The February 10, 2016, Regular Meeting of the Woodbridge Board of Selectmen was convened at 6:00 p.m. in the Town Hall Central Meeting Room by First Selectman Ellen Scalettar.
Present: Ms. Heller, Ms. Jacobs, Ms. Scalettar, Ms. Kayne, and Mr. Anastasio
Absent: Mr. Dey
Present for Staff: Mr. Genovese, Administrative Officer/Director of Finance; Mr. Weiner, Town Counsel; Mrs. Shaw, Clerk
Absent: Ms. Yagla, Assistant Administrative Officer

PUBLIC COMMENTS

Mr. Hotchkiss, 25 Fairground Road – shared with the Selectmen financial and play information for the golf course. He said that course rounds and outings have increased each year and that Billy Casper Golf is willing to help with the marketing of the pool and work with the pool staff on the use of the banquet tent in the coming season.
He also recommended that the funds to renovate the Old Fire House for the Fitness Center be used for the Country Club of Woodbridge ("CCW") Club House. He said that moving recreation and the fitness center to the club house would be an attraction for CCW members.

Ms. Marrella, 184 Rimmon Road – said that residents are very concerned that the Selectmen continue to have special meetings and are pursuing plans regarding the future of the Country Club of Woodbridge without an opportunity for public comment. She said that there should be a public comment item on the agendas of the Boards and Commissions Special Meetings scheduled for February 18th and March 10th. She urged Ms. Scalettar to "hit pause", step back, and seek public comment.

Adrienne Micci-Smith, 117 Ansonia Road – said that she is very upset about any possible development on the Country Club property and that there should be as much public input as possible.

Martha German, 1145 Johnson Road – said she had a petition signed by 45 residents for the pool to remain open for the 2016 season.

Michael Broderick, 5 Old Still Road – said that (1) the pool should remain open; (2) the Club House was designed by a Woodbridge architect of merit and should be preserved and could be put to many uses. Money should be used for its preservation – not on the police station. No one in Town believes we need a larger police station. He also said there is a huge pesticide spill at the Woodbridge Country Club that is contaminating the aquafer.

Robert Hopkins, 34 Old Mill Road – expressed his frustration that information about the CCW pool has not been given to residents and asked why the residents were not made aware of the pool being on the agenda.

Ms. Scalettar explained to him that discussion of the pool was not on the agenda.

Robert Hill, 68 Acorn Hill Road – spoke about the 2011 capital assessment of the club house prepared by David Stein, Architect with Silver Petrucelli Associates. He also said that the club house should be repurposed for recreation and perhaps a senior center. As for the pool – if people want to save the pool they should sign up for membership. He noted as an aside, that perhaps the first proposal by Toll Brothers for a 51 unit development on Woodfield Road was the better choice.

Edee Lockyer, 948 Baldwin Road – the Town is losing pool membership because of the Selectmen's indecision about the entire property. This has been going on for years. The Selectmen seem to consider only development/sale of the property. She said that from the meetings she has attended, it is her opinion that this is not what the people of Woodbridge are telling the Board.

Dr. Lober, 35 Wepawaug – urged the Board of Selectmen to keep the pool open; preserve the club house; and re-examine the proposed capital expenditures, notably the police station, which would increase the Town's debt load and would pave the way for more public employees, which would also increase the cost to the Town.

Ms. Scalettar's statement regarding Public Comments:

Ms. Scalettar said that she takes exception to many of the remarks made during public comments and many of them are inaccurate. She said that she does agree with Ms. Marrella about "Hitting Pause" on the Country Club and that is exactly what she has done. Ms. Scalettar said that she hit "pause" so that the Board could regroup and establish the facts, rather than have everybody's own facts out there. The Boards of Selectmen and Finance have spent many hours going over the facts and the Board of Selectmen will bring the facts to the public and have ample public conversation. Ms. Scalettar said that different commissions in Town have asked for presentations and updates. She said that because she did not want Mr. Genovese having to attend ten different commission meetings she asked and the Chairs have agreed to two special joint meetings (February 18th and March 10).

Ms. Scalettar reminded everyone that every one of the meetings is open to the public, although not every meeting is open to public comments. The public is welcome to attend – and there is ample time for public comment at the Board of Selectmen meetings. She also stated that there will be public comment at the public meetings with respect to the future of the Country Club. Ms. Scalettar said again that she is striving to the best of her ability to make sure every discussion is based on facts. As the Board has discussed before, everyone is entitled to his or her own opinion, but not to his or her own facts. She also said that there were many opinions stated at the meeting represented as facts and that the Board will be working very hard to establish a common understanding.

She also noted regarding the 45 residents that Ms. German reported had signed a petition for the pool, that the Board has to take the number of users into account as it discusses the cost of the pool.

Ms. Scalettar said that David Stein, Architect with Silver Petrucelli, was present to give an update of the costs to mothball the building or to make general repairs and replace key components.

As to the golf course, Ms. Scalettar said that unfortunately the information given by Mr. Hotchkiss regarding the golf course is not supported by Billy Casper Golf. Billy Casper has told the administration that to continue the contract after 2016 would require more than $100,000 contribution from the Town. As to the pool, Billy Casper Golf has no interest in the pool, they do not believe it helps with their golf operation, but if the Town asks they will help with managing it for a fee.

Ms. Scalettar asked everyone to be cautious about purported "facts" and if anyone has questions to call the Selectman's office at any time. She said that she will not have discussions based on opinions masquerading as facts.

TREE REPORT – Operations Manager, Warren Connors

Mr. Connors reported on the steps that United Illuminating follows in the tree trimming process. 1) tree are assessed by the U.I. arborist; 2) permission is sought from property owner to trim or remove tree; 3) work began in August of 2015; 4) the First Selectman is updated weekly regarding the progress; 5) any municipal trees are assessed by both U.I. and Mr. Connors; 6) State Arborist is responsible for working with U.I. on State Roads and he is behind schedule; 7) property owners refusal to have a tree trimmed or removed is revisited in four years.

In response to specific questions Mr. Connors said: on Cedar Road, the resident marked all trees for removal; the U.I. tree program reduces the town's tree budget; Ms. Kayne asked that she be shown the municipal trees on the list.

COUNTRY CLUB OF WOODBRIDGE – UPDATE

Zoning Update – Attorney David L. Grogins, Cohen and Wolf Attys. at Law

Ms. Scalettar said that Mr. Grogins' opinion (distributed to the Board) will address the serious issue of possible zoning regulation changes for the property and what would be the impact of that zoning change on future changes in ownership of the country club property and as precedent setting for other parcels in Town. She said an earlier concern regarding development of the property was "spot zoning" and that concern was addressed by Attorney Shansky, whose opinion has been widely distributed.

Ms. Scalettar introduced Atty. Grogins as widely known for his expertise in the area. She noted that he and his firm have worked with other towns on such zoning issues.

As background, Atty. Grogins said that he has practiced with Cohen and Wolf for forty years; been Town Attorney for Newtown, CT for over twenty-five years; Town Attorney for Ridgefield, CT for over fifteen years; and has served as Town Attorney for Brookfield, CT.

He said that Ms. Scalettar contacted him because he handled a similar situation for the Town of Ridgefield.

Atty. Grogins then went through his opinion point by point addressing two questions relative to the potential development of the property by a third party contract purchaser. He also cited several instances of case law.

1) What are the precedential effects on other parcels in Town if the zone is changed to allow some type of cluster development?
2) Can the Town protect the Golf Course property from a zone change or variance after a sale takes place?

Mr. Grogins summed up his remarks by stating that in his opinion the Town would be well protected on both issues. A copy of the letter is attached to these minutes and becomes a part of the permanent record of the meeting. The opinion letter will also be made publicly available.

Questions: Mr. Anastasio said that given the opinion there appears that there is no guarantee that Mr. Grogins opinion is fail proof and that the town could not be challenged.

Mr. Grogins said that he could not state that there is no way the Town could be challenged, but the substantial likelihood is that decisions that he referred to in his opinion would be upheld in a court of law.

Ms. Kayne said that the opinion assumes that the residents want a change in zoning, a big assumption. It also assumes that the Zoning Commission, in its legislative capacity, would work in the best interest of the Town. Ms. Kayne asked who defines the best interest of the Town?

Mr. Grogins answered that it is a standard defined by case law and courts.

Ms. Scalettar also responded to Ms. Kayne, explaining that zoning questions have been raised many times, and the Board needs to understand the risks and the implications of a change. Ms. Scalettar also noted that cluster housing, particularly for seniors, was mentioned in the 2005 and 2015 Plans of Conservation and Development for consideration so it is very important to understand the zoning issues.

Town Counsel Weiner reminded those in attendance that in Woodbridge, no Town property can be bought or sold unless there is a Special Town Meeting where the voters make the decision by a yes or no vote. This opinion does not come into play unless the voters say "yes". This opinion was sought to answer some of the valid question raised about precedents for other areas of Town.

Ms. Scalettar referred to Mr. Hill's remark during public comment that perhaps the first proposal was the better one, and said that no developer has revisited the original proposal. However, there is a proposal for 69/70 units on 36 acres of the parcel that would leave about 128 acres of open space for the Town that could be used in various ways – with or without the building. She said that there are ways to view the property that she believes

address the concerns of all Woodbridge residents – financial concerns, open space concerns, and those who want to stay in town. Ms. Scalettar once again stressed that she has "hit pause" to get all the facts so that, most importantly, when the decision goes to the Town for a vote, the residents have information they need to be well informed about what is a very complex issue for the Town.

BEST ORGANIC/OUTDOOR MAINTENANCE PRACTICES REPORT – Louisa Cunningham

Ms. Scalettar introduced Ms. Cunningham, Chair of the seven member Ad Hoc Committee on Best Organic Practices and thanked her for her presentation this evening.

Ms. Cunningham thanked the Board for the opportunity to make recommendations for wildlife promotion and organic methods in the Town of Woodbridge.

Ms. Cunningham's report addressed proposed management practices for the Fitzgerald Property. Bullet points are below.

- Management resides with the Parks Department; report to CUPOP
- Pesticide Policy as amended in 2015 to be included in all leases for use of the property
- Mowing for meadows should occur between mid-November to mid- March to accommodate butterflies
- Train Parks Dept. staff in identification of desirable native plants vs invasive
- Remove invasive plants by hand
- Create brush piles to foster wildlife
- Plant native shrubs
- Protect wetlands and watershed through conservation easement
- Manage tree growth to create biologically diverse forests that are beneficial to wildlife
- Install educational signage at entrance re preservation of wildlife; role of native flora and fauna; mowing schedules, etc.

The report also listed recommendations for management/maintenance of each section of the property, including the road, parking lot, and the ice skating rink.

Ms. Cunningham said that the report has been filed with the Commission on the Use of Publicly Owned Properties.

Ms. Kayne said she was pleased that the report was based on the Yale School of Forestry study of the property. She asked why the report did not address more specifics on the Community Gardens as she understood that one reason the Committee was formed was because of installations in the gardens.

Ms. Cunningham said that the Committee's charge was for wildlife promotion and organic methods. The Committee will also address other parcels of town-owned property and road

side management. She noted that the Committee has been working with NOFA, the Audubon Society, DEEP, and other environmental groups.

Ms. Scalettar said that the impetus for the Ad Hoc Committee came from a conversation with Ms. Cunningham about having a wild flower garden/meadow on the Fitzgerald Property and Ms. Cunningham's, as well as Ms. Scalettar's, long time commitment to organic practices which are very important and should be promoted in town.
Ms. Jacobs clarified that the Commission on the Use of Publicly Owned Properties, in its review of the Fitzgerald Property, is addressing guidelines for the Community Gardens.

Ms. Scalettar asked Ms. Cunningham for her suggested prioritized list to implement the recommendation in the report.

Ms. Cunningham said that restoration of the wetland area in the center field, including relocation of the skating rink, would make an impact in making people aware of wildlife preservation.

The Board thanked Ms. Cunningham for the comprehensive report.

WILL McLEAN – EAGLE SCOUT PROJECT PRESENTATION

Will McLean, member of Troop 63 BSA, said that for his Eagle Scout Project he seeks the Board's permission to build a 30' long, 4' wide wooden bridge over a stream and wetland area on the Blue Trail located on the Fitzgerald Property. Scout McLean said that he has been assisted in the design by Scout Master and architect, Robert Tucker, with funding from the Woodbridge Land Trust. Scout McLean said that once he has received approval from the Board of Selectmen, he will apply for an Inland Wetlands Permit.

The Board of Selectmen **VOTED UNANIMOUSLY** (Kayne – Jacobs) to approve Scout Will McLean's Eagle Scout Project as presented.

COUNTRY CLUB OF WOODBRIDGE – CLUB HOUSE UPDATE

David Stein, Architect with Silver Petrucelli Associates, presented an update of his 2011 "Woodbridge Country Club Capital Needs Assessment", an infrastructural evaluation of the building. He listed three options for the building and potential cost: Option 1 - Decommission (mothball) $100,000; Option 2 – General repairs and replacements of key components $3.5-4 Million or $80/85 SF @ 43,000 SF; Option 3 – Demolition of the entire building and construction of a new club house $5,350,000. Mr. Stein said that no environmental testing has been done on the building and the costs listed in each item does not include the cost of asbestos, PCB, or lead abatement. He also noted that it is not feasible to remove the top of the building and keep the locker area.

UPDATE ON ELECTRIC VEHICLE CHARGING STATION GRANT

Terry Gilbertson, Building Official said that the Town has received an $8,266.62 grant to install a second electrical Vehicle charging station in Town. The recommended area is the

library and or Center parking lot. Mr. Gilbertson said that though the Library Commission did not take a vote, they expressed interest in a non-dedicated spot in the easterly parking lot (the lot between the Library and the Old Fire House). He noted that there are 28 plug in electric vehicles registered in Woodbridge and 275 hybrids.

The Board discussed the possibility of installing the charging station in the commercial district, since there is already one in the Town Hall parking lot.
Ms. Jacobs moved and Ms. Heller seconded to accept the Department of Energy and Environmental Protection grant.

Aye – Heller, Jacobs, Scalettar
Nay – Anastasio, Kayne

The motion passed to accept the grant with the agreement that before any location was approved other sites would be investigated especially one in the commercial district.

DARLING HOUSE – RENEWAL OF TENANTS' LEASE

Barbara Baldwin of the Amity Woodbridge Historical Society presented the renewal lease for the current Darling House tenants. Term of the lease is from March 1, 2016 – February 28, 2017. There is no increase in rent.

The Board of Selectmen **VOTED UNANIMOUSLY** (Jacobs – Anastasio) to approve the renewal of the one year lease for rental of the Darling House Caretaker's Wing.

FARM LAND LEASES

The Board of Selectmen **VOTED UNANIMOUSLY** (Scalettar – Jacobs) to approve the following leases for Town farm land for the 2016 growing season:

Keith Arnold, Fitzgerald Fields 1, 2 & 3; Elderslie Preserve 1, 2 & 3, 211 Peck Hill Rd.
Marc & Lisa Santoro, property at 52 Center Road and 160 Pease Road
Chris Sorensen, 1910 Litchfield Turnpike
Sarah Shepherd, Field north of Darling House, Eicher Property, and 1936 Litchfield Turnpike
Tim Kriz, Zwick Property at 282 Seymour Road

MEDCOM AGREEMENT

Mr. Weiner explained that the participating municipalities are still negotiating the MedCom Agreement that replaces the Town's agreement with C-Med for coordinated ambulance service and mutual aid.

TOWN COUNSEL REPORT

Executive Session – at 8:52 p.m. the Board **VOTED UNANIMOUSLY** (Scalettar – Anastasio) to move into executive session pursuant to Section 1-200(6)(B) – for discussion and

possible settlement of claim made by the Regional Water Authority concerning outstanding obligation. Mr. Weiner and Mr. Genovese were invited to attend the session.
At 9:08 p.m. the Board of Selectmen moved out of executive session and returned to the meeting. No motions were made or votes taken in executive session.

Mr. Weiner explained that a leak in the water line from the pump house to the Country Club in February 2011 resulted in a bill for water usage of a $102,000. Matt Menchetti, owner of MDM Golf, the operator of the golf course at that time has not paid the bill. Mr. Weiner has negotiated with the Regional Water Authority for the Town to pay the sum of $43,000 for full settlement of the obligation.

Action by the Board of Selectmen: The Board of Selectmen VOTED UNANIMOUSLY (Heller – Jacobs) to approve the recommended settlement with the Regional Water Authority in the amount of $43,000.

ADMINISTRATIVE OFFICER/DIRECTOR OF FINANCE'S REPORT

Monthly Report – Mr. Genovese said that as of January 30, 2016 he is projecting a budgetary surplus of approximately $188,030 at the end of the fiscal year, resulting in a projected fund balance of $4.38 Million or 9.51% of the annual projected expenses at end of year.

Intergovernmental Revenues are expected to experience a deficit of $17,279 due to a total of $89,178 in state funding reductions.

TAX REFUNDS

Pursuant to Section 12-124 thru 129 of the Connecticut General Statutes and the recommendation of the Tax Collector, the Board of Selectmen **VOTED UNANIMOUSLY** (Heller – Anastasio) to refund property taxes in the amount of $20,932.30.

FUNDING REQUESTS

The Board acted to recommend the following funding requests to the Board of Finance:

1516-9 – Allocation $11,288.00
To: Fire Dept. Hydrants (1230-00/55245)
From: Board of Finance Contingency (1170-00/56800)
For: Fund shortfall in account due, in part, to rate increase from the Regional Water Authority.
(Scalettar – Heller) Unanimously Approved

1516-10 – Interdepartmental Transfer $43,000.00
To: Country Club of Woodbridge Water (1192-00/55240)
From: Golf Fees (1-5-1920/45200)
For: Pay outstanding water bill from 2011 to Regional Water Authority
(Anastasio – Jacobs) Unanimously Approved

EXTENSION OF ELECTRICITY GENERATION CONTRACT

Action on this matter has been postponed.

ASSISTANT ADMINISTRATIVE OFFICER'S REPORT

Update on Nugent Property, 1875 Litchfield Turnpike - Ms. Yagla said that the Conservation Commission applied for a State Grant to purchase the property. However, the Nugent family members cannot agree regarding the sale of the property.

Website – Ms. Yagla said that the Town has received 15 responses to the RFP process for a new website. The current provider did not respond.

TOWN CLERK'S REPORT

The Board of Selectmen **VOTED UNANIMOUSLY** (Scalettar – Heller) to acknowledge receipt of the Town Clerk's Report for the month ending January 30, 2016.

MINUTES

The Board of Selectmen **VOTED** to approve the following minutes:

November 10, 2015, Regular Meeting – (Jacobs – Anastasio) Unanimously Approved
December 9, 2015, Regular Meeting – (Heller – Anastasio) Unanimously Approved

RESIGNATION

The Board of Selectmen acknowledged receipt of Robyn Berke's resignation from the Conservation Commission. The Clerk was directed to send Ms. Berke a letter of thanks for her years of service.

FIRST SELECTMAN'S REPORT

Ms. Scalettar reported on her activities since the last Board of Selectmen meeting:

- Ms. Scalettar and Ms. Yagla visited Adrienne Micci-Smith's home based window dressing business and the Grand Opening of the Palette Arts Studio at 245 Amity Road;
- she met with Derby Mayor Dugato and Bethany First Selectman Gorski regarding Animal Control;
- thanked Mr. Genovese and the Finance Department for the excellent job in preparing the 2017 proposed budget;
- met with Frontier representatives regarding the updating of T1 lines for the communication system;
- attended a lock-down drill at Bethany Community School;

- reminded the audience of the 3rd Wisdom of Woodbridge event on March 22nd at the JCC. Yaron Baitch will speak on internet security.
- Attended a reception honoring Rita Gedansky for fourteen years as a member of the Amity Board of Education
- Person of the Month for February is Adam Parsons, recognized for his rescue of an abandoned puppy and more.

LIAISON REPORTS

Ms. Scalettar: Amity Board of Education meeting was cancelled due to weather

Ms. Kayne: The Recreation Commission discussed increasing the Director's compensation; the Commission voted unanimously to request that the Board of Selectmen open the Country Club pool for the summer season. The Woodbridge Board of Education held an executive session which she did not attend.

Mr. Anastasio: The Town Plan & Zoning Commission and The Library Commission meetings were cancelled due to weather.

Ms. Jacobs: The Economic Development Commission – she was not able to attend the meeting. The Commission on the Use of Publicly Owned Properties reviewed the Commission's draft of the guidelines for the Woodbridge Community Gardens and received a report from the Ad Hoc Committee on Best Organic and Outdoor Practices for Town Property. The Police Commission continued to discuss the parking problem on Hazel Terrace, staffing and overtime issues. The Department was commended on their roll during the snow storm.

Ms. Heller: The Inland Wetlands Agency did not meet as there were no applications. The Fire Commission meeting was cancelled due to the weather. The Human Services Commission discussed space issues, the need for a lavatory on the cafeteria level, the April 28th volunteer tea and plans for Wear Red for Women Day.

ADJOURNMENT

On a non-debatable motion by Mr. Anastasio, seconded by Ms. Jacobs, the meeting adjourned at 9:40 p.m.

Respectfully submitted
Geraldine S. Shaw, Clerk

COHEN and WOLF P.C.
ATTORNEYS AT LAW

HERBERT L. COHEN
(1928-1983)

AUSTIN K. WOLF
RICHARD L. ALBRECHT
JONATHAN S. BOWMAN
IRVING J. KERN
NEIL R. MARCUS
G. KENNETH BERNHARD
DAVID L. GROGINS
GRETA E. SOLOMON
ROBIN A. KAHN
RICHARD SLAVIN
DANIEL S. NAGEL
RICHARD J. DI MARCO
DAVID B. ZABEL
MARK A. KIRSCH
DAVID M. LEVINE
JOSEPH G. WALSH
MATTHEW C. SUSMAN
DAVID A. BALL
JOCELYN B. HURWITZ
STUART M. KATZ
MONTE E. FRANK
PATRICIA C. SULLIVAN
VINCENT M. MARINO
JULIE D. KOHLER
ARI J. HOFFMAN
COURTNEY A. GEORGE
BARBARA M. SCHELLENBERG
RACHEL A. PENCU
JASON A. BUCHSBAUM
L. JOYELLE MAINI
DAVID M. MOROSAN
MARCIA M. ESCOBEDO
DAVID DOBIN
PHILIP C. PIRES
ROBYN H. DRUCKER
RACHEL A. SCHWARTZMAN
SHANE R. GOODRICH
JARED L. SHWARTZ
ALEXANDER COPP
MATTHEW A. CIARLEGLIO
CHRISTINE M. BREW
JOSHUA PEDREIRA
BRITTANY M. REHMER

OF COUNSEL
ANNMARIE P. BRIONES
EILEEN LAVIGNE FLUG
ANN L. FOWLER-CRUZ
THEMIS KLARIDES
ROSAMOND A. KOETHER
BRUCE L. LEVIN
JACK E. MCGREGOR
JOHNPATRICK C. O'BRIEN
ALLAN J. ROSEN
MARTIN F. WOLF

DAVID L. GROGINS
Please Reply To Danbury
e-mail: dgrogins@cohenandwolf.com

February 9, 2016

Honorable Ellen Scalettar
First Selectman
Woodbridge Town Hall
11 Meetinghouse Lane
Woodbridge, Connecticut 06525

Re: Country Club of Woodbridge Property

Dear First Selectman Scalettar:

You have requested my opinion regarding two questions relative to the potential development of a portion of the former Country Club of Woodbridge property (the "Golf Course Property") by a third party contract purchaser. The questions are:

1. What are the precedential effects on other parcels in the Town of Woodbridge (the "Town") of a change of zone of the whole Golf Course Property, or a portion thereof, to allow for the construction of a cluster housing development by a third party developer?

2. Can the Town protect the Golf Course Property from a zone change or variance after a sale takes place?

In examining these questions I have reviewed the May 1, 2015 Town Plan of Conservation and Development (the "POCD"), the Town Zoning Regulations (the "Regulations"), the applicable sections of the Connecticut General Statutes and case law. While this letter does not address any specific development plan, I assume that some form of cluster housing may be proposed, and that any such development will encompass between 35 and 40 acres of the Golf Course Property.

1. The effect of changing the zone of the Golf Course Property on other Town properties:

The Regulations, adopted on December 24, 1932 and most recently amended on September 15, 2014, do not presently allow any form of cluster housing on the Golf Court Property or anywhere in the Residence A Zone. Therefore, in order to accommodate any form of cluster housing, the Regulations must be amended.

1115 BROAD STREET
P.O. BOX 1821
BRIDGEPORT, CT 06601-1821
TEL: (203) 368-0211
FAX: (203) 394-9901

158 DEER HILL AVENUE
DANBURY, CT 06810
TEL: (203) 792-2771
FAX: (203) 791-8149

320 POST ROAD WEST
WESTPORT, CT 06880
TEL: (203) 222-1034
FAX: (203) 227-1373

657 ORANGE CENTER ROAD
ORANGE, CT 06477
TEL: (203) 298-4066
FAX: (203) 298-4068

To address the issue of the effect of a zoning amendment, it is first necessary to engage in a short discussion of the Town Plan and Zoning Commission's authority. Connecticut General Statutes § 8-2 provides the Town with the authority to regulate zoning. In general, "[a] zoning commission may change zone boundaries or zoning regulations on its own initiative, when it sees the need for a change, or it may make a change when an application is filed with the commission for a zone change. In either case, the commission is performing a legislative function and has broad discretion as to whether or not to change the zoning of property or to amend the zoning regulations." R. Fuller, 9 Conn. Prac., Land Use Law & Prac. (4th Ed.) § 3:7, Page 39. "When enacting or amending its regulations, a local zoning authority acts in a legislative capacity. It must therefore be free to modify its regulations whenever time, experience and responsible planning for contemporary or future conditions reasonably indicate the need for a change." Malafronte v. Planning & Zoning Board, 155 Conn. 205, 208-09 (1967).

The Connecticut Supreme Court has repeatedly affirmed the "wide and liberal discretion vested in local zoning authorities when they have acted within their prescribed legislative powers." Burnham v. Planning & Zoning Commission, 189 Conn. 261, 266 (1983). Such discretion is important "because the local authority lives close to the circumstances and conditions which create the problem and shape the solution." Id. Indeed, "[t]he discretion of a legislative body, because of its constituted role as a formulator of public policy, is much broader than that of an administrative board, which serves a quasijudicial function." Malafronte v. Planning & Zoning Board, 155 Conn. at 209.

Although a zoning commission "should not ordinarily alter the classification of a certain area in the absence of changed conditions, it is clear that this rule, which is a restriction on the principle of legislative discretion, will only be applied in those rare instances where the zoning amendment is patently arbitrary. A less strict rule would require the court to exercise a legislative judgment." Id. "Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment." Id.

In order to grant a zone change, the Town must meet a two-part test: (1) The zone change must be in accord with a comprehensive plan; and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2. First Harford Realty Corp. v. Plan & Zoning Commission, 165 Conn. 533, 541 (1973). "The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community."[1]

My point is that it is difficult to overturn a decision to amend the zoning regulations. Therefore, an amendment to change the zoning of the Golf Course Property, or a portion thereof, to allow for some form of cluster housing will have a very high probability of withstanding a legal challenge. More importantly, an attempt to utilize the adoption of such an amendment as legal precedent to apply the amendment to other areas of the Town, assuming the Planning and Zoning Commission rejects such a proposal, will also be able to withstand a legal challenge. In Homart Development Co. v. Planning and Zoning Commission, 26 Conn. App. 212, 215 (1991), the Appellate Court reiterated that Connecticut courts are loath to overturn a decision by a zoning authority denying a requested zone change. "Only under certain circumstances, where the classification is found to be unjust, confiscatory or unconstitutional and the reasons for such a change are unusual and compelling, will the courts reverse the authority's refusal to grant an application for a change of zone on the grounds that the existing classification is found to be unjustified". Id.

Additionally, and equally as important, the text of the amendment can be useful in restricting its application. Assume for discussion purposes a hypothetical amendment which provides for "cluster housing" on a 40± acres parcel with access to public sewers and water, and which has direct access to a state highway. Such an amendment would be limited in the land to which it is applicable, based on the provisions of the amendment.[2]

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[1] There is an excellent discussion of the meaning of the term "Comprehensive Plan" as well as an equally excellent discussion of the authority of the Planning and Zoning Commission in the letter from Attorney Majorie Shansky to you dated July 3, 2014.

[2] While it is beyond the scope of this letter, another approach would be adoption of a "floating zone," which is defined as a "special detailed use destruct of undetermined location in which proposed type, size and form of structures must be pre-approved and which is legislatively deemed in advance to be compatible with the area in which the zone is eventually placed if specified standards in the zoning regulations are met and the particular application is not unreasonable." R. Fuller, *supra*, §3:9, Page 42.

Finally, the POCD both supports the amendment of the Regulations to provide for the use of the Golf Course Property, or a portion thereof, for a cluster housing project, and supports the denial of such a provision with respect to other properties in the Town. The following statement is contained on page 27 of the POCD:

> **Consider Usage of Country Club of Woodbridge Property**
> Consider age-restricted life style housing which may include cluster housing or planned development district to take advantage of the site's unique access to public water, sewer, transportation, infrastructure and to create housing options for older residents and provide opportunities for Woodbridge residents to age within their community.

The import of this provision is based upon Connecticut General Statutes §8-3a(a). Section 8-3a(a) requires that, when a combined zoning commission makes a change to its zoning regulations or zoning district boundaries, it must state on the record its finding on the consistency of the changes with the POCD. The above quoted provision from the Woodbridge POCD obviously strongly supports cluster housing on the Golf Course Property and, one can assume, does not support it in other areas of the Town.

2. The use of private covenants and restrictions to protect the Town in the event the original developer sells the Property.

The Town's ownership of the Golf Course Property presents additional opportunities to control the use of the Property outside of the traditional zoning context. Under normal circumstances, if a town seeks to control the use of property by having the potential developer contract with the local zoning authority and thereby bypass the municipality's established process for gaining approval for a zone change, this is illegal "contract zoning." See Campion v. Board of Alderman, 278 Conn. 500, 530-533 (2006).

On the other hand, if the Town is the owner of the property, as in the present case, then the Town may contract with the prospective developer by including in the contract for sale, and/or the deed of conveyance, covenants or restrictions requiring: 1) that the development proposal for the Golf Course Property be limited to a specifically identified site plan; 2) age-restrictive development; and/or 3) a right of first offer for the Property if sold to a third

party. Such covenants and restrictions do not constitute "contract zoning," and do not violate other limitations on the disposition of property, such as illegal discrimination, and there is no known legal authority which prohibits this.

The following are examples of covenants and restrictions previously utilized in similar contexts:

Rights of First Offer. Following Settlement, the Property shall be subject to the terms of this Section (for a time period to be determined). Thereafter, this Section shall be deemed null and void and of no further force or effect. In the event Buyer intends to sell the Property prior to the above to a bona fide third party (i.e. a party unaffiliated with buyer), then prior to listing or offering the Property for sale the Buyer shall notify the Seller in writing c/o Board of Selectmen, Town Hall, of Buyer's intent to do so and the price for which it intends to sell the Property (the "ROFO Notice"). Seller shall then have thirty (30) days from the receipt of such ROFO Notice to make an offer to purchase the Property. After said thirty (30) day period, the Buyer shall have the right to list the Property for sale and sell the Property to a third party provided, however, if the Property does not sell at the initial price offered in the ROFO Notice, and Buyer decides to sell anytime thereafter at a lower price, Buyer shall be required to offer the Property to Seller in the same manner as provided above. Said right of first offer (the "Right of First Offer") shall continue until such time as this restriction shall be released and this paragraph shall be deemed null and void. This provision shall survive Settlement.

Further Restrictions.
The deed of conveyance delivered pursuant to Section ____ above shall be further subject to the following:

(a) A restriction of record, in perpetuity; requiring that, except for the development of the Property in conformance with Exhibit ____ and Section _____ above, development by Purchaser, his heirs, successors and assigns, of the subject Property shall be limited to those uses specifically permitted as a right or by special permit under Zoning Regulations as may be amended by the Planning and Zoning commission of the Town. Except as required for purposes of development of the Property in conformance with Exhibit ____ and Section ____ above, the aforesaid limitation

shall not be modified by any variance granted by the Zoning Board of Appeals; and

(b) A restriction of record, in perpetuity, requiring that 80% of the houses located on the Property will be age restricted such that one resident must be 55 years of age or older and that 100% of the houses will be restricted such that no minor under the age of 18 years may occupy any one of them for more than three (3) months in any consecutive twelve (12) month period. The Buyer shall be required as a condition hereof to form a Common Interest Community for the intended development. The Homeowner's Association of the Common Interest Community shall be charged with the responsibility to enforce the above restriction.
The terms of this Section shall survive Settlement.

The use of the aforesaid covenants and restrictions have prevented municipally owned property from being "flipped" after sale to a private party. Inclusion of these covenants and restrictions in the contract for sale of the Golf Course Property can similarly protect the Town.

Conclusion:

The Planning and Zoning Commission has broad authority to adopt an amendment providing for "cluster housing" development on the Golf Course Property, or a portion thereof. Likewise, based on Connecticut zoning law and the text of the POCD, the Commission has broad authority to reject application of such an amendment to other properties in the Town. As a protective measure, the Town should consider private restrictions and/or covenants to prevent future development of the Golf Course Property that is inconsistent with the Town's goals and aspirations.

COHEN and WOLF P.C.
ATTORNEYS AT LAW

I am happy to meet with you and the Board of Selectmen to discuss the contents of this letter and answer any questions you may have.

Very Truly Yours,

David L. Grogins

DLG/cgh
cc: Gerald Weiner, Esq.