

From: Lois Laczko June 17, 2011 12:36:02 PM  
Subject: Zoning Commission Minutes 05/16/2011 ADOPTED  
To: SimsburyCT\_ZoningMin  
Cc:

ADOPTED

ZONING COMMISSION MINUTES  
MAY 16, 2011  
REGULAR MEETING

I. CALL TO ORDER

James Gallagher, Chairman, called the regular meeting of the Simsbury Zoning Commission to order at 7:35 p.m. in the Main Meeting Room at the Town Offices. The following members and alternates were present: Edward Pabich, Robert Pomeroy, Bruce Elliott, Madeleine Gilkey and Thomas Doran. Also in attendance were Hiram Peck, Director of Planning, Richard Sawitzke, Town Engineer, and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Gallagher appointed Commissioner Gilkey to serve for Commissioner Salls, and Commissioner Doran to serve for Commissioner Vaughn.

III. APPROVAL OF MINUTES of May 2, 2011

Commissioner Pomeroy moved to approve as amended the minutes of May 2, 2011. The motion was seconded by Commissioner Pabich and passed unanimously. (5-0-1 vote with Commissioner Gilkey abstaining)

Commissioner Pabich read the Call.

IV. PRESENTATION(s)

a. Application of Spiro Markatos, Owner, Marc Lubetkin, Manager, Red Stone Pub, Agent for a Site Plan Amendment to construct an 8-foot x 30-foot patio on property located at the Red Stone Pub, 10 Mall Way. SC-3 Zone

Chairman Gallagher said, for the record, that his office is located in the Red Stone Pubs building. He does not own the building or is he a partner in the Red Stone Pub.

Marc Lubetkin, 107 East Weatogue Street, Simsbury, CT, spoke on behalf of this application. He said that he is the managing partner at the Red Stone Pub and is at this meeting to get permission to construct a patio. Mr. Lubetkin said that he was in front of the Design Review Board last week. They made some good suggestions, as did Mr. Peck. Mr. Lubetkin said that he spoke with his engineer/architect today and she also liked the suggestions. They are ready to make adjustments as necessary to accommodate those suggestions.

Mr. Lubetkin said that they would like to have four tables with a total of 16 chairs on the patio so the people can enjoy the view and the weather. It is consistent with the intentions of the Simsbury Center Zone. This is also the first application following the approval of the new regulation. Mr. Lubetkin said that this is an historic location and he has made his best effort to retain the character and value of that location. He said that they have a very good clientele, and having some seats outside would improve their experience and help make Simsbury's down town a more walkable community.

Mr. Lubetkin explained some of the information they received in their packets. He said that in the pictures with his son he is showing the height of the horse head hitching posts that they want to use (son is approximately the same height). Mr. Lubetkin said that the hitching posts are heavy duty aluminum with a rounded base with chains in between. He mentioned that the courtyard building was once a carriage house and stable.

Commissioner Pabich said that there were recommendations from the Design Review Board and also five recommendations from Town Staff. He asked Mr. Lubetkin if he intends to execute all of those recommendations, and also asked if he would make this Commission comfortable with the safety of the patrons given the parking situation. Mr. Lubetkin said that the Design Review Board suggestions and Mr. Peck's suggestions are very inline. He felt that Mr. Peck took the Design Review Board suggestions, and actually made some tactically correct approaches to them. Mr. Lubetkin said that he has no problem accepting his suggestions except for the one year granting of the permit.

Mr. Lubetkin said that in terms of the safety of the clientele, there are an awful lot of restaurants around the world that have patios right on the street with cars parking right in front of them. He does not see a major hazard of doing that. Mr.

Lubetkin said that the suggestion of putting large planters in the parking spaces during patio operation is excessive, but he is happy to do it. Also, the removal of three parking spaces from that space during the operation of the patio is not a problem. There is a ton of parking in the area between the commuter lots, CVS, etc.

Commissioner Elliott asked Mr. Lubetkin for clarification on the location of the chain at the far end of the parking spaces when it is in operation, not at the near end. Mr. Lubetkin explained the diagram that was in the packet. He also showed the Commission a drawing of where he had originally planned to place the patio on the outside of the horse heads and have permanent chaining up. Mr. Lubetkin said that Mr. Peck has suggested that, instead of putting the patio and the sidewalk separated by bollards, he put the line of posts basically at the end of the parking spaces (where the nose of the cars would go in). The side chains would be removable and only hooked up when the patio is in use. Commissioner Elliott asked Mr. Lubetkin if it had been his intent to remove the three parking spaces. Mr. Lubetkin said not originally, but if that is what the Commission wants he is okay with it. Mr. Lubetkin said that he wants to create a wonderful experience for the people in town. This is the first step in leverage of what is being done for the Simsbury Center Zone. He said that there should be more patio and outdoor experiences. He showed on a drawing where the patio would end and where horse heads and planters would be placed. At some point in the future he would like to enlarge the patio.

Commissioner Gilkey asked if during the day, when the pub is not open, the planters would disappear, and L Design's customers would be able to park in their regular spots. Mr. Lubetkin said that when he opens at five the planters would come out. If she does have people parking in those spots, he would have to wait until they leave. There will be a few logistical challenges as on some nights L Design is open until 6:00 p.m. Commissioner Gilkey asked if he has spoke with Linda at L Design. He said not with this proposal, as it just came out on Friday night. Chairman Gallagher asked if he could move the planters back to where the chain fence is located and leave those parking spaces open. Mr. Lubetkin said that would be wonderful. Commissioner Gilkey said that he would have to have a wall of planters in order to present a certain amount of safety for her to feel comfortable.

Commissioner Elliott asked what the Assistant Fire Marshal has approved. Mr. Lubetkin said that his original idea was what the Assistant Fire Marshal had approved. Commissioner Elliott asked if the proposal they have now has been reviewed by the Fire Marshal. Mr. Lubektin said that nobody has, as it has just come out. Mr. Lubektin said that the Assistant Fire Marshal's communication with him was that as it is a chain and is outside

it does not impact him what so ever. Chairman Gallagher asked about the sidewalk. Mr. Lubetkin said that he would be putting in a three-foot sidewalk that extends into the parking lot 1 ½ feet.

Commissioner Gilkey said that she feels that there are some pieces that they do not have. She said that the Fire Marshal has yet to review any type of a final plan. She said that she would have a hard time voting on this. Mr. Lubetkin said that the Fire Marshal had approved his original plan, as is. Commissioner Gilkey said that the original plan has been changed. Mr. Lubetkin said that the original plan has not been changed, but these were suggestions from the Design Review Board and Hiram Peck. Mr. Lubetkin said that he would be willing to accept their approval of his original plan, and if they want to adopt some of the suggestions he would be willing to do that. Commissioner Pabich said that when they started to discuss this application, Mr. Lubetkin had said that he would be willing to adopt both the recommendations of the Design Review Board and Mr. Peck. This makes his total plan far more conservative. Mr. Lubetkin said that he is willing to adopt those recommendations even though it is more expensive for him. He also said that this does not mitigate that the Fire Marshal approved the first plan which was more conservative.

b. Application of Thomas A. Schneider, Director of Finance & Operations, Ethel Walker School, Owner, Charlie Nyberg, Agent, for a Site Plan Amendment for a barn renovation at the Equestrian Center on property located at the Ethel Walker School, 231 Bushy Hill Road. R-40 Zone

Charles Nyberg, Associated Architects, 16 Spring Lane, Farmington, CT spoke on behalf of this application. Also, with Mr. Nyberg was Thomas Schneider of Ethel Walker School. Mr. Nyberg showed the Commissioners a drawing showing a series of photo's with different views of the existing barn on Bushy Hill Road explaining what they were. He said that they are planning on removing a portion of the building and cut it back. Right now on the first floor is a garage space, which was used for yard equipment. The upstairs was used as an office for the equestrian program. Mr. Nyberg said that they are proposing to remove the garage and bring the office down from the second floor to the first floor so it has easier contact with the public. They are also going to be getting rid of the storage space, which has yard equipment and gasoline stored there. He said that they will also be removing the fire escape that is visible on the side of the building that is facing Bushy

Hill Road. The second floor will not be used at all. There will be a pull down to get to that level for maintenance purposes only. There will be new siding, paint and windows. Mr. Nyberg said that they have been working with the Building Official and Fire Marshal over the past few months and they have been most co-operative. This application had been before this board a few years ago with a much more extensive addition, but the cost got to be much too prohibitive for the school to go forward. The program has been cut way back, but they have preserved the architectural quality of the barn. This has been represented as the gateway to Simsbury on Bushy Hill Road. Mr. Nyberg said that they feel that they have a good product and are asking for this Commissions approval.

Commissioner Elliott asked if there is a sprinkler system in the barn. Mr. Nyberg said no. He said that they have taken down a portion of the structure between the existing riding rink and the barn and have established a building line between the rink and the barn that meets code requirements. Also, they are providing a masonry structure with a concrete roof that is located between the riding rink and the barn structure. He showed this on the drawing. There will be a drop shutter fire door at that point, which will effect a code separation between the masonry building and the wood framed barn building.

Commissioner Gilkey asked where the hay is stored. Mr. Nyberg said that the hay is up in the loft of the barn. She asked how they get it down. Mr. Schneider said that there are actually hatches that the bales are pushed through. This is automated. Commissioner Elliott asked about the dock. Mr. Nyberg said that this is a dock area for hay. It is a raised concrete platform that trucks back up to it.

c. Application of the Town of Simsbury, Owner, Richard L. Sawitzke, P.E., Agent, for a Site Plan Amendment to renovate, and add to, the main pool/rink building at Simsbury Farms on property located at the Simsbury Farms, 100 Old Farms Road. R-40 Zone

Richard Sawitzke, Town Engineer, spoke on behalf of this application. He had Mark Hopper, Fletcher Thompson, Associates with him. Mr. Sawitzke said that the project that they are speaking about is in the center of the Simsbury Farms Recreational facility on Old Farms Road. It is for a small addition on the west end corner of the main building. He showed the location on a plan. Mr. Sawitzke said that the total site acreage is about 236 acres. When they are done with this project they will be covering a total of 5.7 acres that includes all the buildings and parking lots at the facility. The site coverage will remain low at about 2.4%. Simsbury Farms operates under special permit in an R-40 zone. They are well within the set backs of rear yard of 50-feet and side yard of 40-feet. There are also no

wetlands or floodplains in the work area. The site is served by public water from Old Farms Road. They also have fire protection available. He said that there is a waste disposal site on the premises. Mr. Sawitzke said that the bulk of this project is new including a new pool deck, and adding .300 square feet to the building.

Mark Hopper, Associate Principle, Fletcher Thompson, Inc. He distributed a small packet of information to the commissioners. Mr. Hopper said that they are in the R-40 single family residential zone. Municipal uses are permitted in any zone. They are not even close to meeting minimum lot coverage and are well beyond all the setbacks for front, side and rear yards. The property has a large amount of frontage along Old Farms Road. Mr. Hopper said that the parking requirement is for .75 cars per 500 square feet of gross square foot area.

Mr. Hopper said that the existing building is 8,300 square feet and new construction that is just associated with the main pool building is 1,300 square feet. That makes a total building area of 9,600 square feet. He said that the actual building height is 36 feet. With the work that they are doing they are not adding any additional height above the existing ridge line. The 36 feet is from the lowest floor level of the rink up to the highest point of the existing roof. He pointed out the photograph on the drawing that illustrates that point. Mr. Hopper said that existing parking is 87 parking spaces. By the zoning calculations only 15 are required by the building. He said that the building is not the parking generator; it is the rink and pools itself.

Mr. Hopper discussed the site today saying that there are four pools consisting of a main pool, diving pool, lap pool and a wading pool. Currently there is a small service road to a loading dock area and also to an upper level concession stand. There is a separate pool entrance through the main building and a separate rink entrance through the existing rink building. The proposed site plan shows that they are replacing the entire pool deck. Currently, between the main pool and the lap pool, and the main pool and the diving pool there is a series of landscaped moats. It is a separating of the three main pool areas. There are also stairs that go up and over the landscaped moats. Mr. Hopper said that they are removing these as part of the project as it will increase handicapped accessibility to all the pools, and also increase general accessibility. They will

also take out some aged vegetation that has attracted a lot of bees and nests over the years. This will clear all that up and will provide a brighter accessible space.

Mr. Hopper showed a site plan with the location of the new construction. The 1,300 square feet of new construction is at the corner of the existing building. They are maintaining the current entrance, but are increasing the space in and around the main entrance. They want to be able to provide direct access from parking to the pool deck during the summer use of the facility, and direct access to the rink as well without having to go into the building. Accessibility and movement is one of the key elements they wanted to work on throughout the facility. Mr. Hopper showed on the plan that there are three separate and distinct entrances to the complex. There is one for the rink, one into the main building, and one pool entrance from the parking area directly onto the pool deck itself. He said that the main building supports each of these functions.

Mr. Hopper discussed the lower level plan. He explained that the orange colors on the plan are new construction, and the yellow elements are areas of heavy renovation. The dark walls are also new construction. A Commissioner asked about the square footage of construction. Mr. Hopper said that the 1,300 square feet of new construction is part of the main pool building, and the rest is between the infill of the alleyway at the pool building and the stand alone rink entrance. He explained that part of this plan is to infill the alleyway current building to create four locker room spaces. There will also be handicap accessible toilets placed in the lower level and a program room for use by the facility created in the lower level.

Mr. Hopper discussed the main level plan. The elements of new construction are a new entranceway and a dedicated ice skating storage room. There will also be the creation of a new small office area, check in desk, and a little larger lobby area to gain access. Also, there will be an addition of an elevator that will make this level and the lower level handicap accessible. Mr. Hopper said that there will be a total reworking of the locker rooms and toilet facilities. All spaces will have handicap accessibility. There will be new and improved lifeguard first aid stations and additional pool storage. Mr. Hopper said that all of the existing building is getting touched and reworked.

Mr. Hopper discussed the upper level. He said that the only work that is occurring is the removal of the existing concession stand. It will be moved to the main level, which will also make this handicap accessible. Chairman Gallagher asked if the elevator will go to the upper level. Mr. Hopper said no. The upper area will be utilized as a covered deck. There will be handicap accessible deck area down below off of the concession stand.

Mr. Hopper said that the building will get a total upgrade of all of its systems. There will be new siding, windows and roof. Also, new insulation as this building is used year around. The systems inside such as mechanical, electrical, plumbing and ventilation will also be improved. Mr. Hopper showed and discussed the elevation drawings.

Commissioner Gilkey questioned the need for a separate building to enter the rink. Mr. Hopper said that they decided not to add onto the existing rink building because it created a huge trigger. The trigger is sprinklers. Once you start to add onto the existing building it would trigger the sprinkling of the rink building. That was not part of the project, and was not budgeted for. He also said that the pool structure has the capacity of being added onto without triggering the addition of sprinklers.

Chairman Gallagher allowed public comment as this item is to be voted on at a town referendum Tuesday.

Robert Kalechman, Simsbury, said that he was present at the Board of Selectmen meeting when a person in a wheelchair came up to address the Board. The gentlemen said that he would like handicap accessibility. Mr. Kalechman said that in the meeting minutes this gentleman was assured by the First Selectman and the Board of Selectmen that the renovations would all be handicap accessible. Mr. Kalechman said that the BOS did not say elevator, they said handicap accessible. He also discussed the referendum scheduled for May 17th saying that this project may, or may not, pass. He asked how this Commission could send a message to the people that are going to go vote on the 17th saying that they endorse it. What you are saying, by endorsing this plan, is that you are endorsing the affirmative vote. He said that he feels that it is prudent, as officers and officials of the Town that they wait until all the information is in front of them as to whether this is going to be approved or disapproved.

Joan Coe, 26 Whitcomb Drive, Simsbury, said that she agrees with what Bob Kalechman and does not feel that it is prudent for the Commission to vote on something when, in fact, the people are voting for it tomorrow. She said that the amount of money appears to be high.

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Sue Bednarczyk, 119 East Weatogue Street, Simsbury, said that she does not



think that this Commission should be voting for this before the public votes on it, but aside from that she thinks that they should look at everything now from an aquifer protection perspective because, even though they did not have public audience for that item, Ethel Walker is on a public aquifer.

d. Application of C. Anthony DiFatta, Jr., President, Ensign-Bickford Realty Corporation and Powder Forest Homes, LLC, Owner, for a Modification to an approved Site Plan for the Powder Forest Homes site plan on property located at Bushy Hill Road. CZ Zone

Commissioner Elliott asked if they should consider altering the agenda tonight to vote on the other issues that have been presented so those people can go home. Chairman Gallagher said that he will alter the agenda after this item is heard.

Scott Consoli, Attorney, for the law firm of Ford and Paulekas located at 280 Trumbull Street, Hartford, Connecticut said that he is here on behalf of Powder Forest Homes, LLC, for a modification to the current site plan. Anthony DiFatta, Ensign-Bickford Realty was also there to discuss specifics and answer questions.

Attorney Consoli said that the Powder Forest project was originally approved in 2004. The approvals have been extended through 2014. The entire project encompasses four separate distinct neighborhoods and contains 182 units. He said through the end of 2010 there have been a total of 79 home sales, and they expect another 8 or 10 this year. The original plan in 2004 was to build and sellout in three years, but, as you can see through their request, if they hit their projected sales this year they will be at approximately 48% sold out.

Attorney Consoli said that Mr. DiFatta has had discussions with the Design Review Board, and also has met with the Town Planner to review the modifications to the site plan that might allow them to better achieve what the market out there is looking for today. He said that they are requesting four changes.

1. To have some flexibility with introducing new home styles that today's buyers may want; new home colors; and placement of home styles on lots.

Attorney Consoli said that their suggestion for all of these changes is, if this Commission approves the modifications, that they give the Town Planner the authority, on a case by case basis, to make these approvals.

2. Convert duplexes to freestanding homes provided they fit within the

lot, as there is not a lot of activity in the market for duplexes.

3. Delete shared driveways. Homeowners are requesting their own driveway. They would like to eliminate, on a case by case basis, some of the shared driveways and make them separate.

4. Locate the home on a particular lot within the building envelope.

Anthony DiFatta, Ensign-Bickford Realty, 125 Powder Forest Drive, Simsbury said that the Wynwood neighborhood (showed on a plan) was the first neighborhood that they launched off, which is located off of Bushy Hill Road. Every house in that neighborhood (65 homes) is sold except for the old sales office. They are now building in the Bantry neighborhood (showed on a plan) where some homes have been sold. They also have six inventory (spec) homes there, and are in the process of building two more. He said that from a marketing standpoint, even though there are only five homes on the books to close this year, they are trying to be aggressive and satisfy both the people who want to come in and buy a certain home, but would like to modify the location, and to also satisfy the people who may have already sold their home and want to buy a home from the existing inventory.

Mr. DiFatta said that they added new homes in 2006 to generate more interest. The Design Review Board asked that they also add some more colors. They now have added more siding color choices. He said that most people, given a choice, prefer not to have a duplex. He showed on a plan where a couple of duplexes are located. They may be able to split one of them, but one cannot be split because the underground utilities are in. Mr. DiFatta showed several examples of shared driveways. Most people would prefer not to share a driveway, but there will be some driveways that will be shared. Mr. DiFatta said when you have a Planned Unit Development there are set backs from the street, and set backs from the side and rear building limit lines, but there is a little bit of flexibility within. They would like to be able to locate homes at alternative locations on the lot, if requested.

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Attorney Consoli said that what they are trying to put a protocol in place so that they do not have to come before this Commission every time they want to make a little change. There are four new homes styles, three of which are below \$400,000 in cost and the fourth is above \$500,000.

Commissioner Elliott asked about the square footage of the homes. He was told that in some instances the models are small in square footage, but a ranch unit (one story home) is larger.

Hiram Peck said, for the record, he has talked with the applicant a number of times as well. He said that if the Commission should decide to go ahead with this, he would agree that most of these changes are relatively small. However, if the Commission decides to go forward, tonight or at the next meeting, the following things need to be addressed:

1. The total site coverage needs to be the same as originally approved. He does not think that this represents any big change because some of the units are smaller, and some are slightly larger.
2. The total number of square feet should be the same as was originally approved. Whatever that calculation turns out to be from the 2005 approval should be the same whether there are minor deviations of a square foot or two here or there in the total. Mr. Peck said whether that gets considered on a neighborhood by neighborhood basis, or the total project basis, really depends on how the applicant wants to go forward. The Commission needs to be careful about total square footage.
3. The total number of units would be the same as originally approved.
4. It is important that the affordability of the sum of the units, 14 that were affordable units, would remain the same. If the applicant is able to come up with a simpler formula for calculating the affordability that would be fine. In the meantime, it should be the same number of units that qualify affordable.
5. No changing open space, which would result in a decrease in the open space. If the applicant wanted to somehow increase the open space or reallocate it someone that made more sense to the Conservation Commission that would be fine.

Attorney Consoli said that the changes suggested by the Town Planner are fine, and he thinks that is what they intended. He said that Exhibit A is close to the form that the Commission could look at to aide them in drafting an amendment if needs be on the four areas that they would ask to go back to the Town Planner for approval specifically.

Commissioner Pomeroy asked if there are any changes to the terms of the phasing of the areas or the time necessary in which they are building out. Mr. Peck said that is not being requested at this time.

Commissioner Gilkey asked how many duplexes they envision being separated. Attorney Consoli said that they have five in the Wynwood neighborhood all built. They had three planned for the current Bantry neighborhood with one already split into two single homes. One will not be split because the drainage and such has been setup with water lines, etc. so splitting would be a problem. There is one other duplex that they may, or may not, separate.

Commissioner Pabich moved that they vote on the four presentation items before proceeding to the public hearing. The motion was seconded by Commissioner Gilkey and passed unanimously with a 6-0 vote.

#### V. DISCUSSION AND POSSIBLE VOTE PRESENTATION ITEMS

a. Application of Spiro Markatos, Owner, Marc Lubetkin, Manager, Red Stone Pub, Agent for a Site Plan Amendment to construct an 8-foot x 30-foot patio on property located at the Red Stone Pub, 10 Mall Way. SC-3 Zone

Commissioner Elliott said that he is very sympathetic to a small business person who is starting a business here, but the fact is there are three issues before them. The plan that his engineer or architect drafted, input from the Design Review Board, and input from Hiram Peck. He said that before tonight's meeting the applicant was not particularly familiar with anything except what he had submitted. Commissioner Elliott said that he would prefer to see this come back to them at the next meeting by using the Consent Agenda vehicle that they will be approving later this evening. He said that the applicant should come back with a plan that meets the requirements of the code that the applicant understands and incorporates the various suggestions that he has already that he would accept. Commissioner Elliot said that he prefers not to see somebody get a one year approval, and have to come back to see them. He does not feel that they have the authority.

Commissioner Pabich said that it does not have to be a one year approval. It could be a safety update. He said that if there was a safety issue, staff would have to find a way to enforce safety points. This Commission's decision would not change.

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Mr. Peck said that typically in a situation like that where someone meets the technical requirements of an application, and yet the Commission wants the ability to say after a year if it is not working out they want to the ability to rescind the permit.

Commissioner Pomeroy said that he appreciated the conversation and he wishes that they could all agree on what they are voting on, but it would be nice to see it on one piece of paper.

Commissioner Elliott said that Hiram could attest to the effect that it meets the requirements and incorporates the Design Review Board's

suggestions. The application would sit on the Consent Agenda and get approved without anymore presentation.

Commissioner Gilkey said that she feels the same way. The applicant should get this all on one document as to what is actually going to be there so the Commission can see it. She said that the Design Review Board had suggestions and Mr. Peck echoed those suggestions. Those are safety concerns.

This application has been closed, but no action was taken. This will be placed on the next agenda.

b. Application of Thomas A. Schneider, Director of Finance & Operations, Ethel Walker School, Owner, Charlie Nyberg, Agent, for a Site Plan Amendment for a barn renovation at the Equestrian Center on property located at the Ethel Walker School, 231 Bushy Hill Road. R-40 Zone

Commissioner Gilkey moved to approve as submitted the application of Thomas A. Schneider, Director of Finance & Operations, Ethel Walker School, Owner, Charlie Nyberg, Agent, for a Site Plan Amendment for a barn renovation at the Equestrian Center on property located at the Ethel Walker School, 231 Bushy Hill Road. The motion was seconded by Commissioner Pomeroy and passed unanimously with a 6-0 vote.

c. Application of the Town of Simsbury, Owner, Richard L. Sawitzke, P.E., Agent, for a Site Plan Amendment to renovate, and add to, the main pool/rink building at Simsbury Farms on property located at the Simsbury Farms, 100 Old Farms Road. R-40 Zone

A Commissioner asked what is it that this Commission has jurisdiction over as it relates to this project. Why does the order in which we approve what we are supposed to approve matter versus the budget for it. Mr. Peck said that it is a good question. Typically what happens is that the items would not come to the Commission until it was ultimately approved by the voters. In this case, it has been to a number of Boards and Commissions as informal and ultimately formal. The application was at this meeting simply to get the matters and issues on the table, and find out if there were any questions. The Commission does not have to vote this evening, and it probably would be better to wait for a decision by the voting public.

The Commissioners and Mr. Peck discussed the term handicap accessible in relation to an elevator and/or ramps accessibility to the levels at the main pool/rink building at Simsbury Farms.

This application has been closed, but no action was taken. This item will be placed on the next agenda.

d. Application of C. Anthony DiFatta, Jr., President, Ensign-Bickford Realty Corporation and Powder Forest Homes, LLC, Owner, for a Modification to an approved Site Plan for the Powder Forest Homes site plan on property located at Bushy Hill Road. CZ Zone

Commissioner Pomeroy moved to approve the application of C. Anthony DiFatta, Jr., President, Ensign-Bickford Realty Corporation and Powder Forest Homes, LLC, Owner, for a Modification to an approved Site Plan for the Powder Forest Homes site plan on property located at Bushy Hill Road with the four requested modifications as amended by the stipulations read into the record by Mr. Peck specifically:

1. The total site coverage needs to be the same as originally approved.
2. The total number of square feet should be the same as was originally approved.
3. The total number of units would be the same as originally approved.
4. It is important that the affordability of the sum of the units, 14 that were affordable units, would remain the same. If the applicant is able to come up with a simpler formula for calculating the affordability that would be fine. In the meantime, it should be the same number of units that qualify affordable.

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5. No changing open space, which would result in a decrease in the open space. If the applicant wanted to somehow increase the open space or reallocate it somewhere that made more sense to the Conservation Commission that would be fine.

Commissioner Elliott said that he is supportive of all the issues raised that suggest that they should have more flexibility in the design, layout and to adjust the site plan. He said that it is his personal belief that the State Statute does not support authorizing the Town Planner to make decisions on behalf of the Zoning Commission. Commissioner Elliott said that site plans and site plan amendments are the domain of the Zoning Commission. One of the mechanisms of the Consent Agenda was to enable a quick certain resolution, without more investment and time by the applicant, that serves to meet the obligation that the Zoning Commission actually makes the decision by vote of the Consent Agenda, and not by some written approval by the Planning Director. Commissioner Elliott said that this applicant is only looking for periodic approval of site plan amendments conceptually all of which they are in agreement with and would

approve. He said that the Commission could approve what they have here, but the wording by the Town Planner could be modified.

The applicant expressed concern with having to wait for his application each time having to go on a Consent Agenda. His concern is that he could lose a deal over that period of time and the whole point is to make a sale. There is too much of a time delay.

This application has been closed, but no action was taken. This item will be placed on the next agenda.

VI. PUBLIC HEARING(s), DISCUSSION AND POSSIBLE VOTE

a. Application of Lily Taylor Roberts, Owner, Paul E. Roberts, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an Accessory Dwelling unit on property located at 33 West Mountain Road. R-40 Zone

WITHDRAWN ON MAY 13, 2011

b. Application of the Town of Simsbury, Owner, Gerard G. Toner, Director of Culture, Parks and Recreations, for a Special Exception for a Temporary Liquor Permit, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations in conjunction with the Performing Arts Center (PAC) Board (in contract with the Tower Ridge Country Club) to serve beer and wine at the 2011 PAC seasonal events as pre-approved by the Board of Selectmen (subject to the approval of the Town Attorney) held at the performing Arts Center facility at Simsbury Meadows on property located on Iron Horse Boulevard. SC-Civic Site

Chairman Gallagher recused himself from this application and left the room.

Commissioner Pabich, Secretary, opened the public hearing to public comment.

Robert Kalechman, Simsbury, said that he opposes the application of the Parks and Recreation Department for a Special Exception. He said that people bring liquor, beer, or wine to each and every concert that is conducted by the Hartford Symphony. That is not the issue. He does not feel that the Town of Simsbury should be in the business of dispensing of alcohol. No matter how you want to cut it, it is not Tower Ridge; it is the Town of Simsbury dispensing the liquor. He said that no one has gone to the State Liquor Control Bureau. The Town Attorney was at the meetings, but did not give an opinion relating to this issue. Mr. Kalechman said that there are also ethical issues, and as this is Town property, the Town is liable.

Joan Coe, 26 Whitcomb Drive, Simsbury said that there is a serious problem with the PAC. Now that the Town is in charge everybody is getting a different deal. She said that they are paying differently for the use of the property, fees and distribution. Mrs. Coe said that there also is no plan on how they are going to distribute alcohol. She said that there had been a BYOB policy and now they are saying do not bring it in. Mrs. Coe asked how the public will know that there is a new rule for each group. The liability is on the Town. Mrs. Coe said that they also do not have a plan with what Tower Ridge will be selling, and what they will be charging. The Town Attorney has not given an opinion. You need a hard copy of what this opinion is. She asked the Commission how they can give approval on something they know nothing about. She also said that there is no hard copy on what the Town insurer has said. There are restrictions and requirements that have to be delineated in a plan and a plan is needed that is consistent to everybody.

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Sue Bednarczyk, 119 East Weatogue Street, Simsbury said that this Commission needs to really think about the fact that they are supposed to be thinking of traffic, safety and welfare. They need to make sure that they have all their ducks in a row before they vote, and should have all the letters from the insurance carriers. Ms. Bednarczyk said that she does not have a problem with liquor at the site, as long as it is managed correctly.

Gerard Toner, Director of Culture, Parks and Recreation, spoke on behalf of this application. He said that the Board of Selectmen at their April 11th meeting approved the recommendation of the Performing Arts Center Board to enter into a contract with the Tower Ridge Country Club to become the exclusive pre-approved beer and wine vendor at the Performing Arts Center. This would be for the period of one year, and would apply to events that were approved by the Board of Selectmen subject to the approval of the Town Attorney. Mr. Toner said that now there is a series of four concerts, but only three that they would like to have the ability to serve beer and wine at.

Mr. Toner said that the RFP that went out was put together with the input of the Town Attorney and the Town's insurance carrier. Besides a complete staffing plan, they had to list products, quantities, proposed pricing, and equipment that would be provided. Mr. Toner said that they require all servers to be certified in TIPS training and shall provide documentation demonstrating that. He said that they take this very seriously. The RFP required that they show their prior experience in vending offsite, and that



there were no claims against them. They also had to provide proof of adequate insurance, and give an adequate revenue sharing arrangement.

Mr. Toner said that after going through the BYOB situation at Simsbury Farms for a number of years, he thinks this is a preferable arrangement. There is a lot to be said for having it in a controlled environment, and this is consistent with what other venues provide. This would exclude, for the time being, the Hartford Symphony. Mr. Toner said his response to Joan Coe's question on how do you let people know, is that it would be printed on every ticket that is sold. Also, it would be on the Web Site, posted in the parking lots and also the gate area. There also will be events where no alcohol will be allowed.

Commissioner Gilkey asked what is driving this idea of having a vendor on site as opposed to BYOB. Mr. Toner said that it the PAC Board looks at what will make the venue as attractive and as marketable as it can be. Also, this gives the Town concession revenue. The PAC Board had a concern on the BYOB, in addition to the Town not seeing any return on it, that the BYOB has the potential to really be a problem. Commissioner Gilkey said that the consumption, because of the cost, should not be as great when you are purchasing the drinks. She said that this might deter attendance. Mr. Toner said that typically, in this sort of an arrangement, less beer and wine will be consumed than with a BYOB arrangement. The Board does feel strongly that this is a far better arrangement.

Commissioner Pabich said that he does not feel that he has enough information to vote on this application, and is concerned about the liability issues.

Commissioner Elliott said that this has to do with seasonal events for 2011. He asked Mr. Toner what the "pre-approved by the Board of Selectmen" statement in parenthesis means. Mr. Toner said the three dates that are set have already been pre-approved by the Board of Selectmen. Commissioner Elliott also asked what the "subject to approval by the Town Attorney" statement means. Is the Town Attorney going to approve the events one at a time or has he approved the application. Mr. Toner said that the Town Attorney prepares and signs off on a License Agreement for every event that goes on at the site. Commissioner Elliott asked what the class of the license is.

Mr. Peck said that the three events dates are June 17, 2011, July 29, 2011 and August 5, 2011. They are the three dates on the application that was signed by the First Selectman. If the PAC came back with three more concert dates in the future, they would have to come back to this Commission to add those dates to the 2011 season request. The Town Attorney, for each of those dates, would draft a License Agreement for that particular event. The

Board of Selectmen would have final approval in terms of that particular event. Mr. Peck said that in terms of specifics about the class of permit. The RFP says specifically beer and wine, names a particular type of wine and beer, gives a price for each glass, and size of each glass. Beer and wine is a class of permit.

Commissioner Pabich asked what the impact would be if they choose not to approve this request for the first concert. Mr. Toner said, as a guess, they would go forward with the concert on a BYOB basis. Mr. Peck said at this point in time this Commission does not have anything to do with that aspect with the Symphony. If the beer and wine is being sold or distributed then a special exception is needed and they would have to come before this board.

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Joan Coe said that when this was presented to the Board of Selectmen, Lisa Heavner had a list of twelve issues that she was concerned about. One issue was a letter from the insurance provider that would state that this was an approved use of the town land and the liability issue. This should be on the minutes of that meeting. The Board of Selectmen voted for it contingent upon all of her issues being fulfilled. Mrs. Coe said that the issues have not been fulfilled. Commissioner Pabich said that they are not in the position of judging the Board of Selectmen.

Robert Kalechman said that about a year ago they had a REACH situation. The Board of Selectmen voted not to allow it, but REACH decided to do it anyway. REACH gave away hard liquor in packages. Mr. Kalechman said that unless you have it spelled out with written copies in front of you, you have no idea what is going on. He said that he has attended every Board of Selectmen meeting, and this approval was set on contingencies including prior approval of the Attorney. There is not one document, everything is word of mouth.

Susan Bednarczyk asked if something did happen who would get sued, the Town or Tower Ridge? The response was everybody.

Commissioner Elliott moved to continue this item to the next meeting that will be held on the first Monday in the month of June at 7:00 p.m. because this Commission does not have sufficient information at this point to make a decision. The motion was seconded by Commissioner Pomeroy.

Commissioner Pabich requested that everyone lists their questions and get them to Hiram. He said that the public hearing is carried forward to the next meeting.

Chairman Gallagher returned to the meeting.

VII. DISCUSSION AND POSSIBLE ADOPTION of Consent Agenda Policy

Commissioner Elliott moved to approve Article XIV Policy on the Consent Agenda with the insertion of a phrase at the end of Section VI. An item proposed for the Consent Agenda, but which is removed at Commissioner request, may be placed on the regular agenda for the same date or a future date by the Chairman with consideration of the applicants preference and other factors. The motion was seconded by Commissioner Pomeroy and passed unanimously with a 6-0 vote.

IX. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION/  
COMMUNICATIONS

Mr. Peck distributed to the Commissioners copies of enforcement issues.

X. ADJOURNMENT

Commissioner Pabich moved to adjourn the meeting at 10:10 p.m. The motion was seconded by Commissioner Gilkey and passed unanimously.

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Edward Pabich, Secretary