

IN THE MATTER OF : ***APPLICATION NO. 200501978e***
FLOOD MANAGEMENT
EXEMPTION REQUEST

***CT DEPARTMENT OF EDUCATION/
UNIVERSITY OF HARTFORD
MAGNET SCHOOL*** : ***JANUARY 16, 2007***

FINAL DECISION

I

SUMMARY

The Connecticut Department of Education (the applicant) has applied to the Department of Environmental Protection (DEP) for an exemption from floodplain certification requirements. General Statutes §25-68d(d). Specifically, the applicant seeks an exemption from the requirement that it certify that its proposed activity promotes long-term non-invasive floodplain use. §25-68d(b)(4). The applicant's request for an exemption from this requirement has been filed in connection with the planned construction of a magnet high school at the University of Hartford (the project).

The parties in this matter are the applicant, the DEP (Inland Water Resources Division staff), and the City of Hartford. A hearing on the applicant's request was held in Hartford on August 15, 2006. The applicant, DEP staff and the City of Hartford presented evidence addressing the factors necessary to obtain the exemption. Two members of the public made comments about the purpose and the site of the project. The record closed on November 10, 2006 and was reopened on January 11, 2007 to admit new evidence.

The applicant has satisfactorily demonstrated that the project is in the public interest. In addition, the applicant has shown that if constructed as proposed, this critical activity would not injure persons or damage property and would comply with the provisions of the National Flood Insurance Program (NFIP). The applicant's request for an exemption from the provisions of § 25-68d(b)(4) is therefore granted subject to two conditions described herein.

II

FINDINGS OF FACT

1. The applicant is funding the construction of a magnet school on the campus of the University of Hartford. The project, known as the University High School of Science and Engineering, is a joint venture between the City of Hartford and the University. The project is adjacent to and within the floodplain of the North Branch of the Park River and is a critical activity as defined in §25-68b(4). (Exs. SDE-1, 8¹.)

2. In August 2005, the applicant submitted a flood management certification application to the DEP. In a letter dated April 7, 2006, the applicant requested an exemption from §25-68d(b)(4), the section of the flood management statutes regarding long-term non-intensive floodplain use. The applicant requested this exemption because it could not reasonably certify that the project promotes long-term non-intensive floodplain uses. The applicant also notified the mayor of Hartford, as the school construction grant recipient, that increased flood insurance rates may result because of the construction of the school in this area. (Exs. SDE-1, 2, 6.)

3. On April 12, 2006, the DEP published notice of the application and recommended approval of the exemption. A hearing on the application was held on August 15, 2006, following the receipt of a petition signed by more than twenty-five persons. Notices were also sent to the mayor of Hartford and the appropriate state legislators as required by § 22a-6(d). (Exs. DEP-1, 4, 6, 9; ex. SDE-7).

¹ SDE represents the applicant's exhibits.

4. The magnet school would be constructed by the City of Hartford and attended by students from Hartford and surrounding school communities. The school would be one of eight required by a State court order to fulfill the desegregation mandates that arose from a 1996 Connecticut Supreme Court decision². (Ex. SDE-1; test. 8/15/06, J. Hasegawa³.)

5. The University has dedicated land for the school on its campus in an area that meets the requirement that the school be located within the limits of the City of Hartford. The proposed school would immerse high school students into the University of Hartford community. The program, based on an “Early College” model, would allow qualified students to have the opportunity to earn college credits while enrolled in the school. Approximately 400 students in grades nine through twelve are expected to attend the school. (Ex. SDE-1; test. A. Hadad.)

6. To fulfill the school’s mission, the applicant, the University of Hartford and the City of Hartford acknowledge that the school must be located on the University’s campus. The Early College philosophy and curriculum design was included in the Operations and Facilities Plans that were approved by the applicant during the 2003-2004 academic year. (Ex. SDE-1; test. J. Hasagawa; A. Hadad.)

7. No construction activities would be within or affect the floodway. Area neighborhoods, particularly along Granby Street, have experienced sewer backups and street flooding during heavy rain events. However, the Metropolitan District Commission has confirmed that construction of the proposed magnet school would not cause or exacerbate flooding in the surrounding area. (Test. M. Curley; J. Caiola.)

8. The Federal Emergency Management Agency (FEMA) floodplain map data for Hartford is derived from a Flood Insurance Study (FIS) prepared in 1986. The water surface profile in this area is primarily a function of backwater control. Data for the Route 44 crossing over the North Branch of the Park River was based on a stone arch

² *Sheff v. O’Neil*, 238 Conn. 1 (1996).

³ All testimony was given during the hearing held on August 15, 2006, which was audio recorded. Subsequent citations to testimony will only list the name of the witness.

culvert twenty-seven feet wide by sixteen feet high downstream from the project site. The constriction created by this narrow bridge produced 4.2 feet of backwater on the upstream face of the bridge for the 100-year flood flow and 3.3 feet for the 500-year flow. In addition, the water surface elevation at the upstream face of the Route 44 bridge defined a nearly level pool that extends north approximately 7000 feet, an area that includes the project site. (Ex. SDE-3; test. P. Forzley.)

9. In 1991, the Connecticut Department of Transportation (DOT) constructed a new Route 44 bridge, approximately 120 feet north of the former bridge, with an enlarged opening seventy feet wide and twenty feet high. The applicant has determined, and staff agrees, that, with the reduction of the constriction, increased hydraulic capacity reduced the backwater by up to 3.8 feet thereby reducing flooding potential significantly. The hydraulic effects of the bridge reconstruction are not reflected in the current FEMA map. The applicant has received a Letter of Map Revision from FEMA that reflects the increased hydraulic capacity and supports the elevations provided by the applicant. (Exs. SDE-3, 11; test. P. Forzley; J. Caiola.)

10. The project site is located in floodplains delineated as Zone AE (100-year flood) and Zone X (500-year flood) as determined in the FIS. The National Flood Insurance Program (NFIP) requires that any building in a floodplain be at least one foot above levels for the 100-year flood. As the project is a critical activity, the State requires protection from the 500-year flood as well. (Ex. SDE-3; test. J. Caiola; P. Forzley.)

11. The proposed school would exceed the NFIP requirement of being at or above the base flood elevation of 54.4 feet (NAVD88) as the school's lowest floor would be at 57.0 feet (NAVD88). There are no basements proposed for the new school. The emergency generator and transformer would be located at elevation 57.0 feet (NAVD88) and anchored in place. (Ex. SDE-2; test. P. Forzley.)

12. The project also would comply with the DEP critical activity requirements. The 500-year flood elevation of 53.9 feet (NAVD88) is based on the increased hydraulic capacity of the Route 4 bridge. Dry access from the school to the University would be

available above the 500-year flood elevation at 54.8 feet (NAVD88). (Ex. SDE-2; test. P. Forzley).

13. The project would not cause an increase in flow velocity or depth during the base flood discharge. Grading proposed for the project is expected to provide thirty-eight cubic yards of additional available flood storage. Water supply and sanitary systems, and foundation drains have been designed to prevent impacts from floodwaters. (Ex. SDE-8; test. J. Caiola; P. Forzley.)

14. Anticipated increases in stormwater runoff due to the project would not have an adverse impact on flooding. Stormwater outfall protection has been designed in accordance with the 2000 DOT Drainage Manual. Stormwater basins planned for the project have been designed in accordance with the DEP 2004 Connecticut Stormwater Quality Manual. (Test. J. Caiola.)

15. The existing stream gauging station located near the Route 44 bridge currently is not in operation because repairs are needed. The City of Hartford has indicated that it would repair or replace the gauging station in accordance with federal and state standards, and perform necessary maintenance in the future. These repairs would allow data to be transmitted electronically to the University of Hartford. (Ex. SDE-2; test. C. Croccini.)

16. The University of Hartford has an extensive flood forecasting, notification and evacuation program for its campus. Following repair or replacement of the stream gauge, the University would incorporate data transmitted from the gauge into its existing flood monitoring procedures. The University would also include the school in its emergency notification and evacuation procedures. (Exs. SDE-2, 4; test. A. Hadad.)

17. Staff has recommended approval of this application for an exemption subject to the following two conditions⁴:

⁴ Staff originally proposed a third condition that the applicant obtain a LOMR from FEMA prior to the date of building occupancy. During the pendency of this decision, the parties moved to reopen the record for

- a) The City of Hartford shall repair the water monitor gauge in accordance with the DEP specifications and connect to both the DEP and the City of Hartford electronic flood monitoring systems; and
- b) The City of Hartford shall provide flood forecasting and monitoring capabilities consistent with systems maintained by the National Weather Service, including a flood preparedness plan.

(Test. J. Caiola.)

III

CONCLUSIONS OF LAW

The Commissioner is authorized to coordinate, monitor and analyze floodplain management in the state. General Statutes §25-68c. This responsibility includes the certification of state agency activity or critical activity within or affecting a floodplain pursuant to § 25-68d(b) or the approval of an exemption from such authorization in accordance with § 25-68d(d).

Section 25-68d(d)(1) provides that the Commissioner, after notice and a public hearing, may approve an exemption request if she determines that the planned project is in the public interest, that persons or property in the area of the project will not be injured or damaged by the proposed activity and that the project complies with the provisions of the National Flood Insurance Program. The applicant has presented substantial evidence to demonstrate that its exemption request satisfies these criteria.

A

THE ACTIVITY IS IN THE PUBLIC INTEREST

An applicant must first demonstrate that the project would be in the public interest. The phrase “public interest” is not defined in § 25-68d(d)(1). However, the Department has previously relied on the common understanding of the term. The “public

the purpose of entering evidence of the receipt of the LOMR and of staff’s withdrawal of this proposed condition. (Ex. SDE-11.)

interest” means “the general welfare of the public that warrants recognition and protection” and “[s]omething in which the public as a whole has a stake...an interest that justifies governmental regulation.” Black’s Law Dictionary 1244 (7th ed. 1999). See *In the Matter of Connecticut Department of Public Works (Bridgeport Superior Court, Center for Juvenile Matters)*, Final Decision, May 27, 2003, citing *In the Matter of State of Connecticut Department of Economic and Community Development on behalf of New London Development Corporation*, Final Decision, December 3, 1999.

In this exemption request, the applicant and DEP staff presented unchallenged testimony and documentary evidence that this planned project is necessary. The record shows that the project is a magnet school to be constructed by the City of Hartford for the benefit of students from Hartford and surrounding suburban school communities. The school is one of eight that must be established to fulfill the requirements of a State court order. The location of the school has been determined based on a specific approved curriculum design.

The project would provide other community benefits. Construction of the school would result in repairs to the North Branch of the Park River stream gauge. Once repairs are made, the gauge will be monitored electronically twenty-four hours per day by the University’s computer system. The evidence of the educational and community benefits resulting from the project sufficiently demonstrates that the project would be in the public interest.

B

***THE ACTIVITY WILL NOT INJURE PERSONS OR DAMAGE PROPERTY
IN THE AREA OF SUCH ACTIVITY***

The Commissioner must also determine that the project would not injure persons or damage property in the area of the planned activity. §25-68d(d)(1). The evidence presented by the applicant satisfies this second criterion.

The hydraulic effects of the Route 44 bridge improvements have caused flooding levels to decrease dramatically at locations upstream of the bridge. The bridge improvements have also caused the 500-year flood level at the site of the proposed school to decrease, such that dry access for persons and vehicles would be available from the new school to the University of Hartford property.

In addition, the City of Hartford has demonstrated its commitment to satisfy the conditions on the exemption proposed by staff. The repairs to the existing stream gauging station would restore its function as an Advance Flood Warning System for the river, and water elevation data would be transmitted to the DEP and the National Weather Service. The University of Hartford would ensure that the data is continuously transmitted to a computer at its facilities. The University would incorporate this information into its existing flood monitoring procedures for its campus. The project will not result in injury to persons or damage to property in the area of the activity.

C

THE ACTIVITY COMPLIES WITH THE PROVISIONS OF THE NATIONAL FLOOD INSURANCE PROGRAM

The NFIP requires that any building in the floodplain be constructed at least one foot above the level of a 100-year flood. 44 CFR 60.3 (1997). The State of Connecticut requires protection from 500-year flood levels for a critical activity such as the school. Regs., Conn. State Agencies § 25-68h-2.

The record indicates that the proposed structure will exceed the NFIP requirement of being at or above the base flood elevation. §25-68d(d)(1). In addition, dry access will be available from the new school to the University. Therefore, the project also meets the state requirements for critical activities.

IV

CONCLUSION

The applicant has demonstrated that the proposed project is in the public interest, would not injure persons or damage property in the area of such activity, and complies with the provisions of the National Flood Insurance Program. The applicant has satisfied the provisions of § 25-68d(d)(1). The applicant has also demonstrated that the two conditions proposed by staff would be satisfied. Accordingly, the applicant's request for an exemption from the requirements of §25-68d(b)(4) is granted, subject to the conditions specified in Paragraph 17 of the Findings of Fact contained herein.

/s/ Jean F. Dellamarggio
Jean F.Dellamarggio, Hearing Officer

P A R T Y L I S T

Final Decision In the matter of CT Dept. of Education
University of Hartford Magnet School
App. No. 200501978e

PARTY

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