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To: SimsburyCT_PlanMin
Cc:

ADOPTED

PLANNING COMMISSION MEETING
MARCH 8, 2011
REGULAR MEETING

I. CALL TO ORDER

Michael Paine, Chairman, called the regular meeting of the Planning Commission to order at 7:02 p.m. in the Main Meeting Room at the Simsbury Town Offices. The following members were present: Mark Drake, Ferg Jansen, Chip Houlihan, Sean Askham and alternate Alan Needham. Also in attendance was Howard Beach, Zoning Compliance Officer.

II. SEATING OF ALTERNATES

Chairman Paine appointed Commissioner Needham to sit for Commissioner Hallenbeck.

III. APPROVAL OF MINUTES of February 22, 2011

An edit was made to the minutes.

A motion was made by Commissioner Needham to approve as amended the February 22, 2011 minutes. The motion was seconded by Commissioner Jansen and passed unanimously.

IV. First Notice of Election of Planning Commission Secretary in Accordance with Planning Commission Rules and Procedures to Fill Vacant Position

This item will be on the agenda for the meeting scheduled for March 22, 2011.

V. DISCUSSION

a. Revised Fee in Lieu of Open Space Regulation – Set Public Hearing Date

Suggested revisions of the Revised Fee In Lieu of Open Space Regulation were given to Commissioners who had not received them. Chairman Paine said that there is only one place that has changes. The change discussed was on page 2, section 7 (documentation); line 4 and 5, the wording "any zoning sign off or the issuance of any building permit" replaced "temporary or permanent certificate of occupancy". Mr. Beach said that what has been a problem in a couple of towns that have adopted "fee in lieu of" is that they did not specify when the fee got paid. What happened, by default, was that the developer didn't pay the fee, and when that person came in for a certificate of occupancy on the property they got hit with the fee. He said that by stating it this way, it makes it obvious that the developer has to pay the fee before they get a building permit. Chairman Paine thought that it would be to the town's advantage to deal with the fee up front.

Commissioner Houlihan said that there is a conflict. Paragraph number 5 talks about when you pay the fee stating that a fraction.....shall be paid to the town at the time of the sale of each approved lot in the subdivision. This comes directly out of the General Statutes. Commissioner Houlihan said that he does not think that the payment timing in number 7 is consistent with the Statute in number 5. He did say that they could use the concept under the alternate payment, because the alternate payment is an option for the developer and the town. If the developer suggests that they go that way, then we can append any conditions that we want to, including paying earlier. Mr. Beach said that he is not sure that there is any conflict in the terms of timing. The Zoning signoff, to the point of the building permit, is not until the applicant comes in with the final design of the house. Typically the lot is sold, then they come in to build the house. It stipulates that before you get the building permit to build the house, the fee has to be paid. Commissioner Houlihan said that if we go through the appraisal route, the statutory process is until the lot is sold to someone else, we cannot get our money. Commissioner Jansen asked if the statute prohibits us from getting the money when the subdivision is approved. Commissioner Houlihan explained that the statute states that you get a fraction of the fee and that is on a per lot basis at the time it is sold. Chairman Paine asked if the actual language comes from Section 8-25 (b). Commissioner Houlihan replied yes. Chairman Paine felt that this issue should go to the Town Attorney. He will follow-up with both Hiram Peck and Bob DeCrescenzo to clear it up. Chairman Paine said that their goal here is to be able to collect these monies prior to the tail end of the occupancy. It should be done at the sale of the lot or the taking out of a permit. Commissioner

Houlihan said that it would be easier to get the money up front, at the early stage. Chairman Paine suggested setting a public hearing date for this item for about a month from now. They would still have time at their next meeting to finalize the language. Mr. Beach explained the legal notice procedure stating that the legal notice has to be in the paper twice, the first time not more than 15 days (not less than 10 days) prior to the hearing date, and the second time must be published no less than 2 days before the hearing. The two notices cannot run on consecutive days – they must be at least 2 days apart.

The Commission continued their discussion on the Fees in Lieu of Open Space (FILO) regulation, expressing their concern over the wording “passive recreational”. Commissioner Askham asked if there is some way they could change the way they say it, instead of taking it out. Commissioner Houlihan suggested the wording “passive recreational with the intent of preserving land in its natural state”. The general sense is that land is supposed to be set aside now, kept in its natural condition. The grass could be mowed and the bushes and trees trimmed. He said that normal land management should not be prohibited.

The discussion continued with whether to eliminate the wording “passive recreational” or not. Commissioner Houlihan suggested the following sentence be used in (5). Payment of the Fee: A fraction of such fee,.....
...with General Statutes §8-25b to be used solely to acquire additional land or development rights for open space. This would eliminate “for the sole purpose of preserving open space, acquiring additional land for open space or for passive recreational or agricultural purposes.” Commissioner Jansen said this wording should be run by both Hiram and the Town Attorney.

b. Route 10 Corridor Study Status

Chairman Paine said that a Rte 10 Steering Committee meeting was held on March 3, 2011. The next Rte 10 Steering Committee meeting date is March 24th. The Planning Commission briefly discussed the Route 10 Corridor Study.

c. Town Center Code Referral to Zoning Commission

The Planning Commission discussed the Town Center Code.

Commissioner Jansen made a motion to send a positive referral to the Zoning Commission on the Town Center Code.

Referring to the Plan of Conservation and Development, page 6, Town Center,

Simsbury Center:

Simsbury Center projects the character of the Town. It is where we find our government, our meeting places, our history, our concerts and our main commercial center. In the age of shopping malls and developments of scale, we need to preserve and enhance the feel of a living downtown area where the pace and scale are markedly different. To this end, Simsbury Center must remain the vital, historic, cultural and economic hub of Simsbury. Moreover, we must implement strategies to make it even more so.

The vitality and appearance of Simsbury Center provide a focal point for our community. The development of the playing fields and the Performing Arts Center at Simsbury Meadows brings families to the center of town and has spurred investment and renovation in the downtown area. The challenge is to promote economic development in the Center while preserving the look and feel that residents find to be charming.

The motion was seconded by Commissioner Houlihan and passed unanimously.

d. Referral on Proposed Ordinance Concerning Outdoor Wood-Burning Furnaces to Board of Selectmen

The Commission discussed a document addressed to the Board of Selectmen from Hiram Peck. Chairman Paine said that there is a conflict in this document. He said that it is his understanding that there has never been a complaint in Simsbury, although there is one complaint listed in the document. Mr. Beach said that he is not aware of any complaints, but said that town's that have these wood burning furnaces installed have had a tremendous amount of

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complaints. Mr. Beach told the Commission that he serves on the Council of Environmental Quality and they have had numerous groups come in to testify to them as to the dangers involved. There is a copy of the report from the Department of Public Health incorporated into the document. The main problem with the outdoor wood-burning furnaces is that it is impossible to control what the people burn in them. People fire it up in the morning, and leave it for the day. Once it gets up to heat, it shuts down and just smolders. The problem with these is that the outdoor wood burning furnace burns at a lower temperature so you do not get complete combustion. Then smoke comes out of the stack and drops to the ground (especially on humid days) and can go for thousands of feet at ground level. They have found

that sub-micron (most dangerous type of particulate matter) is dramatically in excess of EPA's allowances for particulate matter in areas up to 500 to 800 feet away from the stack. Also, people living in their homes have levels in their homes that are well in excess of EPA standards. Mr. Beach said that several towns have passed zoning regulations banning the outdoor wood-burning furnaces.

Commissioner Houlihan asked if the town has received any comments from people in favor of the outdoor wood-burning furnaces. Mr. Beach said that he is not aware of any comments received as Hiram has just started to float this. They are trying to set up a meeting sometime at the end of March or beginning of April at the Library and possibly invite in someone who represents a company who makes these stoves. They could present the case for how well they work, etc. Also, possibly get someone from the Department of Health with issues on how they do not work. They want to get a panel discussion going so people can hear both sides of the issue and make an educated decision. Neither a date nor a list of speakers has been set.

The Commissioner's continued the discussion of this agenda item.

The Commission decided to hold off on a referral this evening, and will continue to discuss this item at the next regular Planning Commission meeting.

e. Open Space Encroachment Issues

Howard Beach discussed the Open Space Encroachment issue. He said that a resident is planning to have an in-ground pool constructed on their property on Old Stone Crossing. When they came in with their plan it was discovered that they had clear-cut town open space for part of their yard. Mr. Beach showed the Commissioners the property location on the subdivision map, and also the location of an historic stone wall running along the area. The person clear cut to the historic wall and around to make that area their property. Mr. Beach said that the Conservation Commission/Inland Wetlands Agency also looked at this, as the applicant had gone before them for an Inland Wetlands Permit for the pool. They came up with a suggestion for replanting the area saying that the contractor will have to put natural vegetation in the area, and the home owner will be responsible for paying the costs. Mr. Beach went over the remediation plan with the Planning Commissioners stating that it is an excellent selection of plantings. The issue for discussion is that the applicant is only rebuilding a portion of all they had cut. The Conservation Commission felt that this is beyond their purview, as they are not the Commission that should demand that the applicant rebuild all the property right up to the property line. They felt that it is the purview of the Planning Commission to state that there is not a problem with the plantings, but there is a problem with any

encroachment over the line and the plantings should be brought up to the line. The side yard that was cut was a tree preservation area (approximately 70 to 80-foot tall pine trees), as was the front part. This issue is now before the Planning Commission as this was part of the condition of approval of the original subdivision. The contractor told Mr. Beach that the home-owner thought the stone wall was their property line. Also, now the applicant has to go before the Zoning Board of Appeals to obtain a variance for placement of the swimming pool. The Conservation Commission, and also Gerry Toner, Director of Parks and Recreation, do not want mowed lawns in the town open space and people using town property as part of their own land. They want it restored. Mr. Beach said that there are other properties in town that have encroached on open space, and as they catch them they are told to cease using the land. The Conservation Commission wanted this particular issue before the Planning Commission this evening so Planning could make the final decision. Mr. Beach said that this issue could be taken care of administratively, or this Commission could request that the applicant appear before them. He said that done administratively he would put together a letter enforcing this Commission's decision. It would then become an enforcement issue from his perspective so he could go out to the property to make sure that the work has been done.

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Chairman Paine said that he would work with both Howard and Hiram to get the correct wording into a letter with this Commission's recommendations. Mr. Beach said that the applicant should also come in to the Town Hall with a modified planting plan showing the restoration up to the property line. When this plan is submitted, it could be either submitted to staff or to this Board with the contractor or owner present to explain it. Chairman Paine said that with this Commission submitting a letter, and copying both Hiram and Howard on the letter, and as long as the plan is submitted to staff for administrative review, there would not be a need for the revised plan to come to the Planning Commission (unless a problem was found on the plan). Chairman Paine said that the Commission sending a letter should set the tone.

VI. STAFF REPORT(s)

None

VII. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

Chairman Paine said the Open Space Committee met the previous week and most of the meeting was spent on discussing dealing with encroachment on the town's open space.

VIII. ADJOURNMENT

Commissioner Jansen made a motion to adjourn the meeting at 9:35 p.m., The motion was seconded by Commissioner Askham and passed unanimously.

Michael Paine, Chairman