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Cc:

ADOPTED

ZONING COMMISSION MINUTES
FEBRUARY 9, 2009
SPECIAL MEETING

I. CALL TO ORDER

Austin D. Barney, Chairman, called the Special Meeting of the Simsbury Zoning Commission to order at 7:30 p.m. in the Auditorium of Eno Memorial Hall, 754 Hopmeadow Street, Simsbury. The following members were present: Garrett Delehanty, Jr., James Gallagher, Scott Barnett, Bruce Elliott, John Vaughn, and Alternates Madeleine Gilkey and Edward Pabich. Also in attendance were Hiram Peck, Town Planner, Robert DeCrescenzo, Town Attorney, Lois Laczko, Commission Clerk, and other interested parties.

II. APPOINTMENT OF ALTERNATES

None

III. APPROVAL OF MINUTES of January 26, 2009

Commission Elliott moved to approve as amended the Minutes of January 26, 2009. The motion was seconded by Commissioner Delehanty and passed unanimously.

Commissioner Delehanty read the Call.

IV. PUBLIC HEARING(s)

a. Application of the Town of Simsbury – Owner, Attilio Ceneviva, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a restaurant wine and beer permit for Attilio's at Simsbury Farms on property located at Simsbury Farms, 100 Old Farms Road.

Attilio Ceneviva, 12 Northgate, Concessionaire of the restaurant at Simsbury Farms said that he is at this meeting to obtain a restaurant wine

and beer permit. He said that he has been a Simsbury resident for the past eight years and has been running the restaurant at Simsbury Farms for the past four years. During this time it has been a BYOB. Mr. Ceneviva believes this facility should have a beer and wine permit for the following reasons: 1) to regulate the drinking that currently takes place, 2) to provide a necessary service to the customers, and 3) to remain competitive with other municipal golf courses. If a wine and beer permit is allowed, it will allow the Concessionaire to control the drinking and there would be less consumption of alcohol. Mr. Ceneviva said that there is an expectation from golfers and also restaurant patrons that the facility should provide all the necessary amenities of a full service restaurant. He also said that it is important to remain competitive with other golf courses in the area. Currently Simsbury Farms is the only golf course of the 45 public or municipal courses in Connecticut that does not serve beer or wine to its customers. He feels that the addition of beer and wine would allow for more golf outings and events held at the Simsbury Farms. Mr. Ceneviva said that he has experience, as he previously has been a holder of a liquor permit. He believes that having a beer and wine permit at Simsbury Farms would allow for a better and safer environment as a restaurant operator could control and regulate the consumption of beer and wine.

Commissioner Delehanty said to Mr. Ceneviva that he had indicated that one of his reasons that if he was able to control the beer and wine sales within the restaurant is that this would enable him to better control what is now unauthorized drinking that happens on the golf course and in the parking lots. Mr. Ceneviva said that he does not believe that this is unauthorized, as the policy is now BYOB. He feels that someone who has to buy beer is not going to buy as much as he previously might have been bringing to the golf course under the BYOB policy.

Commissioner Gilkey asked what would stop the parking lot drinking. Mr. Ceneviva said that he is not here to control the parking lot he is here to ask for a restaurant beer and wine permit. He feels that the police should regulate the parking lot drinking.

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Commissioner Gallagher asked if there would be a bar or just table service. Mr. Ceneviva said there would be just table service. The patio is also table service. As the facility is small, there is no area for a bar.

Commissioner Elliott asked Mr. Ceneviva to explain how special events are done. He asked if food service is provided on the golf course for those types of events. Mr. Ceneviva said that he provides food for the events on the turn, not on the course.

Chairman Barney asked Mr. Gerald Toner, Director of Parks and Recreation, to explain site management. Mr. Toner first responded to Commissioner Elliot's questions. He said that when outings are booked, they send people out a contract with conditions. One of the conditions is that beer or alcohol beverages may not be dispensed on the course. The staff enforces this. They have lost outings and events because of this condition, but feel it is important and this does need to remain intact.

Mr. Toner discussed the new gravel road. He expects all patrons to utilize this road when they leave, and he expects to put up extensive signage. Also, barricades may be put up in certain areas to steer people towards the exit area. They will distribute information through email and the town web site on the road change. Mr. Toner said that they have full time staff at Simsbury Farms that work two shifts. One individual works Monday through Friday until 11:00 p.m. He will be asked to monitor and enforce, if necessary, people utilizing the exit road as it was intended. He has had discussions with the Police Chief and periodically they do ask for police presence for certain events that may be held there.

Chairman Barney expressed concern on the safety of children that dart out between cars and run back and forth across the road. He suggested a gate at the top of the hill that would open to get to the golf club, but not open if the driver tried to come down the hill. Chairman Barney asked if it was possible to find a used gate and install it at the top of the hill. Mr. Toner said that he does not know much about them, but has seen them in parking garages. He does not know how suitable this would be for that area. He said that if they found it was a problem with people just not observing the traffic direction, then they would have to look at other alternatives. He would prefer not to see cars backed up as they wait for a gate to go up and down, especially on a summer day when it is congested anyway. Mr. Toner believes that they can monitor and enforce the traffic. If it turns out to be an issue, they will address it.

Commissioner Elliott said that he understands that the restaurant is a seasonal operation so as a result the gravel road was not maintained this winter. Is there any plan to change that or will the road stay seasonal. Mr. Toner said that they have submitted a grant application for the completion of the road in terms of paving, etc. Short of that it will not be maintained in the winter. He does not envision that they would go back to a two way road for the fact that it would create confusion as they are going to be spending time educating people and trying to enforce the one way road. If it does eventually become open year round, it will still be a one way road. Chairman Barney asked when Mr. Toner would hear on the grant. Mr. Toner said that there are no guarantees with the State.

Chairman Barney opened the hearing to public comment.

Thomas Frank, 19 Banbury Drive, Chairman - Economic Development Commission., spoke on behalf of the Economic Development Commission at this hearing. Mr. Frank read a letter into the record expressing the view of the EDC. The letter is addressed to Austin D. Barney, Chairman. The Economic Development Commission urges the Zoning Commission to approve this application.

Harmon (Hap) Poole, 2 Baron's Court, has lived in Simsbury for 47 years. He is in favor of the permit.

Bob Duguay, 11 Nod Brook Drive, spoke in favor of the application. He said that Simsbury Farms is a wonderful facility, and he has not seen any issues with children running across the road.

Gerry Wetjen, 29 Wood Duck Lane, at the meeting representing the Simsbury Farms Men's Club. He said that they have approximately 250 members and the organization endorses Attilio's application. This is an almost full

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service restaurant of the highest quality. He said that the Men's Club is in the process of doing all sorts of signage for the golf course and they would be happy to discuss signage with Gerry Toner regarding the new road.

David Bush, 4 Katherine Lane, Vice Chairman - Parks & Recreation Commission. He said that as part of their Commission, they have addressed what is being discussed tonight, but also went further. The drinking that goes on there now is unmonitored. The Commission felt that it was important that a presence is provided that can not only monitor, but has the authority and the responsibility as the Permittee to monitor that consumption. Along with that comes insurance, liability protection. The Park and Recreation Commission are supposed to run their program so that it does not cost tax payer dollars. As part of that, the golf course is the number one funding source. The beer and wine license will make the golf course competitive with the other golf courses in the area. He said that letters are going out to all the leagues telling them that when they go to sign up (if this is passed) there is a new way of operating at Simsbury Farms. The Park & Recreation Commission believe in responsibility and safety. As a Commission, they try and do a very thorough job before ever asking anyone to come before the Zoning Commission. He said that they believe tonight that they have the right candidate, the right issue, and economic times.

Chairman Barney asked Mr. Bush if the Parks & Recreation Commission talked

about any site management issues outside of the beer and wine permit. Do they have anything to add to the discussion about how to deal with the apparent driver that does go down the hill the wrong way. Chairman Barney is concerned about the kids as he does drive to the Farms and sees the kids darting in and out all the time. Mr. Bush said that children are there and that they do play. At this moment there is no traffic control, but they would be creating a traffic control pattern that is now more organized. You come in one way and go out another way. The exit point is clearly a further distance from the pool and the general area of activity and the traffic is now directed away from the pool and the tennis court area. Parks and Recreation also discussed signage and the Men's Club has always been good about donating. The Men's Club has already committed to helping with the construction and/or finance of putting up the necessary signs. They also have a window of approximately three months to begin to educate the public and the outside users.

Commissioner Gilkey asked if the pathway point where the kids go from the swimming pool to the tennis court is lined (pedestrian walk). Mr. Toner said yes. Chairman Barney asked how long the unpaved portion of the new road is. Mr. Toner responded roughly 700-feet.

Paul Henault, 12 Wyngate, Chairman – Board of Finance. He spoke tonight as a resident who lives near Simsbury Farms. He does not believe that the Town of Simsbury should approve the application for the following reasons: 1) safety, 2) liability, 3) competition and 4) character of the town. He said that he had also spoke with Peggy Shanks, former First Selectman, who also asked him to express some of her concerns over this. Mr. Henault said that this is a multiple use facility and many people, not just golfers, use it. There is a pool, tennis courts, playgrounds, and hiking trails. Mr. Henault also discussed liability saying the deep pocket scenario will rule regardless with whether we have liquor liability insurance that the applicant may buy, or a hold harmless agreement that the applicant may sign. He said that by approving this application we encourage and sanction consumption at the course, and we would be brought into any suit. He recognizes the need for commercial development in the town, but does not feel this is the type of development that the town needs. Mr. Henault mentioned that Riverview had previously been mentioned as close proximity to the hiking trails. That is true, but Riverview is not a town owned facility. Mr. Henault said that that the Farms was built in 1972 and was envisioned to be used by all ages for multiple purposes and not to cater to one constituency only. He said that the message to our children is that you cannot have recreation without alcohol. That is the wrong message for the town to send. Mr. Henault said that the members of this Board have always used good judgment and common sense in reviewing applications. He asked that they deliberate in a thoughtful manner and consider the impact of this application, not just on one segment of the constituencies that use

Simsbury Farms Golf Course, but on the entire constituencies that use the Simsbury Farms Recreational Complex.

David Ryan, 20 Westledge Road, said that it has been proven that the first person who had the restaurant facility at Simsbury Farms did fail because he did not have the ability to generate enough income. Mr. Ceneviva is now facing very tough economic times and this should be recognized that as a very serious threat. Mr. Ryan mentioned a previous parking lot party where a group had a full bar setup in the parking lot after their event. Those people drive

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out of there, past the pool, totally out of control. This has been going on for six or seven years now. He feels that having Mr. Ceneviva with control over what is going on there is a far safer thing for our children than the way it is run today.

Roseanne O'Hare, 213 Bushy Hill Road, lived in Simsbury for 14 years. She feels that Attilio has proven himself. He is a source of employment for the youth in town and has a home in Simsbury. The application applies to the restaurant where families will be dining. Attilio represents what they want to see in Simsbury; hard work, good old fashion values and quality. She asked that this Commission consider approving the application.

Dan Patrick 16 Fernwood Drive, lived in Simsbury for 5 years. He said that he, along with others', manages a popular golf outing up at Simsbury Farms. The level of service from Attilio's is impeccable. They get about 140 golfers every year and almost 250 people for dinner. He asked that the Commission consider approval.

Harmon (Hap) Poole, 2 Baron's Court, said that traffic there will exist whether there is liquor or not. He does not feel that those arguments have anything to do with Attilio. He also mentioned having retired people, like himself, stand there to make sure cars only come in one way and out the other way.

Chairman Barney closed the public hearing.

b. Application of Lawrence S. Christian – Owner, Jeffrey A. Gebrian, Principal CR3, LLP – Agent, for a Special Exception, pursuant to Article Eight, Section A.9 and a Site Plan Amendment, pursuant to Article Five, Section J of the Simsbury Zoning Regulations to address total site coverage, including parking and a modification to the existing building footprint, 625 Hopmeadow Street.

Jeffrey A. Gebrian, Principal, CR3 Landscape Architects, spoke on behalf of this application. This application is for a 288 square foot addition to the ground floor of the building at 625 Hopmeadow Street. This building is located to the north of the property. There may be some issues regarding parking and coverage. CR3 put together an assembly of drawings that had been done in the past and showed the Commission where the work would actually be done. Mr. Gebrian said that he has upgraded the information regarding parking. In accordance, under the professional office zone, the parking requirements are 6.6 spaces per 1,000 gross square feet for medical or dental offices. 46 parking spaces are required on this site. All are built, except for the modification to the footprint on 625 Hopmeadow. Two handicap spaces would be rebuilt to meet code effectively reducing a little of the impervious surface. He also spoke of unoccupied spaces in the building such as closets, storage, stairs and halls, which would reduce the coverage and they would then need only 37 parking spaces. Mr. Gebrian said that the Design Review Board has seen this application and has approved it.

Chairman Barney asked if the staff parks in the existing upper lot. Mr. Gebrian said yes there is an existing parking lot above with nine parking spaces and the staff does park there. There are also ten parking spaces on Woodland, which is also staff parking. The main lot is where patients park. Commissioner Elliot asked Mr. Gebrian to identify where the exact expansion at 625 Hopmeadow is occurring. Mr. Gebrian said that it is just to the left where it pops out. Plants are located around it. It is about a 288 square foot one floor addition. He showed the Commission the location on a plan. Commissioner Elliot questioned whether parking could be added to the southerly end of the property where there is a line of trees/shrubbery and a vacant area. Mr. Gebrian said it would be difficult to do as there is a steep grade change from the side walk on Hopmeadow up to Woodland of about 14 feet.

Chairman Barney opened the hearing up to public comment. As no one wanted to speak, Chairman Barney closed the public hearing.

c. Application of the Town of Simsbury for Zoning Amendments to the Town's Zoning Regulations, pursuant to Article Four (B), Definitions, Article Seven, Section N, Permitted Uses, and Article Ten, Section K and Section A, Special Regulations for the purposes of a Continuing Care Retirement Community (CCRC) and the incorporation of a Conceptual Master Plan (CMP) into the regulatory process.

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Robert DeCrescenzo, Town Attorney, spoke regarding this item. He said that he would be referring to the document called "Revised Text Amendment:

Continuing Care Retirement Community Simsbury Zoning Regulations". Based on the testimony that was taken at the last session of the public hearing, there are three changes made to the previous draft. The first change was to remove a portion of the draft that referred to a Conceptual Master Plan (CMP); the second change was to incorporate references to the Continuing Care Retirement Community (CCRC) and to the various sections of Article Ten, Section K and not limit it just to the title; and the third change was to add a new proposed paragraph 11, which takes the CCRC special use out of Article 5, Section J.6, which requires construction to begin under an approved site plan within one year.

Attorney DeCrescenzo explained that the regulation says that you have to begin construction under an approved site plan within one year. The Statute says, which applies to all site plan whether they are in regulations or not, that you have to complete the work under an approved site plan within five years. He said that the concern about the one year requirement for a CCRC is that this type of use requires certain approvals from the State of Connecticut. Work cannot begin on a CCRC until there is demonstration of a certain number of units to already be pre-sold. He said that it does not seem practical to approve a site plan for CCRC where they would then have to break ground on that project within 365 days or else they would lose their site plan approval. The one year requirement, under these regulations, would make it an impossibility for a CCRC to be built.

Commissioner Elliott said that there is an opportunity for a one year extension. Attorney DeCrescenzo said that he does recognize that the regulations do allow for a one year extension upon approval of this Commission, which also presumes that the Commission could also say no. Commissioner Elliott asked if it was enforceable for this Commission to expire or lapse a permit after a year or two, while the State Statute says five years to construct. Attorney DeCrescenzo said that they are not in conflict. The State Statute says you have to compete within five years, but it does not say that you have to begin construction within one year. His opinion is that the State Statute and Regulations are not in conflict so the Commission has every right to draft a regulation that is where it is not in conflict with the State Statute. It is probably enforceable. Commissioner Elliott said that if their regulations are out of sync, it would be a better solution for the Town of Simsbury to delete the third sentence of the paragraph for which they are trying to create a exception for CCRC's only, and not for any other type of site plan that might be approved in Town, which might cause contention. This could move the CCRC along and also help the Town.

Attorney DeCrescenzo said that this item has to be re-noticed. He advised the Commission to continue the public hearing to their next meeting and direct Mr. Peck to re-notice this matter because the new paragraph 11 was

not part of the original. He said that tonight, the Commission could act on paragraph 1, 2, 3, 4, 5 & 6. Paragraph 7 has to be re-noticed because it was added.

Chairman Barney opened the public hearing to public comment.

John Lucker, 88 Blue Ridge Drive, spoke as President of SHARE, and as a member of the SHARE Steering Committee. He said that SHARE supports the Continuing Care Retirement Community (CCRCC) zoning text amendment language as written and presented tonight. This includes the five year window for the developer to complete the work and the potential for another five year extension. Mr. Lucker said that they believe that a CCRC is an extremely desirable development type for Simsbury and beneficial to the Town. The Town has to work with the developer through the necessary planning, design, development, legal and advisory and zoning enforcement regulations. Mr. Lucker said that they believe when all this is done openly and reflects the principals and objectives of the Plan of Conservation and Development, a CCRC can be a win-win for Simsbury.

Chairman Barney asked the Commission if they would like to re-notice the entire package that they have tonight, without the CMP, or would they rather take action on the first six paragraphs, and take up the last paragraph on page three (#7) at their next meeting.

Commissioner Delehanty made a motion to move Item VI (discussion and possible vote on any agenda item) ahead of agenda Item V. The motion was seconded by Commissioner Gallagher and passed unanimously.

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VI. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

a. Application of the Town of Simsbury – Owner, Attilio Ceneviva, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a restaurant wine and beer permit for Attilio's at Simsbury Farms on property located at Simsbury Farms, 100 Old Farms Road.

Prior to the actual vote, each member spoke their opinion on this application.

Commissioner Gallagher moved to approve the application of the Town of Simsbury – Owner, Attilio Ceneviva, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a restaurant wine and beer permit for Attilio's at Simsbury Farms on property

located at Simsbury Farms, 100 Old Farms Road. The motion was seconded by Commissioner Delehanty and passed with a 5-1 vote. Commissioners Delehanty, Gallagher, Barnett, Elliott and Vaughn voted in favor. Chairman Barney voted against.

b. Application of Lawrence S. Christian – Owner, Jeffrey A. Gebrian, Principal CR3, LLP – Agent, for a Special Exception, pursuant to Article Eight, Section A.9 and a Site Plan Amendment, pursuant to Article Five, Section J of the Simsbury Zoning Regulations to address total site coverage, including parking and a modification to the existing building footprint, 625 Hopmeadow Street.

Commissioner Gallagher moved to approve as submitted the application of Lawrence S. Christian – Owner, Jeffrey A. Gebrian, Principal CR3, LLP – Agent, for a Special Exception, pursuant to Article Eight, Section A.9 and a Site Plan Amendment, pursuant to Article Five, Section J of the Simsbury Zoning Regulations to address total site coverage, including parking and a modification to the existing building footprint, 625 Hopmeadow Street. The motion was seconded by Commissioner Delehanty and passed unanimously with a 6-0 vote.

c. Application of the Town of Simsbury for Zoning Amendments to the Town's Zoning Regulations, pursuant to Article Four (B), Definitions, Article Seven, Section N, Permitted Uses, and Article Ten, Section K and Section A, Special Regulations for the purposes of a Continuing Care Retirement Community (CCRC) and the incorporation of a Conceptual Master Plan (CMP) into the regulatory process.

Attorney DeCrescenzo said that they have been led to believe that relief from the one year requirement is a core issue for the potential applicants.

The Commission members decided to take action on the first six paragraphs.

Chairman Barney closed the public hearing.

Commissioner Delehanty moved to adopt the following amendments to the Simsbury Zoning Regulations acting with the intent stated in the three page revised Text Amendment: Continuing Care Retirement Community – Simsbury Zoning Regulations (Attachment I):

1. that we amend Article Four, Section b, Definitions to add a definition of Continuing Care Retirement Community (CCRC) as stated in number 1 of the three page handout.
2. that we amend Article Seven, Section N for the purposes set forth in number 2 of the three page handout.

3. that we amend Article Ten, Section K: Assisted Living Facility, Congregate Senior Housing Facility as set forth in number 3 of the three page handout.

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4. that we amend Article Ten, Section K, Paragraph 1, Intent as stated in number 4 of the three page handout.

5. that we amend Article Ten, Section K, Paragraph 2., Procedure as stated in number 5 of the three page handout.

6. that we amend Article Ten, Section K, Paragraph 9, Age Restrictions as stated in number 6 of the three page handout.

The Motion was seconded by Commissioner Elliott and passed unanimously. 6-0 vote

V. DISCUSSION OF REVISED ZONING COMMISSION BYLAW DRAFT

The by-laws were briefly discussed.

Commissioner Delehanty moved to approve as the Zoning Commissions Rule and Procedures, the draft Town of Simsbury dated January 6, 2009 with the deletion of the phrase "with the approval of the Chairman". The motion was seconded by Commissioner Gallagher and passed unanimously.

VII. LEGAL RESOURCE ISSUES

Chairman Barney said that there has been considerable discussion over the last three or four years about the legal resources available to both the Planning and Zoning Commissions. Chairman Barney and Attorney DeCrescenzo met with First Selectman Glassman last week regarding this topic. He said that the First Selectman is happy to hire outside counsel for the Commissions if and when it is needed on a particular topic. Attorney DeCrescenzo would be the gate keeper who would say whether he felt, as he is not a specialized land use attorney, that a topic required outside counsel. Chairman Barney said that First Selectman Glassman does not want to have an open ended attachment to a law firm where they might show up at their own will and run up a tab over which there would be no control.

Attorney DeCrescenzo said that they have had a discussion with the First Selectman. He said that the Town Attorney for the Town of Simsbury is the

firm of Updike, Kelly and Spellacy. This is a firm of fifty attorneys with two offices. Attorney DeCrescenzo said that he is not the only one who does land use. There are three people in their office who pretty much exclusively do land use. He said that they do have other resources available to them within their offices. Attorney DeCrescenzo said that his primary responsibility as the lead representative to the Town Attorney is to make sure that the legal needs of the Town of Simsbury are well provided. He said that if this Commission reaches a situation where it is beyond the firm's capability, he will go to the Board of Selectmen and ask them to spend the money necessary to get the legal help required to address the situation.

VIII. ADJOURNMENT

Commissioner Gallagher moved to adjourn the meeting at 9:40 p.m. The motion was seconded by Commissioner Delehanty and passed unanimously.

Garrett Delehanty, Secretary