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JUN 20 2008
CONNECTICUT
SITING COUNCIL

From: Robert and Carolyn Noiseux
447 S Canterbury Rd
Canterbury, CT 06331
pH 860-546-6134
bobnoiseux@yahoo.com

To: Connecticut Siting Council Members and Staff
10 Franklin Sq
New Britain, CT

Date: 6/17/08

Subj: the reopening of Petition 784 (Plainfield Renewable Energy)

Dear Council Members:

A citizen's group called Friends of the Quinebaug River has submitted a motion to reopen Petition 784. You have no doubt seen this motion. You have no doubt seen PRE's voluminous response. This response itself makes our case. Our position is that the hearing should be reopened for several reasons:

1. The PRE/CSC notice agreement was not followed.
2. There are missing relevant facts which should be part of the record, and as such, part of the decision making process.
3. We feel that that these issues coming to light justifies the "changed conditions" as required by statute.

As a Council, FQR is asking you to decide whether these matters are important enough to reopen the process and reevaluate the decision. When we filed our motion, it was never our intent to be all encompassing, but rather to bring out examples of things which show lapses in both record and notice. It was our belief that the hearing itself would be the venue to discuss and evaluate the specific arguments. Since the motion was filed, little has changed. If anything, our position is strengthened.

Regarding the first point, the applicant has gone to great lengths to mask the lack of notice. They are now relying on "discussions", "phonecalls", and non-specific letters to show "notice". They do not dispute the lack of signage and lack of notice to abutting property owners. In fact, a review of the CSC Public Hearing notification shows that Canterbury is not even mentioned. Do you feel that this is transparent? Given the lack of public notice of the revised location, do you feel that it is reasonable to have expected the public to research and bring forth concerns with the revised location?

Regarding the second point: We raised some issues pertaining to the pump house property. We feel that the public trust demands these issues should be resolved before this project can move forward. We have enclosed with this letter, an unusual document filed with the Man-Burch property land records. This document highlights the local conditions including proximity to the Yaworski Dump and Yaworski Lagoon. This document encourages research on these issues at the Canterbury Library. This research was done and showed a report drawn up by the Dept of Health and Human Services back in 2000. This report can be viewed on line at:

http://www.atsdr.cdc.gov/hac/PHA/yaworski2/ywl_p1.html

One of the conclusions contained in the study is this: "Groundwater beneath the Yaworski Waste Lagoon Superfund and Yaworski Landfill sites is contaminated with volatile organic compounds and metals above health comparison values for drinking water. This contaminated groundwater has migrated off-site and groundwater on the other side of the Quinebaug river is contaminated."

It is reasonable for the public to then ask

1. What contaminants (if any) are present on the PRE site?
2. How would the health and safety of area residents and the Quinebaug itself, be protected from the release of these potential contaminants due to construction activities?
3. Will the proposed ongoing usages lead to future uncontrolled releases of hazardous materials?

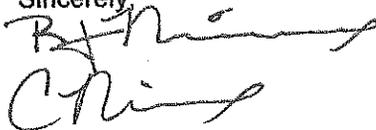
We are not saying that the property in question cannot under any circumstances be safely used for the purpose intended. Indeed the Council has in the past approved property usages with conditions or restrictions. We are saying that this issue should be carefully studied. No matter how hard the applicant tries, he cannot dispute that this was never done. Furthermore, there are additional issues which an open hearing process would bring out.

Given that the applicant has not received their DEP permits, and will not within the near future, and given that the applicant has decided to sue the Town of Canterbury, thus tying their project up for an indefinite period of time, it is fair to say that spending some time reopening the process would not unfairly impact the applicant's timeline.

In closing, I am also attaching a memo issued by CEQ Executive Director Mr. Karl Wagener to the CEQ members. As a fresh set of eyes, he too has identified some troubling issues. At the May CEQ meeting, the Council unanimously endorsed the reopening of the CSC Public Hearing.

Thank you for your consideration.

Sincerely,



Robert and Carolyn Noiseux

cc: Mr. Derek Phelps (via email)
Mr. Daniel Caruso (via e mail)
Mr. Robert Marconi (via email)
Mr. Robert Golden (USPS and email)
Mr. Bruce McDermott (USPS and email)
Ms. Margaret Miner (via email)
Mr. Roger Smith (via email)
Mr. Steven Orlomoski (via email)
Mr. Roger Shinkiewicz (via email)

Encl: 9 pages

Thomas F. Harrison
Chairman

DATE: May 16, 2008

TO: Council Members

M. Howard Beach

FROM: Karl J. Wagener
Executive Director

John M. Mandyck

RE: Agenda Item 6A – Plainfield Renewable Energy

Susan B.
Mendenhall

Background

Earl W. Phillips, Jr.

Plainfield Renewable Energy LLC (PRE) has proposed to build a 37.5 MW power plant in Plainfield that would use wood – harvested trees, construction and demolition debris, and other waste wood – for fuel. Many aspects of the project are controversial and present environmental management challenges.

Richard Sherman

The Connecticut Siting Council (CSC) approved the project in June 2007. (Technically, the approval was in the form of a ruling that the project did not need to obtain a Certificate of Environmental Compatibility and Need, as the project was smaller than 75MW (a threshold established by the General Assembly in 2005) and would not have a substantial adverse environmental impact.) Several permits are pending at the Department of Environmental Protection.

Norman VanCor

Wesley
Winterbottom

Complaint

The complaint, made originally to the CSC, is from a resident of Canterbury, Robert Noiseux, who also is a member of the Friends of the Quinebaug River. The Canterbury Inland Wetlands and Watercourses Agency has written to the CSC in support of Mr. Noiseux's complaint.

Karl J. Wagener
Executive Director

The complaint does not pertain directly to the power plant facility proposed in Plainfield. The complaint alleges that the residents, landowners and municipal commissions of Canterbury were not informed of the location of the proposed water intake and pumping facility, which would be in Canterbury about three miles from the power plant.

Chronology

The following is what occurred, as reported to Council staff by citizens. I have verified these facts where possible.

The petitioner to the CSC proposed an intake and pumping facility on industrially-zoned property on Packer Road in Canterbury. Residents and town commissions did not become intervenors. Less than two weeks prior to the public hearing, the petitioner changed the proposed location to a non-industrial property about a half-mile away. Unaware of the change, local residents and town commissions did not comment.

The new property contains wetlands and is adjacent to a federal Superfund site. The deed for the tract the property notes the presence of the federal Superfund site. The new property also is closer than the original site to a public boat launch area.

The CSC never considered the possibility of contamination on the property. Mr. Noiseux contends that oversight is one consequence of the local citizenry being unaware of the change in proposed location of the pumping facility.

In March 2008, Mr. Noiseux wrote to the CSC with the following questions (full letter attached):

“1. As per article 1 of the CSC noticing requirements: Should PRE have erected signage near the proposed pump house? If so, they did not.”

“2. As per article 3 of the CSC noticing requirements: Should PRE have sent notice to owners of property abutting the pump house property and pipeline? If so, they did not.”

“3. In accordance with article 7 of the CSC noticing requirements (see attached document), should PRE have scheduled a tour of the proposed pump house site? If so, they did not.”

“4. Should PRE have included the Canterbury facility site as part of the public hearing notice? If so, they did not.”

The CSC referred the questions to the petitioner. The petitioner’s attorney responded to the questions in a letter dated March 25, 2008.

I reviewed the March 25, 2008 letter and found it misleading, condescending and disrespectful of the citizen, the CSC and the state regulatory process.

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Details of the March 25 Letter From the Petitioner’s Attorney

The March 25 letter is attached. I have marked four sections of the letter (A,B,C,D) to highlight deficiencies in the letter. Explanations of these deficiencies follow:

- A. Mr. Bruce McDermott (the petitioner’s attorney) explains why the statutory provisions regarding public notice of applications do not apply to a petition. However, Mr. Noiseux never referenced the statutes. He was referring to a November 1, 2006 memo from the Siting Council that spells out notification requirements for this petition (memo attached).
- B. Here Mr. McDermott assumes wrongly that Mr. Noiseux is referring to a guidance document, whereas he is again referring to the November 1 memo.
- C. I have underlined a phrase that appears in quotes. To me, the only reasonable inference – the one that the writer surely intends – is that this phrase is a direct quote from the referenced statute (CGS Section 16-50/(b)). It is NOT a direct quote. In fact, the actual language of the statute would lead the reader to the opposite conclusion that Mr. McDermott asserts.

Mr. McDermott's "quote" is: "primary site on which the facility would be located." Mr. McDermott then goes on to say that the primary site is the location of the proposed generating facility, implying strongly that the meaning of "primary site" is "main site," and that such things as pumping facilities would be "secondary sites."

Here is the actual statutory language: "primary or alternative sites on which the facility would be located." The meaning of "primary," in this line and in the context of the whole statute, clearly is "preferred" or "first priority" as distinct from alternative sites. It does not mean "main" at all. (The statute makes this very clear, at the beginning of the section "quoted" by Mr. McDermott, where it refers to "any portion of such facility..., both as primarily proposed and in the alternative locations listed,...")

The importance of this statute is that it requires notice to be sent to adjoining landowners of the primary and alternative sites.

The misleading and disrespectful content of Mr. McDermott's letter is, ironically, beside the point. Mr. Noiseux did not mention the statute in his question. Again, he was referring to the November 1 memo, which states:

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"3. At least ten business days prior to the public hearing, the applicant shall provide notice of the application and scheduled hearing by certified mail to all abutting landowners of the proposed facility."

A review of the record shows that the petitioner asserted that all adjoining landowners had been given notice, and the CSC in its Finding of Fact makes the same assertion. Evidently, the CSC did not find it necessary for the petitioner to give notice to neighbors of the pumping facility, but I do not know if that was a case-specific decision, an oversight, or Council policy. If it is indeed policy, I do not know if it applies to applications or just petitions, which might have different statutory requirements. I intend to learn the answer to these questions, but for the present I conclude that the citizen could have been given this information and evidently was not, certainly not from the petitioner.

- D. "For the reasons set forth above, there was no requirement for the water intake / outfall structure to be described in the public hearing notice." If the reasons "set forth above" are meant to include the conclusions discussed in note C above, then this only shows more disrespect for the reader.

Subsequent Events

The complainant, Mr. Noiseux, responded to Mr. McDermott's letter on April 8. At the request of the CSC, Mr. McDermott replied to that response on April 24. Mr. Noiseux then replied again on April 27 and presumably did not expect a reply from Mr. McDermott, who had asked Mr. Noiseux to consider his previous reply to be his final one. I do not think it is necessary to review each point of those letters here, but I have attached them all for your review.

Mr. Noiseux is asking that the CSC reopen the docket, in part, for the limited purpose of discussing the intake / pumping facility. He is not asking that the location of the power plant itself be reopened. He reports that the Canterbury Inland Wetlands and Watercourses Commission voted at a special meeting on May 14 to support such a request.

Conclusion

The CSC asked the petitioner to respond to Mr. Noiseux' questions about the lack of notice in Canterbury. Because the request came from a state regulatory agency, it should have received a response that respected the regulatory process by providing straightforward and truthful answers for the benefit of the citizen and the CSC. (To clarify my point: If a citizen had written to the company directly and received the replies discussed above, I would have no opinion and I do not think it would be a valid subject of a complaint to this Council.) Instead, the citizen and the CSC received a defense of the proceedings based on incorrect assumptions, irrelevant legal arguments, and misleading statements. Mr. Noiseux has not, to my knowledge, received actual answers to his questions.

Recommendation

Staff recommends that the Council write to the CSC (draft attached) asking the CSC to dismiss the petitioner's responses in their entirety and to answer Mr. Noiseux' questions directly. Specifically, it would be useful to learn why the CSC concludes that structures such as the intake / pumping facility are not subject to public notice requirements, if that is indeed its conclusion.

The Council also could recommend reopening the docket for the limited purpose of discussing the location of the intake / pumping facility. Dockets can be reopened when conditions change. I do not know if people gaining knowledge of the actual proposed location constitutes a changed condition.

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, dated this 22nd day of March, 2006, by and between ASPINOOK, LLC, ("Owner") of Canterbury, Connecticut, and MAN-BURCH, LLC ("Buyer") of Norwich, Connecticut,

WITNESSETH:

WHEREAS, the Owner is the owner of land known as Lot #12 B, Packer Road, Canterbury, Connecticut more particularly bounded and described on Schedule A attached hereto and made a part hereof by reference (the "Premises"); and

WHEREAS, the Owner has placed the Premises for sale; and

WHEREAS, the Buyer is interested in purchasing the Premises from the Owner;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties hereto stipulate and agree as follows:

1. The Owner has informed the Buyer that the Premises are located on Packer Road, Canterbury, Connecticut, and that the Premises are located at or near a Waste Management recycling facility causing heavy truck traffic on Packer Road and further that the Premises are located in close proximity to property known as the Yaworski Landfill, a federally declared Super Fund site, and further that the Premises are located in close proximity to the Yaworski transfer station and activities associated therewith.

#176859

BROWN JACOBSON P.C.

ATTORNEYS AT LAW

22 COURTHOUSE SQUARE P.O. BOX 391 NORWICH, CONNECTICUT 06380-0391
JURIS # 06537 1860 989-3321

2. The Buyer herein stipulates and agrees that it is fully aware that the above described facilities will cause heavy truck traffic on Packer Road in close proximity to the Premises and further the Buyer has been advised by Owner to research the Super Fund and landfill information at the Canterbury Town Library, and by the acceptance of a deed from the Owner transferring the Premises to the Buyer, the Buyer does hereby stipulate and agree that it has been fully informed of the presence of the facilities in close proximity to the Premises and the heavy truck traffic on Packer Road generated by said facilities and the Buyer by virtue of the purchase of the Premises hereby acknowledges that it has full knowledge and factual information of the conditions on Packer Road as described herein, accepting the presence of such facilities in close proximity to the Premises and the truck traffic existing on Packer Road.

3. The Buyer hereby stipulates and agrees that this Memorandum of Understanding shall be recorded in the Land Records of the Town of Canterbury and that any successor in title or purchaser of the Premises from the Buyer shall be subject to this Memorandum of Understanding this day made.

4. This Agreement shall be binding upon the successors and assigns of the Buyer and shall run with the land.

#176859

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BROWN JACOBSON P.C.

ATTORNEYS AT LAW

22 COURTHOUSE SQUARE P.O. BOX 391 NORWICH, CONNECTICUT 06360-0391
JURIS & 06637 (860) 888-3321

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year within above written.

Signed, Sealed and Delivered in the presence of:

ASPINOOK, LLC

[Signature]
LAWYER J. CAFFREY

By [Signature]
Denis Yaworski, a Member

[Signature]
Diana M. Griser
[Signature]
MAN-BURCH, LLC

MAN-BURCH, LLC
By [Signature]
member

STATE OF CONNECTICUT
COUNTY OF NEW LONDON

ss. Norwich

March 22, 2006

Personally appeared DENIS YAWORSKI, a Member of ASPINOOK, LLC. Signer and Sealer of the foregoing instrument and acknowledged same to be his free act and deed and the free act and deed of Aspinoak, LLC, before me,

[Signature]
Diana M. Griser
Commissioner of the Superior Court
Notary Public
My commission expires: _____

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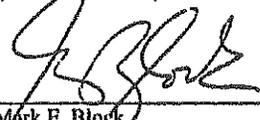
STATE OF CONNECTICUT :

ss. Norwich

March 22, 2006

COUNTY OF NEW LONDON:

Personally appeared Brian H. Burchman, a Member of MAN-BURCH LLC, Signer and Sealer of the foregoing instrument and acknowledged same to be his free act and deed and the free act and deed of MAN-BURCH, LLC, before me,



Mark E. Block
Commissioner of the Superior Court
~~Notary Public~~
My commission expires: _____

#176850

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BROWN JACOBSON P.C.

ATTORNEYS AT LAW

82 COURTHOUSE SQUARE P.O. BOX 381 NORWICH, CONNECTICUT 06250-0381
JURIS 8 06227 (202) 608-3331

PUBLISHER'S CERTIFICATE

State of Connecticut,

ss. Norwich

County of New London,

On this 15th day of November 2006

personally appeared before the undersigned, a Notary Public, within and for said County and State

Bette L. Peck, Proof of Publication

of the "NORWICH BULLETIN" a daily newspaper published at Norwich, County of New London, State of Connecticut, who, being duly sworn, states oath that

NOTICE OF SITING COUNCIL

PETITION AND HEARING

Pursuant to provisions of General Statutes

a true copy of which is hereto annexed, was published in said newspaper

in its issue of the

8th November 2006

13th November 2006

Bette L. Peck

Subscribed and sworn to before me this 15th day of NOVEMBER A.D. 2006

Cinder M. Lisee

Notary Public
NOTARY PUBLIC

My Commission Expires State of Connecticut

My Commission Expires 06/30/08