if I may, I lean towards tabling this until we have more members present, and he sited tonight's inclement weather. I'll vote with my heart tonight, Lees said, and I'm against a parking lot in a flood plain. Chianese asked each Commissioner for their input. Mills said I'd be very curious to investigate some of the issues Mr. Coco brought up. (Tape #1 flipped to side B.) Pinkham said it's simple: it's a Regulated Area, in a floodplain, and we must protect it. Stew's reputation precedes itself. Stew Leonard's has the same people in their administration. There are other feasible alternatives. Lees said, although expensive, there's other feasible alternatives. LeRoy said if only we had seven voting members here tonight. If this is tabled, the EIC absentees must come in and hear the tapes. Casagrande said the absent Commissioners should go back and review the tapes, but there is no case law giving authority on that. Mills, Pinkham and Lees discussed this. Mills started talking about specifics in the proposal, and Chianese and Casagrande told him not to do that since the Public Hearing is now closed. Chianese said about the Stipulated Judgment, we can make it stronger, "more tight", where things can happen down the road. Mills made a motion to

table this until the next meeting, 4/13/05. Lees seconded the motion, and it carried unanimously at 9:21 pm. Pinkham made a motion to start the next meeting in April at 7 pm. Mills seconded the motion, and it carried unanimously.

ADJOURNMENT:

Pinkham motioned to adjourn. Lees seconded the motion, and it carried unanimously at 9:22 pm.

The next regular meeting of the EIC will be April 13, 2005 at **7** pm.

Respectfully submitted,

Patricia Lee, Secretary