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Cc:

DRAFT

PLANNING COMMISSION MEETING  
December 9, 2008  
REGULAR MEETING

I. CALL TO ORDER

Chairman John Loomis called the regular meeting of the Planning Commission to order at 7:09 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Charles Houlihan, Carol Cole, Mark Drake, Julie Meyer, Susan Bednarczyk and Carl Eisenmann. Also in attendance were Hiram Peck, Director of Planning, as well as other interested parties.

II. SEATING OF ALTERNATES

Chairman Loomis appointed Commissioner Eisenmann to serve in the absence of Commissioner Post and Commissioner Cole to serve in the absence of Commissioner Jansen.

III. APPROVAL OF MINUTES of November 25, 2008

Several edits were made to the November 25, 2008 minutes.

Commissioner Meyer made a motion to approve the November 25, 2008 minutes as amended. Commissioner Bednarczyk seconded the motion, which was approved. Commissioner Houlihan abstained.

Commissioner Bednarczyk made a motion to add the discussion of holiday gifts to the agenda. Commissioner Meyer seconded the motion, which was unanimously approved.

The Planning Commission presented Alison Sturgeon, Commission Clerk with a very generous Christmas gift. Commissioner Bednarczyk stated that they appreciate all of her hard work.

IV. CONNECTICUT GENERAL STATUTE 8-3a REFERRAL FROM THE ZONING

COMMISSION on a proposed Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Four (B), Definitions, and Article Seven, Uses, for the purposes of a moratorium (not to exceed eight (8) months) on Adult Oriented Uses.

Mr. Peck stated that this amendment was drafted by the Town Attorney in order to define what adult use is and also to get in motion the process for a moratorium, which is not to exceed 8 months. Mr. Peck stated that the definition, if adopted, would be added to the Zoning Regulations; the moratorium would be put into place as well. He stated that the public hearing is scheduled for January 5, 2009 regarding this issue.

Mr. Peck stated that the Board of Selectmen has been asked to consider an Ordinance for sexually orientated businesses, although they have not yet set a date for a public hearing.

Commissioner Meyer stated that she read in the Simsbury Post that there was some concern that if adult use is defined and the Town adopts an Ordinance, it might encourage these types of businesses to come to Town. Mr. Peck stated that the Town cannot eliminate these types of businesses, but they can restrict and regulate them.

Commissioner Cole questioned if an application for this type of business could come in under another part of the existing Regulations. Mr. Peck stated that there are no prohibitions under the current Regulations.

Mr. Peck stated that the subject of this referral is regarding the definitions only. He stated that the Commission can take no action on this matter if they choose to do so, although he suggested that the Commission recommend approval of the definitions and adoption of the moratorium.

Commissioner Houlihan made a motion that the Planning Commission recommend to the Zoning Commission the approval of the definitions in Section 2 of the proposed Ordinance: Sexually Orientated Businesses and also recommends adoption of the proposed moratorium, which would not exceed 8 months on adult oriented uses. Commissioner Bednarczyk seconded the motion.

Commissioner Eisenmann made one correction to the definitions. Definition (10) DVD's should read DVDs.

Commissioner Bednarczyk questioned why the moratorium needed to be 8 months. She feels that a 3 month moratorium would be appropriate. Mr. Peck stated that because of the referral process, the Town Attorney has suggested an 8 month timeframe.

Commissioner Bednarczyk questioned if Ordinances in other Towns regarding

sexually orientated businesses were more restrictive than this proposed Ordinance. Mr. Peck stated that this was the sample that the Town Attorney submitted.

Commissioner Houlihan stated his concerns regarding some of the language in the definitions, which he feels invites litigation. He feels that the Town should create structures that make is less attractive for these types of businesses to come to Simsbury. Commissioner Houlihan suggested a test. He stated that if there was something that could be seen on a Connecticut beach, the Town should not try to regulate it. He recommended that the word, "buttocks" be taken out of the definitions because he believes there is some degree of risk when using that term. He also recommended the prohibition regarding the display of the areola of the female breast. He stated that topless dancing has been approved by the Supreme Court. He stated that he does not want Simsbury to have lawsuits that could be taken to the Supreme Court.

Mr. Peck stated that if the Commission agrees with Commissioner Houlihan, that they continue with the motion but include that they would urge the Town Attorney to examine these changes prior to the public hearing. If the Town Attorney does, in fact, find these changes to be appropriate, they could then be removed.

Commissioner Houlihan withdrew his motion. Commissioner Bednarczyk withdrew her second to Commissioner Houlihan's motion.

Commissioner Houlihan made a motion to approve the Section 2 definitions of the proposed Ordinance: Sexually Orientated Businesses and to approve this text amendment to request that the Zoning Commission impose an eight (8) month moratorium on receiving applications for Adult Entertainment as it is described in the definitions. The Planning Commission recommends that the Zoning Commission and the Town Attorney review and consider the following changes: 1) to remove the references to "buttocks" for the concern that it could be challenged; and 2) in light of the Supreme Court precedents that have allowed topless dancing, to consider the prohibition on a display of the areola of the female breasts. These changes are because the Planning Commission would like a strong regulation that does not overreach and embroil the Town in potential litigation. Commissioner Bednarczyk seconded the motion, which was approved. Commissioners Meyer, Bednarczyk, Loomis, Cole and Houlihan voted in favor of this motion. Commissioner Eisenmann voted against this motion.

Commissioner Houlihan stated that in Section 14 of the proposed Ordinance, it reads, "...which shall not be refundable, as set by the Council..." He stated that Council should be replaced with Board of Selectmen.

V. CONNECTICUT GENERAL STATUTE 8-3a REFERRAL FROM THE ZONING COMMISSION on a proposed Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Four (B), Definitions, Article Seven, Uses, (Section n), Article Ten, Special Regulations, (Section k), and Article Ten, Special Regulations, (Section a. paragraph 2.a) for the purposes of a Continuing Care Retirement Community (CCRC).

Mr. Peck stated that this proposal is to add definitions to the Zoning Regulations. The Continuing Care Retirement Communities (CCRC) typically consists of 3 levels of care: independent living component; assisted living component; skilled nursing component. Some of the more current CCRCs also have a dementia facility or a facility that deals specifically with physical disabilities. This definition encompasses all of these components. Mr. Peck stated that this definition will pertain to one or more applications that will be coming in for property for the south end of Town.

Mr. Peck stated that another thing this amendment does is that it proposes to define Conceptual Master Plan (CMP), which is less than a final site plan. He stated that it would contain less detail than a final site plan, although it would contain more detail than a sketch plan. This definition explains what would be required in the CMP. The CMP would be the document that would come in at the same time as a request for Special Exception; the CMP would accompany the request for a Special Exception. The CMP also gives the applicant the opportunity to explain what their facility is about and how it will be laid out, including coverage, drainage, wetlands and environmental issues, architectural designs, building heights, setbacks, etc.

Mr. Peck stated that the next thing that this amendment will do is it proposes to add wording. Assisted Living Facility and/or Congregate Senior Housing Facility is already allowed in the Regulations, although it adds the Continuing Care Retirement Community with accessory uses, as defined in these regulations.

Mr. Peck stated that Article Ten, Section K would add, "...or Continuing Care Retirement Community". Also, Article Ten, Section A would add, "... Alternatively for large projects the Commission may accept a Conceptual Master Plan (CMP) as satisfying the submittal requirements for Special Exception approval. Subsequent to approval of the CMP the applicant shall apply for and obtain approval of a final detailed site plan approval by the Commission prior to receiving any zoning permit or any building permit".

Chairman Loomis questioned what the timing for this was. Mr. Peck stated that the Zoning Commission has set the public hearing for January 26, 2009. Mr. Peck stated that timing is critical to these possible applications.

Regarding the CMP definition, Commissioner Eisenmann stated his concerns that the CMP needs to be signed and sealed by a licensed professional. He feels that the wording for this is too vague. Mr. Peck stated that it is vague because it could be an engineer, an architect, a landscape architect, etc. He stated that this is standard terminology that is in many zoning texts. The Commission can decide who the appropriate professional is.

Commissioner Meyer questioned what is required in the formal site plan under the current Regulations. She stated that Article 5, Section J is lengthy and she can understand why an applicant would not want to have location size and design of proposed storm drainage and landscaping and the electrical, etc, although looking at the CMP definition, she stated that she would like to see it defined more concisely. She stated that this may require having a Section L. Chairman Loomis asked that Commissioners Meyer and Eisenmann get together to discuss this issue and report back to the Commission at their next meeting.

Commissioner Houlihan stated that he likes the CMP definition. He stated that it is useful to be able to cut back from a full blown site plan because that level of detail may not be required. He does not see anything that he would change regarding the information that the applicant needs to provide for a CMP. This information gives the Commission what is needed in order to make a reasonable evaluation of the project.

Commissioner Houlihan stated that the CMP is for large projects. He asked Mr. Peck to define a large project. Mr. Peck stated that this is something that is relative. He does not feel that the definition of large projects is needed within this definition. He stated that the Zoning Commission would need to make this determination.

The Commission discussed the possible need to have a special meeting because they have only one regular meeting prior to the public hearing, which is set for January 26, 2009. They will make a final decision regarding a special meeting at their next meeting.

Kirsten Griebel, 7 Caryn, asked what zone the CCRC would fit in. Mr. Peck stated that it is for any zone. Ms. Griebel also questioned what changes would be acceptable if the applicant came in with a CMP and then came back in with a site plan with changes. Mr. Peck stated that this would depend on the significance of the change. The Zoning Commission would have to make a decision based upon how the decision on the CMP and Special Exception are determined and whether it complies with that initial approval. If the final site plan does not comply with the approved CMP, the Commission does not have to approve it. Ms. Griebel questioned if the lot coverage would still be at 40%. Mr. Peck stated that all of the

Regulations would stay the same.

#### VI. STATUS OF CHARRETTE INITIATIVE

Mr. Peck stated that they are in the process of getting a revised proposal back to the consultant to do a focused study on the Town Center. He is hopeful that this Charrette will be completed in February or March. This study would precede a full Charrette if the process is allowed to go forward.

Commissioner Houlihan stated that he feels it would be more efficient and useful to look at the northern and southern gateways instead of the Town Center. Mr. Peck stated that the focus on the Town Center was the focus of the POCD. Focusing on the Center would give the Town good solid information in order to go forward and essentially establish a template for doing that type of zoning in other areas. Mr. Peck stated that there will be input from the public regarding this process. He stated that people need to determine how much density they will tolerate in Town; higher density will bring about positive and negative results.

Mr. Peck stated that this study will set a template for the Town Center. The Town will then be able to see what is appropriate for other areas in Town. He stated that he is hopeful that the second and third phases of the Charrette go forward, although if they are not funded, they will still have a good solid template from this study.

Thomas Frank, 19 Banbury, West Simsbury, and Chairman of the Economic Development Commission, questioned how much public involvement would be possible and how it would be accomplished. Mr. Peck stated that this would depend on the response they receive back from the consultant. He stated that there will be a significant amount of public input. Town staff will also be working to make sure that the public is aware of what is going on and also informing the stakeholders.

#### VII. STAFF REPORT(s)

Mr. Peck stated that there is a homeowner at 21 Cobtail Way who would like to do minor regarding on their property. Mr. Peck stated that this will not adversely affect what the Commission has already put in place on this property. Also, no additional trees will be cut down. If the Commission does not have any issues with this, Mr. Peck stated that he would like to talk to the homeowner about moving forward. He stated that he would view this as administrative, although he is bringing this before the Commission tonight so they can be aware of activities on this property.

Commissioner Houlihan questioned if there would be 2 play areas on this

property. He stated that there is a play area and a future play area labeled on the plans. Mr. Peck stated that the future play area is not being proposed at this time.

Commissioner Meyer questioned what would happen if a homeowner does not progress as planned. Mr. Peck stated that residents call the Planning Department office frequently; he is always aware of things that are happening around the Town. Mr. Peck stated that if there is a problem with something the homeowner has done, the homeowner would need to correct the problem.

Regarding the Meadowood Triangle, Mr. Peck stated that the Town now owns the Triangle and the open space. There is a barn and a house on the property, although they have not yet determined what will happen with these structures. He stated that a meeting will be held soon with Town staff and the stakeholders to discuss future uses for the property.

Mr. Peck stated that the CCM held an agricultural meeting today at the Town Hall to discuss agriculture in the State of Connecticut. They discussed what Towns are doing to encourage and preserve agriculture. Mr. Peck stated that he would send each Commission member a copy of the booklet that was distributed at the meeting. Mr. Peck stated that the meeting was well attended. Many farmers from other Towns attended the meeting as well. Mr. Peck stated that one reason for this meeting is that CCM is collecting information to encourage Municipalities to look at their regulations to see whether there are any regulatory restraints that are placed on agriculture. Chairman Loomis stated that New York and Massachusetts are stronger supporters of agriculture in Municipalities and have more Agricultural Commissions. There are only 5 Agricultural Commissions, to date, in Connecticut. Chairman Loomis stated that one of Simsbury's next steps may be to form an Agricultural Commission.

#### VIII. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

Regarding the Subdivision Regulations and a possible application for a CCRC, Mr. Peck stated that the requirements in the Regulations are very stringent. He stated that if someone wanted to split off one parcel of a property and if it happens to be the third cut of that parcel that is a subdivision in the State Statutes. He stated that there is no mechanism currently in Simsbury's Regulations for allowing someone to come in with something less than what the current regulations require. He suggested that, in this case regarding the CCRC, if the Commission can indicate that they would be willing to see the subdivision line drawn at this stage and not go any further until a full application comes in for this CCRC, that this might be an acceptable way to proceed. Mr. Peck stated that he has not talked to the Town Attorney regarding this issue because the Town

Attorney has a conflict in this matter. Mr. Peck is currently looking for legal advice elsewhere. Chairman Loomis asked that Mr. Peck type up a memo for the Commission members to review prior to the next meeting regarding this issue. They can then discuss this issue at the next meeting when they are more prepared.

IX. ADJOURNMENT

Commissioner Houlihan motioned to adjourn the meeting at 9:02 p.m. The motion was seconded by Commissioner Eisenmann and unanimously approved.

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Gerry Post, Secretary