

City of Derby

Board of Aldermen / Alderwomen

First Ward

Barbara L. DeGennaro
Thomas J. Donofrio
Bev Moran

Second Ward

Joseph L. DiMartino
Evelyn Browning
Ronald M. Sill

Third Ward

Jim DiMartino
Louis Oliwa
Charles Sampson

Board of Aldermen/Alderwomen Special Meeting / Public Hearing Minutes
Derby City Hall
1 Elizabeth Street, Derby, CT
June 6, 2019

1. Call to Order.

Mayor Dziekan called the meeting to order at 6:00 PM.

2. Pledge of Allegiance.

Mayor Dziekan led the Pledge of Allegiance.

3. Roll Call

The Board of Aldermen / Alderwomen members present were Thomas Donofrio, Bev Moran, Joseph DiMartino, Evelyn Browning, Charles Sampson, Louis Oliwa, Ronald Sill and Jim DiMartino. Barbara DeGennaro was absent.

4. Public Portion and 5. Public Hearing: on the lease of municipal real estate, consisting of a portion of the property identified as Map 9-6, Lot 2 and commonly known as the entrance area to the Derby High School for the construction, ownership, operation, and maintenance of a water tank prior to final approval of such lease.

Mayor Dziekan asked if anyone wished to speak.

Attorney Cava – Southbury Road, Roxbury

On a nice night like this I want to be as brief as I can. Look, I know when you are on the Board of Aldermen you have issues (inaudible) that you are trying to address and sometimes what happens though is that you can get caught up in an application or situation like this one and not look at the fine points and how it appears to the public. I feel it's very important because you have a charter and we have laws that require a certain degree of transparency in government and I think sometimes people don't get a look at the same impression you do because they are looking at it from a different perspective. I just want to briefly say just remind you that this property was originally part of the Downs property. It was acquired in 1935 when the electors of this town voted 734 to 39 to purchase and issue bonds to fund it explicitly for park purposes. This was the height of the great depression. Things were not going well. People were out of work. People were desperate and yet the City of Derby decided to spend this money to buy this property because the welfare of the citizens was tied up in having good park land. Thank goodness they did. I don't think there is a town in Connecticut that bought land for park that regrets it today because they couldn't even come close to buying it today at cost and so I think that this is an important factor that's the reason why it did and I'm just going to leave you with a couple a couple of those documents that set that established that these are from your own records and it shows you how it was acquired and what was acquired and I just want to leave that up here for anyone who wishes to take a look at it. Now the way this started is you started it with negotiations with the Regional Water Authority. They went to acquire they've been looking for a site for years for a water tank and you want a water tank because you want more water pressure and water pressure is obtained by the elevation from where the tank is to where the water is out (inaudible) being used so the higher you get the better. They looked at several sites and they looked at this one now. They want to put it on this site and that's why we are here but you negotiated with them in early November '18 you entered into an MOU a memorandum of understanding you basically made a deal with them on how the terms and the thing would be structured. It still needed some work. They had to get approval from zoning and other things. Properties had to be acquired. There were a variety of things that were part of it. You can't just give away or sell or lease park land without replacing it with something under Connecticut law comparable property and

so that started the process down there however there is a problem and that's that your Charter Section 22 requires any time you dispose of land whether it be by sale or lease you put it out to competitive bidding. Ok and the purpose of competitive bidding is that you maximize the return. Our Supreme Court, in a case called Spinello against Manchester, said that it's a well established principal that municipal competitive bidding laws are enacted to guard against such evils as favoritism, fraud or corruption in the award of contracts to secure the best product at the lowest price as a benefit the taxpayers not the bidders so the courts say that what happens in these cases is that even if the town is acting in good faith and wants to obtain the best contract for the residents the court will step in and void the transaction and void the bidding process if there is an erosion of the integrity of the bidding statute and that means that if there is any favoritism if one party gets to negotiate exclusively with the city at the start of the process and reach a deal with the city and investigate the property and get competitive advantages before you even put it to bid and 6 months later this hadn't gone to bid they were in front of the zoning commission and this hadn't gone to bid hadn't complied with the charter until we made a stink about it and called you on it. Ok and then you put it out for three weeks. You you drafted an RFP for an audience of one. There is only one party who could bid under that and be awarded the contract the way you drafted it. This isn't competitive this is basically just gratifying the MOU and so the goal is to maximize the return you need a sufficient exposure to market and three weeks probably is it and since it was already drafted for one bidder probably not very fair to begin with no matter how long you put it on market probably because you are only going to get one bidder. This is also a terrible spot for this tank. We presented this to the planning and zoning commission. I'd like to present you with copies. (Attached) Let's see 1 2 3 4 5 6 7 8 9 10 11 people up there. Here you go and I'd like you to be aware this report id like you to review this report before any action on this because my client Sharlene McEvoy and she engaged Dr. Danzer, Steven Danzer, to do an investigation of property. Now he's his doctorate is renewable natural resources studies. He's a soil scientist. He's a wetlands scientist and he's an arborist a licensed arborist. He has all the criteria necessary to evaluate a property that is a wooded property that is part of a park. Without you know spending a lot of time of this I want to tell you that he takes you through the issues of the fact that why this was acquired as public park and that this changed (inaudible) inconsistent with that. He will take you through your plan of conservation and development and why this violations your plan of conservation and development. The planning and zoning commission creates this plan and then we come back and we do things that don't comply with it and don't pay attention to it when it comes time to actually do (inaudible) so he'll also take you through the ecological value of the land. The fact that it is a landscaped corridor from the portions of coon hollow park that are not developed that are mostly behind the high school and behind that area and that is where the wildlife was able to come through there through this piece of land. It's the bridge to Osbornedale State Park it's the way the fauna, the animal migrate and go back and forth and when you change the grades of the way your gonna do it and you change the tank add the tank and add the fences and parking lot and you add the most of the site is going to have a low fence. When you add all of that in there you have pretty much rendered this worthless for the animal that need to use it to traverse and that's going to eliminate habitat. You are going to remove most of the trees on this property and as a result (inaudible) large trees there he goes through the natural resources and how this is going to be a problem for that and that's why my client (inaudible) planning and zoning case to raise these environmental issues so this is really the wrong place to put it and the other thing he addresses in here is the fact that if you want a hydrologic place to put it there is a better place. There is an alternative place and that very place is a site off Silver Hill its right over the line into Ansonia. The advantage of that site is it has none of the nature resource putting a tank on that site which already has a tank has none of the natural resource impact of this site and it's an elevation of 350 versus this site elevation of 230. It's a120 ft higher. 50 % more capacity for giving you water pressure. It is a much better site and it doesn't have the same problems as this site and yet here the plan is to lease the site for that purpose that is why I think it's wrong and that's why I think you should not do it. I would really appreciate it that you review the report by Dr. Danzer to see why this is not really the place to put it. I know you are caught up in it and you want to get this and the fire department wants the water pressure and everything but if you were to develop the site off of silver hill you would have a lot better pressure situation according to Dr. Danzer. I appreciate your time this evening and I'm sorry I went on as long as I did.

Mayor Dziekan asked if anyone else wished to speak.

Carmen DiCenso – 7 Jeanetti Drive

I was on the Board of Aldermen siting behind that table a few years ago when Regional Water came to us and wanted to put the water tank upon on top of Summit Street Hill better known to the Derby people as Telescope Mountain. We all thought at that time yes we definitely need the press. The fire department lost a house on Summit Street, a 3 family

house, because there was not enough pressure but the that site we didn't like because it's the highest point of the City of Derby on the West side and would be seen from RT 8 north and south. It was just not the right spot. We do have other water tanks in the City. There is a water tank here off of Strang Road and my house is 200 ft from that and I never see it. The water company said it's going to put trees around the new site and before we go into this...this is the site this is the entrance to the Derby High School. Here's the entrance to the tank. There is a house and I'm gonna say an 8th of a mile away 3 or 400 yards away. One house on the corner. I looked up the definition of a park on the internet got that thing today that's great. A bunch of people gather, a place of recreation a place where people can picnic. I'm 68 years old, I've lived in Derby my entire life. The only people years ago were public works had an old picnic bench up there so they could walk across the street and have their lunch. I have never seen anyone picnic there. I never seen anyone on a lounge chair relaxing there. You want to talk about a park, 50 feet away across the street we have 360 acres of a park. I don't think this is a park. It is an over vegetated over grown piece of property that has been abandoned since its inception and nobody has used. The city is in dire need for water pressure. The Regional Water is also going to build us a parking lot that is needed in that area now that we have our new Payden Field House and it's going to be used for different things that are going to be rented out there. Regional Water is also going to be giving us open land on Lombardi Drive. So anything that they are using they are giving back to us, plus. As for the...Safety. This is the biggest problem here, we have a fire on Summit Street. We lost a 3 family house. Thank God nobody got killed. Fire truck did damage a few cars on the way up cause there is a very narrow road but everybody was fine. We have Griffin Hospital, Derby High School, Middle School, the brand new sports complex, Birmingham. They all need water pressure. The firemen will tell you, the chief is here, he'll tell you that the pressure on the west side of Derby is not good. It would be a damn shame if we didn't do this if there was a fire and we had a loss of life due to water pressure. And shame on anybody, anybody that opposes this for a tree. If you are going to compare a tree to a life or somebody's home you should be ashamed of yourself. Thank you.

Mayor Dziekan asked if anyone else wished to speak.

Mr. Charmel – President and CEO of Griffin Hospital

I want to speak in support of this. You heard earlier that originally this water tower was going to be placed on Telescope Mountain and there was opposition there were a number of reasons put forward. Back then I spoke in favor of it because frankly we are concerned. There was an incident a number of years ago now where a water main in Derby was severed and the hospital lost water pressure. And it was a very serious situation. It was probably one of the most frightening things that I've experienced in my 4 years at Griffin. You said well why, we're talking about portable water couldn't you just give them bottle water, but in a hospital operation water is a critical resource. So of course it provides, we have to fill our boilers with water to make steam to heat the building but it's more than that. All of our sterilization in the hospital uses steam so if we don't have water we can't sterilize equipment. Essentially, we can't function. We are a vacuum system. You might know about suction. So a number of devices in the hospital work off suction. We actually use suction to remove secretions from patients. Our suction systems goes down if we lose water pressure so we are literally putting lives at risk. When the president of the Regional Water Authority, after that water main broke, the Regional Water Authority made a significant investment in upgrading the infrastructure in the City of Derby. The water line that came across the bridge was replaced as a result of that incident and a number of other improvements have been made and this was the last piece of it. You can have all the piping and valves in the world but if you don't have water pressure it doesn't function. I understand there is a process that you have to go through to consider all the alternatives to get input from the community, but I don't want us to lose sight of the fact that residents of this City are being put at risk. Patients at Griffin Hospital are being put at risk. Everyday until we solve this problem and I think you've got a viable solution and I heard other alternative sites being proposed. I was here at the last hearing and the consultants of the Water Authority talked about a rigorous process they went through to look at all the alternative sites and methodology so the site that's being proposed tonight was considered and it scored significantly lower than the site that is being proposed so my suggestion is that we move forward and eliminate this risk and I think we can all rest a lot easier if we solve this problem. I encourage you to approve it.

Mayor Dziekan asked if anyone else wished to speak.

Rose Garvrilovic of Regional Water Authority

I quickly would like to state that I think Mr. DiCenso and Mr. Charmel have kind of summarized the need for the tank here in Derby. I would just like to say that from Region Water's perspective, we did start at telescope mountain and took a look at the entire area and we've spent a significant amount of time and effort to find the best site for the residents of Derby, the officials in Derby, the customers of Regional Water Authority and most importantly, the public health and safety of the community. We believe that this is the best site. we believe that for all of those reasons that were stated, for all the community concerns, we believe we have chosen the best site and we thank the commission for considering our application.

Mayor Dziekan asked if anyone else wished to speak.

Attorney Cava – Southbury Road, Roxbury

I just have a few things I wanted to add. The property, the house over here, the Marinelli's house is actually two houses. One right here and one right immediately next to it. Those two houses are not an 8th of a mile away. An 8th of a mile would be somewhere over here. They are not 400 yards or 300 yards away, that would be somewhere over here. They are about between 2 or 300 feet from the tank and they are much closer to the parking lot, they are 100 feet away from the parking lot. So that actually is not the case that it is a million miles away. Right here it looks at it. The trees being put on the site, in the winter these are deciduous trees. They are there already they lose their leaves they are going to line with trees over here and these trees are not going to be tall enough in a period of time that this lady is likely going to be alive to block that tanks view. They are not going to block the view. They are going to put a couple trees here by the parking lot the path of the deciduous doesn't block (inaudible) anything to the house based on final grades. (Inaudible) When we say shame on anyone who opposes it, shame on the people that developed the town of Derby and put their hospital here and other things here if you didn't have adequate water pressure. That's who the shame is on. The shame is on the people that come to a town and build and don't actually build in a place where they have no fear of losing their water. The final thing is, don't value a tree over a life? The State of Connecticut already made that decision for you. The CT Environmental Policy Act says that when you have development versus nature, nature always wins. If there is a reasonable chance of a pollution, (inaudible) or obstruction of the natural resources you cannot develop. Development loses unless there is no feasible and proven alternative and there is a feasible and proven alternative here. Number one, I don't know how much is actually going to be bid for this property because there has been talk of buy other things. When they buy 200 pieces of land that's because you have to replace the park. That's not something for the city. They're just replacing the park land that you are giving away for 300 years. So that doesn't count. The question is the parking lot. We don't know how much that is going to cost or what the value is but this is fairly low value transaction and there are feasible and proven alternatives and there is a feasible and proven place to put the tank which is up off Silver Hill and why doesn't that rate as high as this site, while this site has a whole lot of very modern water pipes across the street that service the middle school that you installed that they told you to install when you built the middle school. Now we had the guy there the other night from the Board of Education where he said boy we ought to get paid back the half a million dollars we spent on putting those pipes in. We spent a half a million dollars putting those in and now the water company (inaudible) so they can use those pipes again that you paid for. So you paid for it once and now they are coming back and you are going to pay for it again. How many times is the City of Derby, when its facing a mill rate increase of 3 and a half to 6 mils, how many times is the City going to take nose dive on a piece of property and a transaction because they are told they need this water tank. They need a water tank but the one up on Silver Hill is going to produce a hell of a lot more pressure for the hospital's cleaning and stuff and generation of steam than this tank on this proposal location on the park land. That is something you have to consider. This is just not going --once again are putting out city money and not getting much back.

Mayor Dziekan asked if anyone else wished to speak.

Rose Garvrilovic of Regional Water Authority

I just wanted to clarify I'm not sure where exactly the site Mr. Cava is talking about on Silver Hill Road, but when it comes to hydraulics there is a too high and too low. If they are suggesting an elevation of 305 and we are looking for an elevation 277 for the overflow you can be blowing out pipes. So it is really bad to put a tank too high and it's bad to put a tank too low. You can have no pressure or pressure can be too high. So elevation of 305 would not be good idea for the tank location and it would not be a good idea for the residents of Derby. The other thing I just wanted to mention when it comes to the environmental factors when we are looking at CEPA, there has been an environmental

review done on this site by the Department of Energy and Environmental Protection and the results were that there was no significant impact to the environment. That will be presented to the Planning and Zoning Commission as part of the application.

Mayor Dziekan asked if anyone else wished to speak.

Carmen DiCenso – 7 Jeanetti Drive

I wanted to give Mr. Cava a little history and yes I am concerned about life and I don't really care about a tree and I don't care what the State of Connecticut says about a tree. I am more concerned about people's lives. Griffin Hospital was built in 1909. So for him to say shame people to put a hospital where there is no water pressure is ludicrous. The park as he calls it, is the general civic, educational, school, and municipal purposes. I believe we are covered under civic and municipal purposes and I think the courts will tell us that.

Mayor Dziekan asked three times if anyone else wished to speak.

Motion to close the public portion / public hearing by Mr. Sill, Mr. Jim DiMartino seconded and the motion carried.

5. Discussion and possible action on the lease of municipal real estate, consisting of a portion of the property identified as Map 9-6, Lot 2 and commonly known as the entrance area to the Derby High School for the construction, ownership, operation, and maintenance of a water tank prior to final approval of such lease.

Ms. Finn forwarded the only bid that was received to the Board. Mayor Dziekan opened the bid package from Regional Water Authority. The Board reviewed the proposal.

Mr. Sampson motioned to accept the bid from Regional Water Authority with their MOU and the first amendment to the MOU and Mayor Dziekan sign all the appropriate documents within the scope of the RFP. Ms. Browning seconded. Motion carried with all in favor.

6. Adjournment

Mr. Sill motioned to adjourn at 6:36 PM, Mr. Sampson seconded and the motion carried.

Respectfully submitted,

Terri Kuskowski

These minutes are subject to the Board's approval at their next scheduled meeting.



STEVEN DANZER, PHD & ASSOCIATES LLC

Wetlands & Environmental Consulting

WWW.CTWETLANDSCONSULTING.COM

203 451-8319

WETLAND BOUNDARIES • POND & LAKE MANAGEMENT • CONSTRUCTION FEASIBILITY CONSULTATIONS • ENVIRONMENTAL STUDIES

Environmental Evaluation of the Planning and Zoning Commission Application of the South Central CT Regional Water Authority - Derby Water Tank Derby, Connecticut

Date: March 22, 2019

By: Steven Danzer Ph.D.

2019 JUN 6 PM 6:42

- Ph.D. - Renewable Natural Resource Studies.
- Soil Scientist – Certified Nationally by the Soil Science Society of America (#353463).
– Registered with the Society of Soil Scientists of Southern New England.
- Professional Wetland Scientist - PWS #1321, Society of Wetland Scientists.
- Arborist - CT DEEP License S-5639.

SCOPE OF INVESTIGATION

At the request of interested neighboring parties, an independent environmental review was conducted of the application materials submitted to the Town of Derby Planning and Zoning Commission for Special Exception Use and/or Site Plan Approval for the 1.0 MG Derby Water Storage Tank on public land at the corner of Chatfield Street and Nutmeg Avenue, Derby, CT.

Application materials reviewed included:

- Cover letter and application documents signed by Rose M. Gavrilovic, PE dated 3/11/2019
- Site plans labeled “1 MG Water Storage Tank” dated 3/11/18, sheets 1-31, prepared by Tighe&Bond.

The public portion of the site was visited several times in 2015 and again in 2019.

The region is also familiar to the reviewer, as a prior application by Regional Water Authority for a similar water storage tank on a nearby landform was also reviewed in 2012 and 2013.

The purpose of this report is to identify the relevant environmental planning policy issues that may be involved if determining whether the Nutmeg Avenue property is even suitable for the change of land-use desired by the water company, and to evaluate the project with regard to conformance to environmental planning standards enumerated in the City Of Derby Zoning Regulations. The following comments and recommendations are offered for the consideration of the Planning and Zoning Commission.

SUMMARY FINDINGS

The project consists of the development of two properties – the tank site property and a parking area property. Under existing conditions, the tank site property is being used as passive open space under a “Public” designation as per the City of Derby Zoning map. This undeveloped land, a 2.15 acre segment of Coon Hollow Park, City of Derby parcel MBL 9-6-2, is *a natural resource of the state* due to its flora and its ecological and environmental functions that are discussed in subsequent sections of this report.

Under the proposed use, the tank site will be developed and restricted for public access, and as a consequence will no longer be able to perform its natural or community function. The destruction of the natural landscape by the removal of mature trees and other vegetation, by the extensive grading, and by the construction and placement of the water tank and its drainage system will all lead to the destruction and eradication of natural forest habitat, impairing the landscape’s ability to provide the ecological (and community) functions documented in this report.

Seven primary issues were identified that constrain the suitability of the land to the change in land-use desired by the Regional Water Authority. They include:

1. The land underneath the tank was originally granted to the City to be used as a public park.
2. The change in land-use is inconsistent with Derby’s currently adopted Plan of Conservation and Development.
3. The land has inherent ecological and community value to the environment that will not be preserved in the change in land-use.
4. The parcel itself is fairly unique in that there is a scarcity of similar wooded parcels zoned as Public in Derby suitable for public enjoyment.
5. No land comparable in ecological value or size has been legitimately approved for replacement, despite state law requirements.
6. No effort has been made to preserve sensitive environmental features despite zoning regulation requirements.
7. An alternative location for the water tank was identified in 2013; however there was no discussion of this fact in the current proposal.

2019 JUN 6 PM 6:43

These issues will be examined in depth in the subsequent sections of this report.

ISSUE 1. The land was originally granted to the City to be used as a public park.

According to the 11/13/1934 issue of The Evening Sentinel, the parcel in question was purchased to be used “for a public park, and for general civic, educational, school, and municipal purposes”. The authorization for the purchase was established through an elector’s meeting on the evening of 11/12/1934.

Further historical evidence also supports the fact that this parcel was intended to be used as a park. The Trustees Deed (Book 116 p. 250 Land Records, recorded 4/26/35) refers to an anticipated park use, stating “As part consideration for this conveyance, the Grantee agrees that it will take proper action to name any park created by it on said premises, as may be reasonably requested by William H. Downes of Boston and/or Catherine J. Whiting of New Haven.”

The South Central Connecticut Regional Water Authority (RWA) is not a civic, educational, school, or municipal institution. A water storage tank facility is not equivalent a public park. A parking lot does not provide the equal functions of a public park or recreational or open space. The installation of the tank, fencing, grading, development of the service road, and use of the parcel by RWA will preclude any future ability of the parcel to be used as a park. Furthermore, the RWA is not a public utility as defined by the CT Public Utility Regulatory Authority (PURA).

Therefore the proposed change of land-use is inconsistent with the deeded purposes in which the parcel was originally intended for.

2019 JUN 6 AM 9:42

ISSUE 2. The change in land-use is inconsistent with Derby's currently adopted Plan of Conservation and Development (PCD).

On Pp. 52-53, under "Open Space and Conservation Strategies" the PCD (adopted in 2016) *identified a need* for the City "to better publicize, promote, and manage its existing parks; increase its recreational offerings; add better park amenities to increase user experiences; and provide greater access to its parks and open spaces." To work towards that goal, the PCD detailed the following action items which are directly relevant to this open space (#1,#2, and #15 respectively) :

- Protect and maintain green and public open spaces.
- Maintain parks – Witek Park, Coon Hollow Park.
- Assess suitability of city-owned parcels as pocket parks and urban gardens.

On P. 61, under "Derby Natural Resources", the PCD recommends as specific action items to preserve existing natural terrain (#4 and #6 respectively):

- **Restrict** development on slopes of 25% or greater and restrict excavation and clearing on lands above steep slopes.
- Continue to **enforce** local zoning and subdivision regulations that protect natural resources and promote low impact developments.

The area of concern was originally acquired for the purpose of parkland. Under existing conditions, the area functions as passive open space. The area is forested, and there is a trail that runs the length of its ridgetop spine. Longtime residents have reported that in the past, the parcel was in fact utilized as a pocket park, with picnic table(s). Evidence of the old access way is still apparent. Currently usage appears to be passive and unobtrusive, mainly limited to those that prefer to access the school area without having to walk on the road and those that seek a quiet natural space. Except for the remnants of the access road, the area has not significantly degraded despite its minimal management.

The importance of preserving small open spaces has long been a planning goal for the City of Derby. The previous PCD (adopted 2003) (p18) recommended that the city:

"Establish and maintain "pocket greens" to enhance community character; Investment in small public parks can enhance and revitalize urban areas and become neighborhood focal points. Redevelopment efforts in the City could focus around such small parks because they can improve land values and enhance the quality of life for residents."

Future development of this parcel to accommodate a water tank and RWA access will prevent the public from using this parcel. The proposed development will also degrade and eliminate physical natural habitat, **an important natural resource**, including habitat on slopes that exceed 25%.

As a result, *the proposed change in land use will not be consistent with the aims, objectives, and priorities of the Plan of Conservation and Development.*

2019 JUN 6 PM 6:43

ISSUE 3. The land has inherent ecological value to the environment that will not be preserved in the proposed change in land-use.

The land is ecologically noteworthy for several reasons.

- 1) It serves as part of the *major connecting wildlife corridor* to the Telescope Mountain forested area to the east, and the Osborne Dale State Park to the west.
- 2) The *structural and species diversity of mature trees and younger trees* on the site provide good local habitat to smaller less mobile wildlife, and together these trees comprise habitat which serves as a protected seed and species source for the rest of the forest. Within the tank site alone, there are approximately 3 dozen mature trees (predominately Red oak, Black oak, and White oak), ranging from 10 inches in diameter to 50 inches in diameter, with most trees in the 30 inch size class. *These are large trees.* As such, the tree canopy under existing conditions is mature, extensively layered, and significant in size, providing environmental functions such as forest habitat, natural shading, and natural erosion control through deep underground rooting.

All of these trees, plus additional intermediate and younger sized trees, will be removed due to the proposed site development (which includes significant grading and alteration of the natural terrain, placement of a structure and related infrastructure, and fencing). The existing tree canopy will be eliminated, leading to the destruction of the natural resource and the eradication of its environmental functions described above.

- 3) The land also contains *the last undeveloped high point* for the local ridge system (elevation 230 as per State GIS data). The high point is of value not only to migrating birds but is appreciated by the public for its view as well. It should be noted that the highpoint is also of value because the rest of the ridge top system is intensively developed, occupied by Derby High.
- 4) The site has modest *recreational value.* Under existing conditions, there is a trail/old access road that allows access to the site for people to enjoy the parcel. During site investigation it was observed that people do in fact visit this parcel.

2019 JUN 5 PM 6:42

The first three of these factors make the property ecologically unique; the wildlife corridor, the diversity of forest, and the geographic highpoint, are important ecological functions. They cause the land to have inherent ecological value. The fourth factor attests that the site also performs a public community function as well.

The land has inherent ecological (and community) value that will not be preserved in the change of land-use. The proposed change in land use will destroy the natural resource and impair the ecological functions described above.

ISSUE 4. The parcel itself is fairly unique in that there is a scarcity of similar wooded parcels zoned as Public in Derby suitable for public enjoyment.

An analysis of all parcels zoned as "Public" as per City of Derby Zoning map has revealed that there are very few wooded parcels currently suitable for use as natural pocket parks. Loss of this parcel to the proposed change of land-use will therefore represent a significant loss to the City.

There are thirty-one parcels within the City designated as "Public". Twenty-one of those parcels are not suitable for public enjoyment in a quiet wooded setting because either they do not contain enough contiguous woods suitable for naturally wooded pocket park (forest cover greater than 1 acre) and/or they are used for a more developed use than wooded pocket park, such as use for schools, for athletic playing fields, for cemetery, or for land fill.

Of the remaining ten parcels that still retain substantial forest cover suitable for use as a natural park, less than half of these parcels are potentially accessible for easy public use. The rest are constrained by steep slopes, wetlands, or ease of public access. This leaves roughly four parcels designated as Public and owned by the City of Derby that may be potentially suitable for use as wooded pocket parks.

Consequently, there is a scarcity of land designated as "Public" on the City Zoning map suitable for use for naturally wooded pocket parks. *Acquisition and development of the parcel in question by the RWA will exacerbate the current scarcity of potential Public designated land suitable for naturally wooded pocket parks.*

2019 JUN 09 PM 0:42

ISSUE 5. As of date of this report, there has been no comparable replacement land legitimately approved in exchange for the destruction of the 2.15 acre public open space portion of the site.

Connecticut General Statutes 7-163(e) and 7-131(n) mandate that any loss of park/recreational/open space land be replaced with comparable land at least equal in value and area, and that any such land exchange should be considered during a Public Hearing process (i.e. separate and prior to site plan review for the site). As of date of this report, this has not happened.

The proposed parking lot area clearly will not provide the same (or any) ecological and community benefit that the existing 2.15 area open space landscape now provides, nor has this issue been considered or approved during a public hearing process.

ISSUE 6. The City of Derby Zoning Regulations encourages; and/or stipulates the preservation and conservation of sensitive environmental features.

Numerous citations within the Zoning Regulations address the protection of natural and other significant environmental features. For example:

- a) 195-2 (Purposes) H: "The maximum practical preservation of natural and other significant environmental features including...steep slopes, hilltops, major strands of trees and other areas of geological, ecological, or scenic value"....
- b) 195-2 (Purposes)I: "...to preserve the natural and scenic qualities of open lands and to enhance and protect the environmental quality of the city"
- c) 195-31 (Site Plan Objectives) H: "That the development of the site will preserve sensitive environmental land features such as steep slopes...and large rock outcroppings and preserve scenic views..."
- d) 195-39 (Design Standards) 4 a: "An attempt should be made to save as many trees as possible."
- e) 195-39 (Design Standards) 4 b: "On heavily wooded parcels, trees over eight inches in diameter must be shown."

The application materials reviewed were **not in conformance** with any of the above provisions.

There were no trees depicted on the site plan despite the fact that there are approximately 3 dozen large trees over 10 inches in diameter that are proposed to be removed *within the tank site portion of the project alone*. This represents a major deficiency in the application materials.

2019 JUN 6 PM 6:42

ISSUE 7. There was **no** discussion within the application materials of alternative site locations for the water tank that would be less destructive to the natural environment or natural resources. Such an analysis is vital to understanding and demonstrating the reasonableness of an activity's impact on the environment.

During a prior 2013 review of a similar SCCRWA water tank proposal on a nearby hill (Summit Street), it was discovered that there is an existing SCCRWA water tank on a parcel located less than a mile away, northwest of the corner of Silver Hill Road and Hull Street, Ansonia.

The application materials at the time stated that the Ansonia-Derby distribution system does not have any storage west of the Naugatuck River. However, the Silver Hill site is also located west of the Naugatuck River, in the same CT DEEP drainage basin.

The base elevation of the existing Silver Hill site is roughly 350 feet. The proposed base elevation of the proposed site on public land adjacent to Chatfield Street and Nutmeg Avenue is 230 feet. If gravitational

distribution is a major factor for site selection (as was implied by the statement back in 2013 regarding the west side of the Naugatuck River) it is unclear as to why expansion within the Silver Hill site was not considered for this tank, since its baseline elevation (350 ft) significantly exceeds the baseline elevation of the proposed site (230 ft), and since it is in the same topographic watershed.

Furthermore, it should be noted that the existing Silver Hill parcel is less than a mile away. Even though the Silver Hill site is located a few feet over the Ansonia municipal boundary, SCCHRWA is a regional water company not a town water company.

Redevelopment or expansion on the existing Silver Hill parcel would lead to significantly less environmental impact than the current proposal. There would be no destruction of natural resources. It appears from the current topography and already developed nature of the Silver Hill site that no significant environmental features would need to be eliminated or irrevocably altered, there would be no open space destroyed, and the impact to the local character of the community would be far less than the current site under consideration.

CONCLUSIONS

2019 JUN 07 PM 5:42

Steven Danzer PhD & Associates was tasked with identifying the relevant environmental planning policy issues that may be involved if determining whether the Nutmeg Avenue property is even suitable for the change of land-use desired by the water company, and to evaluate the project with regard to conformance to environmental planning standards enumerated in the City Of Derby Zoning Regulations.

Seven major issues were outlined and explored in depth. They include:

1. The land was originally granted to the City to be used as a public park.
2. The change in land-use is inconsistent with Derby's currently adopted Plan of Conservation and Development.
3. The land has inherent ecological (and community) value to the environment that will not be preserved in the change of land-use.
4. The parcel itself is fairly unique in that there is a scarcity of similar wooded parcels zoned as Public in Derby suitable for public enjoyment.
5. No land comparable in ecological value or size has been legitimately approved for replacement, despite state law requirements.

6. No effort has been made to preserve sensitive environmental features despite zoning regulation requirements.
7. An alternative location for the water tank was identified in 2013; however there was no discussion of this fact in the current proposal.

All seven issues outlined above pose serious constraints to the suitability of the Nutmeg Avenue site to a change in land-use.

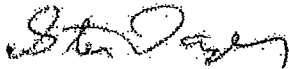
Issue #1 and #5 alone (regarding the historical intent of the use of the property) should be a serious enough reason to prevent approval of this application proposal. Furthermore, the other five issues outlined above represent significant breaches of conservation and environmental planning policies currently embraced by the City.

Thank you for the opportunity to comment.

Respectfully submitted,

Signed,

2019 JUN 10 10:42



Steven Danzer Ph.D.

Soil Scientist, CT Licensed Arborist, Professional Wetland Scientist

Ph.D. in Renewable Natural Resource Studies

2019 JUN 6 AM 8:42

South Central Connecticut Regional Water Authority
90 Sargent Drive, New Haven, Connecticut 06511-5966 203.562.4020
<http://www.rwater.com>

May 31, 2019

Mayor Richard Dziekan
City of Derby
1 Elizabeth Street
Derby, CT 06418

Re: Lease of Municipal Property
73-75 Chatfield Street
Derby, CT

2019 JUN 6 PM 6:40

Dear Mayor Dziekan:

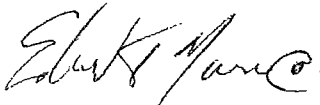
Please find attached a response to your Request for Proposals for the Lease of Municipal Real Estate from the South Central Connecticut Regional Water Authority. As specified, this response includes one original plus 10 copies of the following:

- Cover letter
- Memorandum of Understanding
- Proposed Amendment to the Memorandum of Understanding

The primary contact related to this proposal is Rose M. Gavrilovic, P.E., Director of Capital Planning and Delivery. She can be reached at (203) 401-2578 or rgavrilovic@rwater.com with any questions or additional information you may require.

Additionally, my contact information is (203) 401-2673 or tnorris@rwater.com should you need to reach me.

Very truly yours,
REGIONAL WATER AUTHORITY



Edward O. Norris III, P.E.
Vice President – Asset Management

cc: Rose M. Gavrilovic, RWA
Jodie L. Driscoll, Murtha Cullina LLP

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated this 5th of November, 2018, memorializes the agreement made by and between South Central Connecticut Regional Water Authority ("RWA"), a public corporation and political subdivision of the State of Connecticut having a principal place of business at 90 Sargent Drive, New Haven, CT 06511 and the City of Derby, a municipal corporation organized and existing under the laws of the State of Connecticut having a principal place of business at 1 Elizabeth Street, Derby, Connecticut 06418 (the "City"). From time to time throughout this MOU, each of RWA and the City is referred to as a "Party," and collectively as the "Parties."

WITNESSETH

2019 JUN 10 9:40

WHEREAS, RWA desires to construct, own, operate and maintain a water tank within the City in order to provide sufficient quantity and quality of water to its customers, including those within the City, for consumption and fire protection, and in recognition of the mutual benefits of the new water tank the Parties have worked cooperatively to develop this MOU;

WHEREAS, the City owns certain real property identified as Map 9- 6, Lot 2, in the City of Derby and commonly known as Derby High School and located at 73-75 Chatfield Street ("High School Property");

WHEREAS, the City is willing to lease a portion of the High School Property to RWA for purposes of constructing, operating and maintaining a water tank (the "Water Tank Project"), more particularly shown on Exhibit A attached hereto and made a part hereof (the "Water Tank Property");

WHEREAS, in order to have sufficient access to the Water Tank Property, the Lease (as hereinafter defined) for such property will include non-exclusive rights and easements to pass and re-pass, under, over, through and across the High School Property for the duration of the Lease;

WHEREAS, the City desires to acquire two (2) parcels of real property located within the City, which include: (1) a primarily vacant parcel located on Lombardi Drive consisting of approximately 0.89 acres, which is currently owned by Amodeo and Carmelina Durante (the "Lombardi Property"); and (2) a parcel located on Chatfield Street consisting of approximately 1.25 acres, which is currently owned by St. Peter & St. Paul Ukrainian Catholic Church (the "Church Property"). The Lombardi Property and the Church Property are collectively referred to as the "Sale Properties" and further described on Exhibit B;

WHEREAS, City intends to acquire (1) the Lombardi Property for open space for the benefit of the citizens of the City and (2) the Church Property to be developed as a parking lot for the City's senior center and other municipal offices to be located at 5 Coon Hollow Road, Derby, CT;

WHEREAS, RWA requires temporary rights and easements on, upon, over, across and through the Church Property for the construction of the Water Tank Project, as well as temporary rights and easements to use the Church Property for staging, stockpiling of soil,

storing of equipment and other materials and for any other use as may be necessary in connection with the development and construction of the Water Tank Project; and

WHEREAS, following completion of construction of the Water Tank Project, RWA requires non-exclusive rights and easements to pass and re-pass over, under, through and across the Church Property for primary access to the Water Tank Property for the duration of the Lease;

WHEREAS, in exchange for the Lease and easement rights, RWA agrees to provide funding to the City in an amount equal to the acquisition price for each of the Lombardi Property and the Church Property.

NOW THEREFORE, in consideration of these premises, the parties enter into this MOU to evidence the following general agreement:

SECTION 1. LEASE: If the RWA determines, in its sole discretion, that the Water Tank Property is suitable for, and is or can be zoned for, the RWA's intended use, then the City and RWA shall enter into good faith negotiations for the RWA to lease the Water Tank Property from the City upon such terms as mutually agreed upon by the Parties, including, but not limited to, the following terms: (i) for a term of not less than 99 years for the sum of \$1.00, (ii) an option to renew for an additional 99 years for the sum of \$1.00, and (iii) an option to purchase at the expiration of the term for the sum of \$1.00 (the "Lease"). The effective date of the Lease will be as mutually agreed upon by the Parties, but in no event shall the effective date be later than April 1, 2019. Notwithstanding the foregoing, the Parties acknowledge that the City shall have no obligation to enter into the Lease in the event that the City is unable to acquire the Church Property and the Lombardi Property (or another open-space parcel acceptable to the City and the RWA) prior to, or simultaneously with, the execution of the Lease, for a purchase price acceptable to the RWA, and upon such other terms and conditions as are reasonably acceptable to the City.

SECTION 2. ACQUISITION AND FUNDING OF CHURCH PROPERTY: The RWA agrees to enter into good faith negotiations with the owner of the Church Property with respect to the purchase price and the City agrees to negotiate all other terms and conditions in good faith with the owner of the Church Property for the City's acquisition of the Church Property upon such terms and conditions that are reasonably acceptable to the City and the RWA. Prior to acquiring the Church Property, the City shall conduct such due diligence as the City, in consultation with the RWA, determines is necessary and appropriate, including but not limited to, obtaining a commitment for title insurance from a nationally recognized title insurance company acceptable to the City relating to the Church Property, a "Phase 1" and/or "Phase 2" environmental site assessment, and an A-2 property survey. In exchange for certain rights of the RWA as set forth herein and upon the City's acquisition of the Church Property, the RWA will make a one-time payment to the City in an amount equal to the purchase price of the Church Property (the "Church Property Funding"). The purchase price of the Church Property shall be determined by the mutual agreement of the RWA and the owner of the Church Property. For purposes of clarity, the RWA shall have no obligation to provide the Church Property Funding to the City unless and until the RWA determines in its reasonable discretion that the City has satisfied all of its obligations set forth herein with respect to the Church Property.

SECTION 3. CHURCH PROPERTY EASEMENT: In support of the construction of the water tank following transfer of the Church Property to the City and in exchange for the Church Property Funding, the City shall provide RWA at no additional cost to RWA a mutually agreed upon easement agreement providing RWA temporary easements and rights on, upon, over, across and through the Church Property for the construction of the Water Tank Project on the Water Tank Property, as well as temporary rights and easements to use the Church Property for staging, stockpiling of soil, storing of equipment and other materials and for any other use as may be necessary in connection with the development and construction of the Water Tank Project. The Church Property will be occupied by RWA for construction staging and storing from approximately May 1, 2019 through May 1, 2020. RWA shall indemnify the City from any and all environmental liabilities associated with the environmental conditions on the Church Property caused only by RWA's use of same. RWA shall have no obligation to the City for any hazardous substances which existed on the Church Property on the date the City acquired the Church Property. The City shall record such easement on the City of Derby Land Records.

SECTION 4. HIGH SCHOOL PROPERTY EASEMENT: Simultaneously with the execution of the Lease, the City shall provide to RWA, at no additional cost to RWA, a non-exclusive right and easement to pass and re-pass over, under, through and across that certain portion of the High School Property as depicted on Exhibit C (the "High School Access Easement") for RWA to access the Water Tank Property for the duration of the Lease. The City shall record such easement on the City of Derby Land Records. Notwithstanding the foregoing, upon completion of construction of the Water Tank Project, the RWA acknowledges and agrees that in no event may the RWA's activities under the High School Access Easement unreasonably interfere in any way with the City's operation of the High School Property as a high school.

2019 JUN 6 PM 6:41

SECTION 5. ACQUISITION OF LOMBARDI PROPERTY: The RWA agrees to enter into good faith negotiations with the owner of the Lombardi Property with respect to the purchase price and the City agrees to negotiate all other terms and conditions in good faith with the owner of the Lombardi Property for the City's acquisition of the Lombardi Property for open space only upon such terms and conditions that are reasonably acceptable to the City and the RWA. Prior to acquiring the Lombardi Property, the City shall conduct such due diligence as the City, in consultation with the RWA, determines is necessary and appropriate, including but not limited to, obtaining a commitment for title insurance from a nationally recognized title insurance company acceptable to the City relating to the Lombardi Property, a "Phase 1" and/or "Phase 2" environmental site assessment, and an A-2 property survey. In exchange for certain rights of the RWA as set forth herein and subject to the condition that the City maintain the Lombardi Property as open space in perpetuity, the RWA will make a one-time payment to the City in an amount equal to the purchase price of the Lombardi Property (the "Lombardi Property Funding") upon the City's acquisition of the Lombardi Property. The purchase price of the Lombardi Property shall be determined by the mutual agreement of the RWA and the owner of the Lombardi Property. For purposes of clarity, the RWA shall have no obligation to provide the Lombardi Property Funding to the City unless and until the RWA determines in its reasonable discretion that the City has satisfied all of its obligations set forth herein with respect to the Lombardi Property.

SECTION 6. CHURCH PROPERTY PARKING. RWA shall provide the City with design plans for the parking lot on the Church Property and upon completion of construction of the Water Tank Project on the Water Tank Property, RWA shall pave a portion of the Church Property for use by the City as a parking lot. Upon completion of the parking lot, City shall provide to RWA, at no additional cost to RWA, a non-exclusive right to and easement to pass and re-pass over, under, through and across the Church Property for RWA to access the Water Tank Property for the duration of the Lease. The City shall record such easement on the City of Derby Land Records.

SECTION 7. SUPPORTING APPROVALS: The Parties acknowledge that there are approvals required in connection with Sections 1 through 6 above and 8 below, including those by the Regional Water Authority Board, the Representative Policy Board of the South Central Connecticut Regional Water Authority and the City, including but not limited to the planning and zoning commission. In conjunction with obtaining approvals from any potentially required regulatory or administrative body, the Parties will provide such services and support as may be necessary to obtain necessary approvals. In the event that the Parties do not obtain such required approvals within one hundred eighty (180) days from the date hereof (unless extended by mutual agreement of the parties) (the "Approval Deadline"), this MOU shall be null and void with no recourse to the Parties except for those provisions which expressly survive termination of this MOU, if any. In the event that a planning or zoning board approval or other required approval is denied and the RWA elects to appeal such denial, then the Approval Deadline shall, upon written notice from RWA to the City, be automatically extended for an additional one hundred eighty (180) days.

2019 JUN 6 AM 8:41

SECTION 8. RWA RIGHT OF ENTRY: The City hereby grants RWA the right, personally or through its environmental, structural, geotechnical and other engineers, consultants, surveyors, architects, and other parties as RWA may designate to enter the High School Property to inspect, examine and conduct such property survey, examinations, assessments, appraisal, and geotechnical study tests, including, but not limited to, soil borings, a Phase I Environmental Assessment ("Phase I"), ground water analysis, and soil analysis, of the Water Tank Property, (collectively, the "Investigations"). The City shall allow RWA and such inspectors' reasonable access to the High School Property upon at least 24 hours advance notice to conduct such Investigations of the Water Tank Property. All costs associated with such Investigations shall be borne solely by RWA.

RWA agrees that, in making any Investigations, RWA or RWA's agents (a) will carry not less than One Million Dollars (\$1,000,000) comprehensive general liability insurance with contractual liability endorsement which insures RWA's indemnity obligations hereunder, and, upon request of City, RWA will provide City with written evidence of same noting City as an additional insured, and (b) to the extent that said Investigations damage or disturb the Water Tank Property or any other portion of the High School Property, RWA will promptly restore the Water Tank Property, and any other portion of the High School Property that is damaged or disturbed by such Investigations, to its condition as of the date of execution hereof. In addition, RWA agrees to indemnify, defend, and hold the City harmless from any and all claims for damages to persons or property, caused by or resulting from the performance of the Investigations, including reasonable attorney's fees and court costs. RWA shall give City reasonable prior notice of its intention to conduct any such Investigations, and City reserves

the right to have a representative present provided such rights shall not unreasonably delay or interfere with any said Investigations. All Investigations shall be at RWA's sole expense.

In the event that RWA, after performing any Investigations, is not fully satisfied with the condition or any aspect of the Water Tank Property, in its sole discretion, then RWA shall have the right to terminate this MOU by written notice to the City, received by City (by facsimile transmission or otherwise) at any time, and thereupon this MOU shall be void with no recourse to the parties except for those provisions which expressly survive termination of this MOU. Should RWA terminate the MOU as set forth in this Section, RWA agrees to provide City with copies of all written reports that RWA receives regarding the Water Tank Property.

SECTION 9. MISCELLANEOUS TERMS AND CONDITIONS: The following are comprehensive provisions in conjunction with the aforementioned Sections and Exhibits presented in this MOU:

- (a) Upon full construction of the Water Tank Project on the Water Tank Property this MOU shall become null and void.
- (b) This MOU shall be construed in accordance with and governed by the laws of the State of Connecticut.
- (c) This MOU may not be recorded.
- (d) No Party to this MOU is empowered to alter or amend any term herein unless such alteration or amendment is in writing and has been signed by both Parties. This provision cannot be orally waived.
- (e) The individuals who have executed this MOU on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such Parties for the purpose of duly binding such Parties to this MOU.
- (f) This MOU may be executed in several counterparts, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.
- (g) The terms and provisions of this MOU embody the Parties' mutual intent and shall not be construed more liberally in favor of, nor more strictly against, either Party and, particularly, shall not be construed more strictly against the Party which has drafted this MOU.
- (h) Nothing contained in this MOU shall be construed to create any association, trust, partnership, or joint venture or impose a trust or partnership, duty, obligation, or liability or any agency relationship on, or with regard to, either Party. Neither Party hereto shall have the right to bind or obligate the other in any way or manner.

2019 JUN 03 9:41

Signature Pages to Follow

IN WITNESS WHEREOF, South Central Regional Water Authority has executed this Memorandum of Understanding as of the date set forth below:

1st Witness:

South Central Connecticut Regional Water Authority

Rose M. Garrilovic
NAME Rose M. Garrilovic

By: Edward O. Norris III

2nd WITNESS:

Edward O. Norris III
NAME

Tiffany Lufkin
NAME Tiffany Lufkin

VP - ASSES MANAGEMENT
TITLE

11.05.18
DATE

2018 NOV 6 PM 6:41

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

I HEREBY CERTIFY that on this 5th day of November, 2018 before me, Judith Soda, the undersigned officer, personally appeared Edward O Norris III, who acknowledged himself to be the VP - ASSES MANAGEMENT of South Central Connecticut Regional Water Authority, and as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such Vice President.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Judith Soda

Notary Public/Commissioner of the Superior Court

[Notarial Seal]

My commission expires JUDITH SODA
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 3rd 2021

IN WITNESS WHEREOF, City of Derby has executed this Memorandum of Understanding as of the date set forth below:

1st Witness: City of Derby

Andrew Baklik
NAME Andrew Baklik

By: Richard Dziekan

Richard Dziekan
NAME

2nd WITNESS:

Meg Martins
NAME Meg Martins

MAYOR
TITLE

November 5, 2018
DATE

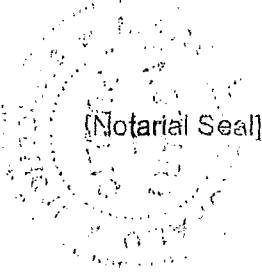
STATE OF CONNECTICUT)
COUNTY OF NH) Derby

2019 JUN 6 PM 6:41

I HEREBY CERTIFY that on this 5th day of November, 2018 before me, Marc Garofalo, the undersigned officer, personally appeared Richard Dziekan, who acknowledged himself/herself to be the Mayor of The City of Derby, and as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such Mayor.

IN WITNESS WHEREOF I hereunto set my hand and official seal

Marc J. Garofalo
Notary Public/Commissioner of the Superior Court



My commission expires: Marc J. Garofalo
Notary Public

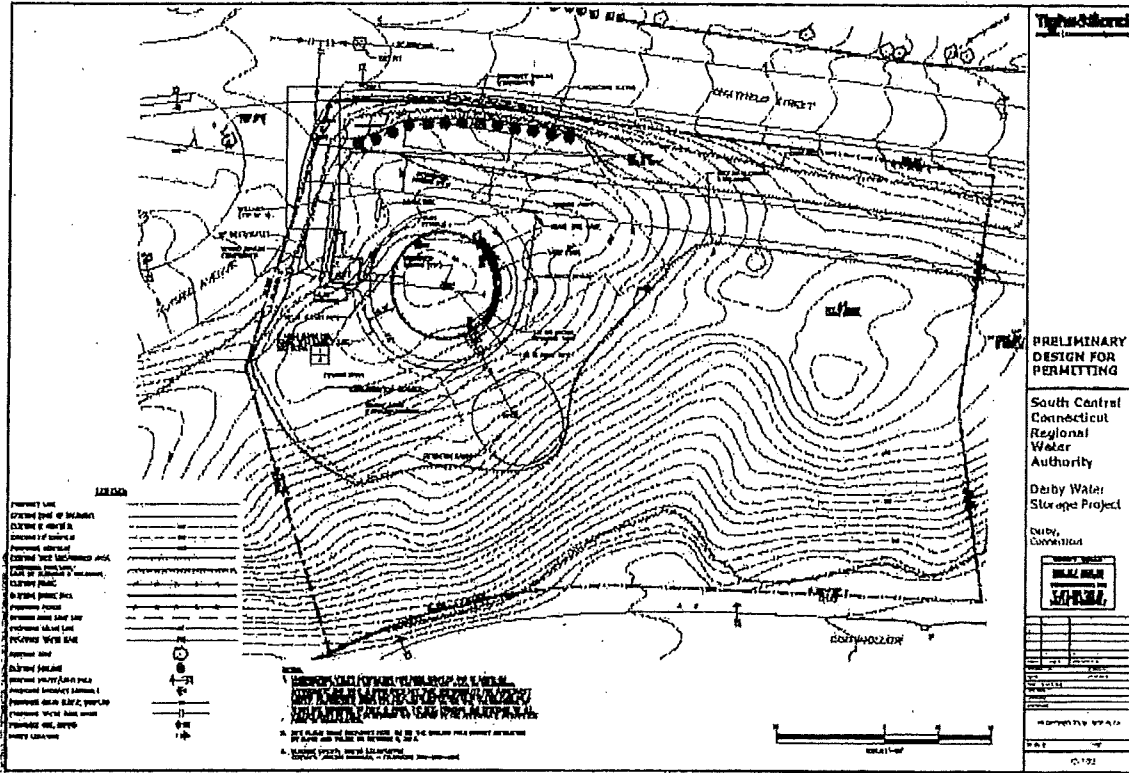
State of Connecticut
My Commission Expires 1-31-2023

Exhibits

2019 JUN 06 PM 6:42

EXHIBIT A

THE WATER TANK PROPERTY

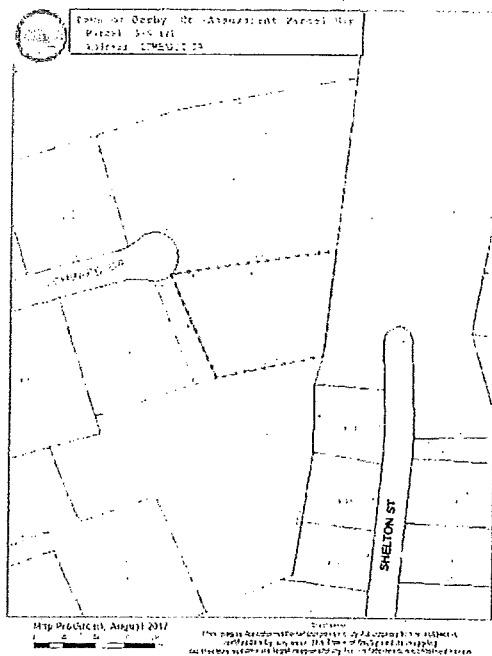


2009 JUN 6 PM 6:42

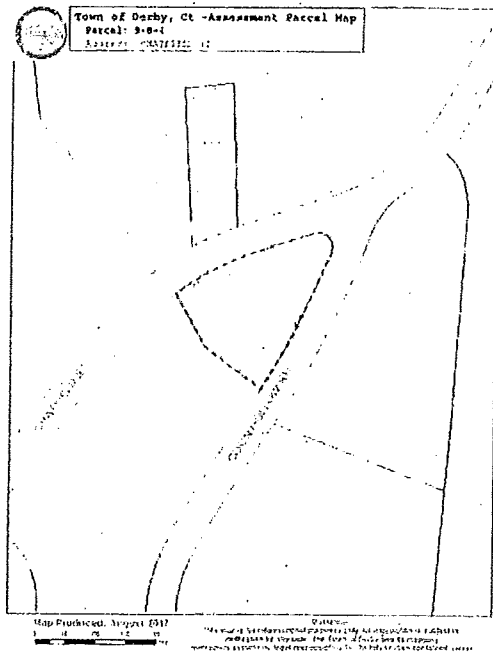
EXHIBIT B

THE SALE PROPERTIES

Lombardi Property:



Church Property:



2019 JUN 6 PM 6:42

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING, is dated as of the ___ day of June, 2019 (this "Amendment") by and between SOUTH CENTRAL CONNECTICUT REGIONAL WATER AUTHORITY, a public corporation and political subdivision of the State of Connecticut, having a principal place of business at 90 Sargent Drive, New Haven, CT 06511 (the "RWA") and the CITY OF DERBY, a municipal corporation organized and existing under the laws of the State of Connecticut having a principal place of business at 1 Elizabeth Street, Derby, Connecticut 06418 (the "City").

WHEREAS, the RWA and the City entered into that certain Memorandum of Understanding dated as of November 5, 2018 (the "MOU"), wherein the City agreed to ground lease to the RWA, and the RWA agreed to ground lease from the City, the High School Property (as such term is defined in the MOU) upon such terms and conditions as more particularly set forth in the MOU; and

WHEREAS, the parties desire to amend the MOU, *inter alia*, to (i) modify the payment structure for the acquisition of the Lombardi Property and (ii) transfer responsibilities for due diligence to the RWA, all as more particularly set forth herein; and

WHEREAS, pursuant to Section 9(d) of the MOU, the MOU may be amended if such amendment is in writing and signed by both parties.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RWA and the City, intending to be legally bound hereby agree as follows:

1. Capitalized terms used but not defined herein shall have the meaning given to such terms in the MOU.

2. The MOU is hereby amended as follows:

a. Section 2 of the MOU is hereby amended and restated as follows:

"SECTION 2. ACQUISITION AND FUNDING OF CHURCH PROPERTY: The RWA negotiated the terms and conditions of that certain Purchase and Sale Agreement dated the date hereof by and among the City, the RWA and the owner of the Church Property (the "Church Purchase and Sale Agreement") for the City's acquisition of the Church Property. Prior to the City's acquisition of the Church Property, the RWA shall conduct such due diligence as the RWA, in consultation with the City, determines is necessary and appropriate, including obtaining a commitment for title insurance from a nationally recognized title insurance company acceptable to the RWA relating to the Church Property, a "Phase 1" environmental site assessment, a municipal search, and an A-2 property survey. Copies of the results of such due diligence

studies shall be provided by the RWA to the City upon the RWA's receipt of the same, and the RWA shall cause the contractors performing such studies to issue reliance letters in favor of the City with respect to such due diligence studies. If the City determines that any additional due diligence is necessary and appropriate, then the City shall conduct such additional due diligence, at the City's sole cost and expense, in consultation with the RWA. All such due diligence must be completed in accordance with the time limitations set forth in the Church Purchase and Sale Agreement. In exchange for certain rights of the RWA as set forth herein and upon the City's acquisition of the Church Property, the RWA will make a one-time payment to the City in an amount equal to the to the purchase price of the Church Property (the "Church Property Funding"), which is One Hundred Sixty-Five Thousand and 00/100 Dollars (\$165,000.00) as determined by the City, the RWA and the owner of the Church Property (the "Church Property Purchase Price"). For purposes of clarity, the RWA shall have no obligation to provide the Church Property Funding to the City unless and until the RWA determines in its reasonable discretion that the City has satisfied all of its obligations set forth herein with respect to the Church Property."

2019 JUN 6 PM 6:42

b. Section 5 of the MOU is hereby amended and restated as follows:

"SECTION 5. ACQUISITION OF LOMBARDI PROPERTY: The RWA negotiated the terms and conditions of that certain Purchase and Sale Agreement dated the date hereof by and among the City, the RWA and the owner of the Lombardi Property (the "Lombardi Purchase and Sale Agreement") for the City's acquisition of the Lombardi Property for open space only. Prior to the City's acquisition of the Lombardi Property, the RWA shall conduct such due diligence as the RWA, in consultation with the City, determines is necessary and appropriate, including obtaining a commitment for title insurance from a nationally recognized title insurance company acceptable to the RWA relating to the Lombardi Property, a "Phase 1" environmental site assessment, a municipal search and an A-2 property survey. Copies of the results of such due diligence studies shall be provided by the RWA to the City upon the RWA's receipt of the same, and the RWA shall cause the contractors performing such studies to issue reliance letters in favor of the City with respect to such due diligence studies. If the City determines that any additional due diligence is necessary and appropriate, then the City shall conduct such additional due diligence, at the City's sole cost and expense, in consultation with the RWA. All such due diligence must be completed in accordance with the time limitations set forth in the Lombardi Purchase and Sale Agreement. In exchange for certain rights of the RWA as set forth herein and subject to the condition that the City maintain the Lombardi Property as open space in perpetuity, the RWA will, upon the City's acquisition of the Lombardi Property, make a one-time payment to the City in an amount equal to Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Lombardi

Property Funding”) to fund a portion of the purchase price of the Lombardi Property, which is Sixty-Five Thousand and 00/100 Dollars (\$65,000.00) as determined by the City, the RWA and the owner of the Lombard Property (the “Lombardi Purchase Price”). For purposes of clarity, the RWA shall have no obligation to provide the Lombardi Property Funding to the City unless and until the RWA determines in its reasonable discretion that the City has satisfied all of its obligations set forth herein.”

c. Section 7 of the MOU is hereby amended and restated as follows:

“SECTION 7. **Supporting Approvals:** The Parties acknowledge that there are approvals required in connection with Sections 1 through 6 above and 8 below, including those by the Regional Water Authority Board, the Representative Policy Board of the South Central Connecticut Regional Water Authority and the City, including but not limited to the planning and zoning commission. In conjunction with obtaining approvals from any potentially required regulatory or administrative body, the Parties will provide such services and support as may be necessary to obtain necessary approvals. In the event that the Parties do not obtain such required approvals by [September 30, 2019] (unless extended by mutual agreement of the parties) (the “Approval Deadline”), this MOU shall be null and void with no recourse to the Parties except for those provisions which expressly survive termination of this MOU, if any. In the event that a planning or zoning board approval or other required approval is denied and the RWA elects to appeal such denial, then the Approval Deadline shall, upon written notice from RWA to the City, be automatically extended for an additional one hundred eighty (180) days.”

3. Except as expressly stated herein, nothing contained in this Amendment shall be deemed to constitute a waiver of compliance with any term or condition contained in the Agreement. Except as expressly amended hereby, the MOU remains unmodified and in full force and effect. All references to the MOU shall be deemed to be references to the MOU as amended hereby. Except as specifically set forth herein, the execution of this Amendment shall not operate as a waiver of any right, power or remedy of RWA or the City pursuant to the MOU.

4. This Amendment shall be governed by and construed by the laws of the State of Connecticut, without regard to conflicts of law provisions.

5. This Amendment may be executed in counterparts and transmitted to the parties hereto by email and/or fax. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be properly executed as of the date first written above.

City of Derby

By: _____
Richard Dziekan
Its Mayor

South Central Connecticut Regional Water Authority

By: _____
Edward O. Norris III
Vice President, Asset Management

2019 JUN 6 PM 6:42