

From: Lois Laczko June 21, 2011 4:21:08 PM
Subject: Zoning Commission Minutes 06/06/2011 ADOPTED
To: SimsburyCT_ZoningMin
Cc:

ADOPTED

ZONING COMMISSION MINUTES
JUNE 6, 2011
REGULAR MEETING

I. CALL TO ORDER

James Gallagher, Chairman, called the regular meeting of the Simsbury Zoning Commission to order at 7:00 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, 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 the Zoning Commission 5/16/2011 Regular Meeting and the Aquifer Protection Agency 5/16/2011 Special Meeting.

A Commissioner moved to approve as amended the minutes of 5/16/2011. The motion was seconded and passed unanimously.

Mr. Peck said that they should wait until they next are meeting as the Aquifer Protection Agency to vote on the Aquifer Protection Agency 5/16/2011 Special Meeting minutes.

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 (continued from meeting of 5/16/2011)

Mr. Peck spoke for the applicant as he was not able to attend this meeting. He said that last time the commission met the applicant was amendable to all of the suggestions that had been incorporated from the Design Review Board's recommendations, and then some subsequent approvals that they had as part of their recommendation. Mr. Peck said that staff had met with the applicant a week ago and asked him to revise the plan in accordance with those requirements, which he did do. Mr. Lubetkin submitted a new plan that extends the pavers for the patio that was proposed out to the horse head iron posts that are going to be placed in the driveway. This will make the patio larger than it originally was, but this allows the sidewalk to be wide enough so people can pass without stepping into an area that is uneven. Mr. Peck said that the applicant brought in a sample of the pavers that will be used in the patio area. This is pretty close to the color of the building itself. The pavers will go all the way out to the posts as indicated on the map. There will be chains that will close the patio off during its use, and they will be unhooked when the patio is not in use. Some large planters will also be rolled out to the edge of the existing parking spaces when the patio is in use. Wheel stops will also be placed where the chains are to prevent any car from going into the area where people will be dining. Mr. Peck said that this address's all the questions that this Commission had at the last meeting.

Commissioner Pabich said that there is still the issue of the look back after one year, or at the end of the season. Mr. Peck said that this is a suggestion that he had made at the last meeting, and he still feels that this is a good idea. The Commission needs to protect itself and the town against a situation where this particular owner may be doing a fine job, but if it is not the case, and in a year or two from now someone else takes it over or it is operated improperly, this Commission would have the ability to say that this is not what we approved. Also, this is a way to avoid the lengthy process of going through zoning enforcement. Mr. Peck said that this does not mean that the applicant has to come back and re-apply after a year, but he does suggest that as a condition to their approval they make the initial agreement for one year. If it works out alright, there is no reason why the patio cannot be allowed to continue.

Commissioner Elliott asked if Hiram means this idea in one year increments. Mr. Peck said no, only one time. He did say that some towns do make this annual because they have restaurant patio's located on public sidewalks along main streets and rights-of way. Commissioner Elliott asked if their regulation supports making this applications approval conditional. Mr. Peck said that the regulations do that because they do say that the Commission has the

right to modify any site plan regulation to make sure that the health, safety and welfare of the community is preserved.

Commissioner Elliot said that the other issue that the applicant was to get back to them on was the conversation with his neighbors. Mr. Peck said that he did address all the tenants, and had them all sign up to indicate that they were in acceptance of the plan that they showed them. He brought the list into the Planning Department and it is now part of the file.

Chairman Gallagher said, as he had said at the last meeting, that he is a tenant in that office building, but does not own the building and he is not a partner in the Red Stone Pub. He said that he had spoke with Mr. Lubetkin this morning to make sure he was happy with his plan and also to make sure he knows what he is getting into. He is still working on the posts, and there is the possibility of having the front posts in a sleeve so he can take them out. Chairman Gallagher said that he also spoke with him regarding the one year look back.

Chairman Gallagher closed this hearing.

b. 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 (continued from meeting of 5/16/2011)

Mr. Peck said that at the last meeting the Commission was pretty much satisfied with the presentation that was made by the architect. There were a couple of outstanding questions and that was the reason that action was not taken at the last meeting. He said that one of the things that came up was whether there was a ramp as part of the construction, and if it could be made into a ramp that would accommodate handicapped individuals. Mr. Peck said that he received a letter from Mr. Sawitzke this morning that indicates that they have spoke with the architect, and they can do that. There also was some confusion regarding the upper level and access to that. In his letter, Mr. Sawitzke says that there really is not general public use for that area. It is not intended to be used for the general public use and there is not any access for either able-bodied or disabled people to go up there. There is no proposed access to that level.

c. 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 (continued from meeting of 5/16/2011)

Scott Consoli, Attorney, from the law firm of Ford and Paulekas, 280 Trumbull Street, Hartford, Connecticut spoke on behalf of this application. Also attending was Andy DiFatta, Powder Forest Homes. They were at this meeting with respect to their proposed modification to a site plan. Attorney Consoli said that they have incorporated all the suggested revisions from the Town Planner and from this Commission into the plan.

Attorney Consoli said that the biggest concern was how to deal with the issue of delegation of authority of this Commission to the Town Planner. He said that they have gone through all of the proposed possible designs for the remaining section of the Bantry neighborhood and listed them on a chart (part of packet). Attorney Consoli explained that this shows the unit number in the far left hand column, and the 12 different designs, and an indication of yes on the chart for one of those designs means that one of those units could possibly fit on that particular lot. He said that the other issue was whether or not they would be able to split some duplexes into free standing units. He explained that the column after the 12 columns (14th column) is whether or not a duplex can be split on that site. An indication of yes or no means that this is a possibility explaining that there is actually only a couple locations where that could happen. The next to the last column has to do with the issue of shared driveways. This shows whether or not a driveway that is currently a shared driveway by two units could be made into two separate driveways so that each unit owner could have their own driveway. There are only a couple of places on the list where that possibility could happen.

Attorney Consoli said that there also were a handful of minor revisions along the way that were made administratively through the Design Review Board. At the time they thought that this was an appropriate action. If there is any issue on whether or not those prior minor modifications were properly approved administratively by the Design Review Board, they are asking at this time that those minor changes also be swept into this modification and approved.

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Attorney Consoli showed them the site plan for the Bantry neighborhood. He explained the color code scheme to the Commission.

Commissioner Elliot asked if they would comment on the nature of the revisions that the Design Review Board approved. Attorney Consoli said that in almost all the cases it was that a certain model home was approved on the original site plan for that site, and a home buyer came and said that

instead of this model they would prefer to have that model on the site. They would then go before the Design Review Board and have the model that the buyer wanted approved and would then build it for the buyer. Attorney Consoli said that now in light of the potential issue of administrative approval they feel it is best to add those all to this modification.

Andy DiFatta showed on the plan where there had originally been planned a shared driveway, but as most people given a choice do not want a shared driveway they instead made the driveway straight in. Also, they now have more green space as they have eliminated the extra driveway.

Commissioner Gilkey asked if they had taken into consideration their request that no two similar homes would be side by side. Mr. DiFatta said that is correct, but said that they may be the same home, but they would be at different elevations and be of a different color. Commissioner Pabich asked if they still have the same number of units, the same lot coverage, and the same open space. Mr. DiFatta said yes and also with eliminating the shared driveways there may be a little more open space.

Attorney Consoli said to address those specific concerns that the Town Planner made at the last meeting, he took the request and modification, which was attached to their letter as an exhibit, and now have added language.

Requested Change Number:

1. No two identical homes built right next to each other. They have added designation number 6-I that the Commission authorizes construction of a home style designated by yes on the attached list. The theory being that the Commission approves all of those potential homes, and then the Town Planner's action is merely confirmatory in nature, rather than him taking any administrative action on his own.
2. Listed units of duplexes that may be split.
3. Deleted the shared driveway section. He listed the unit that they may split a shared driveway.
4. Regarding home locations being in compliance with setbacks, etc. There were not any changes. They added a new confirmation of existing conditions, and listed the lots where those confirmations are necessary. Added a section at the bottom of page 2 that says "we would like to establish the same protocol when we come in for the final two neighborhoods". Attorney Consoli said in order to make this a manageable process they have only showed the Commission the Bantry neighborhood, but they are proposing that when they get to the other two they will come back and will the same thing again. They would put forth a slate of potential homes for units in batches (or whatever this Commission feels is appropriate) and periodically come back to get those approved.

5. The additional conditions that the Town Planner asked for at the last meeting.

- Overall site coverage shall remain the same
- Total square footage shall remain the same
- Total number of units remain the same
- Affordability component remains the same (they did submit to the Town Planner where they are in the process right now as far as affordability goes – five in the first neighborhood, two are already built in the second neighborhood with one more to go, seven slated for the last few neighborhoods)
- Open space shall remain the same

Commissioner Pabich moved that they amend the agenda to vote on the three presentation items now. The motion was seconded by Commissioner Gilkey and passed unanimously.

V. PRESENTATION ITEMS - DISCUSSION AND VOTE

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 (continued from meeting of 5/16/2011)

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Commissioner Pomeroy moved to approve the 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. This approval is based on the modifications that were made and the interaction of the draft resolution as follows:

Whereas the Commission finds that the applicant proposes to create an outdoor patio shown on the submitted plans dated May 27, 2011; and
Whereas the applicant received recommendation for approval from the Design Review Board on May 10, 2011; and

Whereas the submitted revised plan referenced above addresses the concerns raised by the Design Review Board and the Zoning Commission at previous meetings; and

Whereas the applicant shall also submit a list signed by all the tenants indicating concurrence with the revised plan; and

Therefore Be It Resolved that the application of Spiro Markatos, Owner, Marc Lubetkin, Manager, Red Stone Pub, Agent, for Site Plan Amendment to construct an 8-foot x 30-foot patio on property located at the Red Stone Pub, 10 Mall Way in the SC-3 Zone, as shown on submitted materials, is

hereby unanimously approved with modification.

The Modification is as follows:

1. The Commission wishes to insure that the outdoor drinking and dining in connection with the operation of the pub at 10 Mall Way is operated in a manner which is satisfactory and in keeping with the best public interest and in accordance with the practice of good public safety. To that end the Commission approves the permit requested for outdoor patio use with a "look-back" option at the end of one year of operation. As long as the patio is operated as proposed, and as shown on the submitted plans, the permit will stay in full force and effect. However, the Commission retains the right to rescind the permit if the operation is not conducted in accordance with the best interests of public health safety and welfare.

The motion was seconded by Commissioner Elliott and passed unanimously with a 6-0 vote. Commissioners Gallagher, Pabich, Pomeroy, Elliott, Doran, and Gilkey approved.

b. 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 (continued from meeting of 5/16/2011)

Commissioner Pabich moved to approve, consistent with Mr. Peck's resolution, the 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. The motion was seconded by Commissioner Gilkey and passed unanimously with a 6-0 vote. Commissioners Gallagher, Pabich, Pomeroy, Elliott, Doran, and Gilkey approved.

c. 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 (continued from meeting of 5/16/2011)

The Commissioners discussed a draft resolution that Mr. Peck distributed to the members. Mr. Peck said that this specifically references the attached matrix that was talked about.

Commissioner Pabich read into the record the draft resolution that was addressed to the Zoning Commission from Hiram Peck.

The Zoning Commission, in accordance with all applicable Zoning Regulations, considered the above referenced application at regular

meetings held on May 16th and June 6, 2011, and took the following action:

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Whereas, the Commission reviewed the proposed site plan amendments at regular meetings on May 16th and on June 6, 2011; and

Whereas, the Commission finds the applicant proposes to make relatively minor adjustments to the approved site plan for the subject development, including and limited to the revisions shown on the attached schedule of revisions; and

Whereas, the applicant has submitted a complete list of all possible revisions to the site plan, including the revisions included in the attached text as provided by the applicant; and

Whereas, the Commission considers these revisions to be essentially minor in nature and hereby delegates the review and possible approval of each of these possible revisions to staff for determination as to compliance with the approved possible revisions.

Therefore Be It Resolved that the application of Anthony DiFatta, Jr., President, Ensign-Bickford Realty Corporation and Powder Forest Homes, LLC, Owner, for modifications to an approved site plan for Powder Forest Homes on property located at Bushy Hill Road in the open space single family cluster (CZ) zone only as shown on submitted materials is hereby unanimously approved.

The applicant is also hereby notified that all other requirements of the original approval of January 4, 2005, unless approved by the Commission, shall remain in full force and effect. Approved revisions include any minor revisions, which have already been accomplished as of this date.

Attachments: Approved schedule of revisions and text.

Commissioner Gilkey said that in the Whereas paragraph that references the attached schedule of revisions, this should say "regarding Bantry Neighborhood dated May 30, 2011". She feels that it is important to have a date and the neighborhood referenced into the record.

Commissioner Pomeroy moved to approve, consistent with Mr. Peck's resolution, 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. The motion was seconded by Commissioner Elliott and passed unanimously with a 6-0 vote. Commissioners Gallagher, Pabich, Pomeroy, Elliott, Doran, and Gilkey approved.

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

a. Application of the Town of Simsbury, Owner, Gerard G. Toner, Director of Culture, Parks and Recreation, 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 (continued from meeting of 5/16/2011)

Chairman Gallagher recused himself from this item.

Commissioner Pabich opened the public hearing. He read a letter into the record dated June 1, 2011 from the Simsbury Chamber of Commerce stating their support of Tower Ridge Country Club as the preferred Simsbury Meadows Performing Arts Center (SMPAC) beer and wine vendor. Commissioner Pabich said that there was some confusion regarding this letter, as it is not the responsibility of this Commission to approve Tower Ridge Country Club's role in the project, but rather issue a permit for three concerts. Commissioner Pabich said that when he spoke to Charity Folk about this letter, she said that it was the intent of the Chamber to support the motion, which he read to her.

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Commissioner Pabich explained that it is not this Commission's role to decide who the vendor should be, or to decide if alcohol should be sold. Those actions were taken by the Board of Selectmen. He said that their role is to provide a special exception for a temporary permit for three concerts. He would like to keep the conversation focused on just that basis.

Greg Piecuch, Vice-Chairman of the Performing Arts Center Board, spoke on

behalf of this application. He said for the record, Dave Ryan, a member of the Zoning Commission, and also the PAC Board, is not at the meeting this evening. In attendance from the PAC Board were Kathy Barnard, Ferg Jansen, and Sharon Lawson, along with Tom Vincent, PAC Manager. Also in attendance were representatives from the Tower Ridge Country Club, Gerard Toner, Director of Parks and Recreations, and Robert Hensley, Board of Selectmen Liaison to the PAC Board.

Mr. Piecuch said following the last meeting there was a May 18th memo that was drafted by Mr. Peck to the PAC Board. In response to his memo, a memo dated May 30th was sent out which answered each question in detail. Also, they have submitted to this Commission, the Performing Arts Center Alcohol Policy, which was approved by the Performing Arts Center Board. He said that they have also submitted the detailed response to the Request for Proposal that was submitted to and approved by the PAC Board and the Board of Selectmen by Tower Ridge Country Club. There is also, submitted for this Commission's review, a draft Beer and Wine Concession Services Agreement between the Town of Simsbury and the Tower Ridge Country Club (drafted by the Town Attorney). Also in the record is a June 3rd Legal Opinion from the Town Attorney stating that he has reviewed each of the above documents and has approved them to form.

Mr. Piecuch said that have a four option alcohol policy for the Performing Arts Center. This was adopted over the past few years. The default position that the PAC Board and the Board of Selectmen have taken is that any event at the Performing Arts Center is a no alcohol event. If you want to have any type of alcohol service at the Performing Arts Center, it has to go through the PAC Board and the Board of Selectmen.

Option One is a no alcohol policy. An example of this is over the Labor Day weekend a group called The McLovins is scheduled to perform. A significant segment of the attending public will be of a young age group. There will be no alcohol, including any BYOB, at this event.

Option Two is a "BYO" policy. This policy has been done for many years with the Hartford Symphony. This means that there is no check for the amount of alcohol that is being brought onto the site, or even what age group is bringing it in. He said that Public Safety is okay with this. This is essentially unregulated consumption of alcohol.

Option Three is the sale of beer and wine. This is what they are in front of this Commission for this evening.

Option Four is where the facility is rented out for a private event, also called a self-catered event.

Mr. Piecuch said that by entering into a contract with a third party vendor they are putting the onus, in terms of compliance and liability, somewhere other than the Town of Simsbury. He said that it is not an issue of the Town of Simsbury to have to get liability insurance or to get a permit from the State Liquor Control Commission. They have an existing vendor, who has a lot of experience in this, who has pre-existing insurance coverage and will add the Town of Simsbury as additional insured. They also have an existing liquor permit, which can be modified to the extent that it needs to be modified from restaurant to something else. That is all the responsibility of the vendor and is their contractual obligation, not the Town of Simsbury's.

Mr. Piecuch said that each station will be staffed by at least three individuals, including one person who is dedicated to simply checking identification and wristbands. There will be volunteers and police at the gate to identify anyone who is trying to bring any alcohol onto the premises. They have spoken with the Police Chief about this and no issues have been raised. Mr. Piecuch also said that even if they do get approval from this Commission tonight, they will still have to go through the public gathering permit process for each event.

Mr. Piecuch said that there had been a question about revenue. The Town gets a 35% of gross sales commission. From an operations point of view this will add a lot of flexibility to the Performing Arts Center Board. Revenue is

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always an issue particularly for major promoters. From a financial point of view, this will help close the gap. Mr. Piecuch said that for major entertainment events with thousands of people attending, from a public safety point of view, it makes sense to have a regulated consumption of alcohol rather than the current unregulated consumption.

The Town Attorney has reviewed this and drafted a contract. This also has been approved by the Board of Selectmen subject to the consideration of the Zoning Commission.

Commissioner Pabich asked how they would determine whether the event is BYOB or sale of alcohol. Mr. Piecuch said that this is a public policy decision that they make in terms of what the event is. He gave the example of The McLovins saying that they did not think it was appropriate to have

any alcohol at this event. He said from a revenue point of view the concerts on July 29th (Ticket to Ride), and the concert on August 5th (Benny Goodman/Peggy Lee) are alcohol Sales Only events. This helps drive these two concerts to allow the Town of Simsbury and PAC to get commission revenue. From a financial point of view, this helps make these two concerts feasible to provide entertainment for the Town of Simsbury.

Commissioner Gilkey said that all references are to beer and wine with no references to soft drinks, water, etc. Will people be allowed to bring their own containers into these events with their soft drinks. She said that there is nothing on the contract that says the vendor will be selling anything other than beer and wine. Matt Jolie, General Manager of Tower Ridge Country Club, said that it is their understanding that there will be food vendors that will be supplying soft drinks.

Commissioner Pabich questioned the Little House concert that was to have "sales only". Mr. Piecuch said that this event has been changed to a BYO Beer and Wine event.

Commissioner Elliott said in relation to the letter from the Town of Attorney, Mr. Piecuch said that Attorney DeCrescenzo had reviewed each of the above cited documents and approved them to form. He asked what that means. Mr. Piecuch said that he cannot speak for the Town Attorney, but he said that in any contract or legal document the client has to make some positive decisions in terms of what they want to do conceptually, and then from there it needs to get boiled down in a legal language. Mr. Piecuch said that, as his guess, the Town Attorney means that there has been a policy decision, at least from the PAC Board and the Board of Selectmen, that this is the direction that we want to go. He said from a legal form perspective, the way that it has been written up is consistent with that being legal.

Commissioner Elliott said that another point was that by signing an agreement with the third party we have absolved the Town of any potential liability. He asked about personal injury. Mr. Piecuch said that he does not practice personal injury law, but that Gerard Toner has spoke with CIRMA, which is the Town's insurer. He said that the Town has contracted for Tower Ridge to have a commercial general liability insurance policy with \$1,000,000 per occurrence, etc. There is also an indemnification clause. Commissioner Elliott said that Mr. Piecuch had made the statement that it absolves the Town's liability, but he does not feel that these documents say that, or does he think the Town Attorney said it.

Dennis Hannon, Glenbrook Road, said that now that the Town has said that they are going to be completely void of any liability when they are taking 35% of the cut, where does the revenue go to. Also, he expressed concern

about the dollar amount of the insurance coverage. He said that he does not feel that the Town can say that they are not going to have any liability at all.

Robert Kalechman, Simsbury resident, said that he would be a lot more comfortable if the Town Attorney was at this meeting to respond to all the legal questions. This would resolve 80% of the questions as everyone is talking, but he feels that no one knows what they are talking about. Mr. Kalechman also expressed concern about banners that were placed across Iron Horse advertising concerts, but were placed without permits. He said that without the Town Attorney addressing this Commission, he asked that they vote no on this application.

Mark Wilson, 61 Ely Road, Farmington, CT said that he is the President and Founder of the Reach Foundation. They held the Earth, Wind, Fire, Little River Band concert here on August 29, 2009. He is also the owner of Crazy Bruce's Liquor's. Mr. Wilson said that he would like to give comments from both a promoter side and from a liquor

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store side from liability in good faith. He also said that he wants to publicly state that he has no concerts scheduled, or planned to be scheduled in Simsbury this year, or any time in the future. He said that he is not here to talk about the pros and cons of liquor and wine, but there to tell them about some thoughts that he had that might help them make their decision. Mr. Wilson encouraged the Commission to define beer and wine, some are 8% alcohol, while some are as high as 19% alcohol. They should limit the amount of alcohol content in any malt beverages that are sold. Commissioner Pabich said that the executing contract reflects specifically what beer, and what amount, will be served. Mr. Wilson apologized and went on to the definition of wine where there are premixed margaritas that are actually a lime flavored wine. Commissioner Pabich said that the Commission has already been told what will be served. Mr. Wilson again apologized. Mr. Wilson said that the one thing that he found useful in the sell of alcohol, is that you control the amount of alcohol being served. When you have a BYOB event you do not have the ability of watching and controlling and monitoring an individual. Folks will be drinking whether it is a BYOB or an alcohol sale event. From a liquor store perspective, their liability would be reduced by being able to monitor what a customer is consuming versus having unmonitored consumption. You are taking steps necessary to try to control and limit and modify behavior. By

not doing that you are allowing free drinking and you cannot control the alcohol content. With monitoring people, you can shut them off by stopping alcohol sales an hour before concerts end so people have an opportunity to start to sober up. Mr. Wilson said that you do limit and help control their inability to drive. People should not drink and drive. He also encouraged them to consider blanket approvals, at least on an annual basis. Let the PAC Committee, or some other form, judge which concert or event are allowed alcohol sales. As a promoter, they did look at Simsbury this year, but the time involved with getting the PAC approval, Board of Selectmen approval, and this Commission's approval is too long. Their schedule makes it impossible for them to select Simsbury as a venue.

Joan Coe, 26 Whitcomb Drive, said that she was concerned that Mr. Wilson was at this meeting to tell us, from the Reach Foundation, on how we should run our business. She said that Reach was fined \$150 by the Zoning Commission because he violated a zoning regulation by distributing alcohol without any permit or permission. Mrs. Coe said that the Town Attorney gave rules and regulations, but the Town Attorney is not the insurer, CIRMA is the insurer. She asked if there is a letter from CIRMA confirming that this is approved. Mrs. Coe also said that there are people who consistently violate zoning regulations, and then come to the Zoning Commission requesting a permit. As an example, she said that Mr. Patrino (LittleHouse) has continually violated zoning regulations with excessive signage placed all over Town, and doing this without taking out a permit. Mrs. Coe said that in order to have the huge concerts the promoter has to provide alcohol to sell. The money that they raise is the money that the promoter needs. The Town is going in business against the promoter. She said that at most big concerts the promoter supplies the alcohol and makes money from the sale of the alcohol. There is no sharing. Mrs. Coe said that there should be a consistent policy, a policy where everybody plays the same game with the same rules and regulations with the zoning regulations implemented.

Mike Paine, 72 Holcomb Street, said that he is not there as Chairman of the Planning Commission. These are his personal opinions. Mr. Paine said that he was involved with Septemberfest for nearly 20 years, and they came before the Zoning Commission for their annual approval for them to dispense beer and wine. In all the years of Septemberfest, he spent a significant number of hours at the event, and they never had any problems. This can be verified by the public gathering permit. The process that PAC is following started with the Chamber of Commerce and Septemberfest. He feels that the Commission should support this request, and he feels that this is a good thing for the Town. Mr. Paine said that he understands some of the concerns, but he feels that all of them can be handled with the public gathering permit process and also the police monitoring the different issues. Mr. Paine said that the events are not solely driven by the dollar, but the dollar is part of it. The Town went into this business to provide

the venue, and to support this facility.

Commissioner Elliott asked Mr. Paine who actually dispensed the alcohol at Septemberfest. Mr. Paine said that the volunteers were TIPS trained and certified by the Simsbury Police Department. It was very well controlled with the Police there at all times. Commissioner Elliott asked who retained the proceeds. The Chamber of Commerce retained the proceeds. It paid for the rental of the tents, etc.

Mr. Piecuch said that he would like to speak on the liability issue. He said that Gerard Toner, Director of Parks and Recreation, had a number of conversations with CIRMA on this issue. The clear message from CIRMA was that the regulated sale of beer and wine contains less liability for the Town than the unregulated consumption at a BYOB

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event. By moving the BYOB to a for sale, they are reducing the Town's liability. In any event, the Town has insurance, but by going through a third party vendor, the vendor's insurance policy is the primary one.

Robert Kalechman, Simsbury resident, said that in his opinion, the legal thing to do here would be to postpone the vote and ask for the Town Attorney to come and testify before this Commission and clear the air.

Commissioner Pabich closed the public hearing and opened it up to discussion.

Mr. Peck said that all of the questions that the Commission had has been put to the applicant and the responses are on record. They should have everything that has been put in the file.

The Commissioners discussed the application.

Commissioner Pomeroy said that they were very hesitant to move forward last time because they did not have a plan before them. They now have a sense of what is going to happen. He likes the response in the RFP, but thinks that there are risks either with BYOB or with sales. Commissioner Pomeroy said that he prefers the regulated approach. He feels a lot better about it today, than he did three weeks ago.

Commissioner Doran said that by supplying them with the Request for

Proposal and the detailed contract terms, it explains exactly what Tower Ridge is going to do. This answers a lot of the questions they had at the last meeting. He said that no one here is ignoring the risks associated with owning a public venue associated with alcohol consumption and what could happen. Also, there are risks associated with owning a venue with no alcohol events that would also leave the Town open to liabilities. Commissioner Doran said that it is a good thing for the Town that they have this public facility and they bring in entertainment that the Town will support.

Commissioner Gilkey said that she has been going to a number of the BYOB events, and feels that it is much safer for the Town in a controlled environment. Commissioner Gilkey said that she is in favor.

Commissioner Elliott said that he thinks that concerns have been raised during the course of the dialogue here over two meetings. There have been reasonable questions over public policy, but largely they are questions that have been determined by the Board of Selectmen. This Commission is just involved with the question of has the PAC, and the BOS in their role, met the burden that has been placed on them, and on this Commission, by our regulations. He thinks that they have, and supports moving ahead with the application that is before them.

Commissioner Pomeroy moved to approve the application of the Town of Simsbury, Owner, Gerard G. Toner, Director of Culture, Parks and Recreation, 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 two PAC seasonal events (July 29, 2011 and August 5, 2011), 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. The motion was seconded by Commissioner Doran and passed unanimously with a 5-0 vote. Commissioners Pabich, Pomeroy, Elliott, Gilkey and Doran voted in favor.

Chairman Gallagher returned to the meeting.

VII. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Done

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

Mr. Peck said that the Route 10 Corridor Study is progressing. The Steering

Committee will be meeting on Thursday, June 9th. The draft report should be issued shortly. In September, this will go to the Board of Selectmen for some kind of endorsement.

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Mr. Peck said that tomorrow night, in the Main Meeting Room, as part of the Conservation Commission meeting and the Joint Land Use meeting, will be the kick off discussion of the Low Impact Development Engineering Drainage Study of the Town Center. That study will go in concert with the Town Center Code. This will move along quickly as they need this by September. After the draft study is put together, there will be a interim meeting. A final presentation for the public will be at a later date. The firm doing this is out of Providence, Rhode Island. The meeting tomorrow night begins at 7:30 p.m.

Mr. Peck said that there has been some discussion about the Sand Hill parcel. A letter has been sent to the Commission to make a determination about the correct zoning on the Sand Hill parcel. That information will come to them well in advance of the next meeting so they will have a chance to look at it. The owner of the property will make a presentation.

IX. ADJOURNMENT

Commissioner Pomeroy moved to adjourn the meeting at 8:50 p.m. The motion was seconded by Commissioner Gilkey and passed unanimously.

Edward Pabich, Secretary