

On July 3rd I sent a letter to Chairman Petrides outlining the deficiencies and omissions in the developer's submission for the Fairwood PUD proposal which received the first informational meeting on 6/25/18.

I also copied the entire Plan Commission and Town Council on this letter. As of today I have received no response.

In the letter I quoted the "Minimum Submission Requirements for Planned Unit Developments District" contained in Appendix A-8 of the Avon Zoning Ordinances.

Minimum in the title clearly indicates without these submissions, the PUD proposal is invalid and may not proceed to an initial informational meeting before the Avon Plan Commission.

Upon a review of the Fairwood PUD application and document file, it seems the Petitioner omitted several required documents and supporting information required by that ordinance.

These items omitted include:

- A Comparison of Proposed PUD zoning standards and existing Avon Zoning Ordinance standards:

The ordinance states this "Shall use the current standards of the Avon ZO as the basis for the comparison".

(Also, it should be noted, because of this property's location and proposed usage, this comparison must contrast the proposed PUD zoning standards not only against the existing Avon Zoning Ordinances of Residential Matrix R1- Chapter 8, but also the entire Subdivision Control Ordinance, and the Signature Streets Ordinance - Chapter 25 as all three are applicable to this development)

The submission did not include the Permitted use table in the format required by Appendix A-8:

The Submission did not include a Market Survey in the format or with the information required by Appendix A-8:

The Submission did not include the Fiscal Impact Analysis as required by Appendix A-8.:

The Submission also did not include the Yield Plan as required by Appendix A-8.

The ordinance says it “Shall include a table listing the respective numbers of lots, units, square footages of non-residential developments, parking spaces, and acreages of any open spaces”.

The submission did include a brief, unspecified, prospective and vague reference to a commercial development, which is not scheduled to begin building for at least 6 year. This does not meet the letter or intent of this requirement. Ironically, despite the complete lack of detail regarding this commercial development, it is the justification the Petitioner is using to argue they need a PUD exemption as a “mixed use” development. Without a complete plan for the unspecified commercial development, it is impossible to approve this PUD. It is likely that once the residential portion is approved, the commercial element of this proposal never materializes due to logistical problems, access issues, economic issues or other factors.)

It is my understand the Planning Director has informed some citizens who inquired that quote “our process also allows proposals to advance to a pre-filing conference, neighborhood meeting, and any further stage if I decide, in my professional judgment, that these requirements can be waived”.

I believe this statement to be a mischaracterization of the wording of the ordinance as it does not grant an exemption on that basis.

Appendix A-8 actually says “The Zoning Administrator may waive any of the aforementioned requirements if upon examination such information or data is not relevant to the review of the Planned Unit Development District”.

That exemption clearly does not apply to the Fairwood PUD.

Additionally, the Planning director of Avon agreed these items were required for a complete submission in an email to the developer on April 16th. When the developer did not submit them, the petition was submitted anyways in direct conflict to her statement to the developer on April 16th.

The items I indicated above are demonstrably relevant to the review of a large residential PUD which will have an extensive impact on current residents of Avon, nearby home values, traffic, tax base, and infrastructure. It would be unreasonable to argue these items are not “relevant” as they are germane and essential to the decision making process of both the Plan Commission and Town Council.

The decisions made by governing bodies on potential development such as Fairwood PUD have very wide implications. I would hope all persons involved in this process would want to make those serious decisions with as much information as possible. An incomplete submittal by the Petitioner hinders that decision making process.

In a rezoning situation (especially a PUD exception) the plan commission must determine the validity of all available evidence and decide whether the Petitioner has shown that they meet all of the legal standards necessary to grant the rezone request. The Petitioner ultimately has the burden of proof of establishing the need to alter the zoning for their proposal. An incomplete application can therefore be subject to judicial review.

It is also incumbent upon zoning bodies in the State of Indiana to follow all submission requirements as Indiana Code section 4-21.5-5-14 prescribes the scope of court review of an administrative decision.

That section provides that a court may provide relief if the agency action is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

Processing a developer's submission without the necessary information would certainly violate Indiana Code as it would be considered "an abuse of discretion" and "without observance of procedure required by law"

For these reasons, I again respectfully request you require the Petitioner for Fairwood PUD to withdraw their current petition, as it is incomplete and therefore invalid per Avon Zoning Ordinance Section 5-7.

I would also note that when developers appear before this Plan Commission and the Town Council they are grossly unprepared and normally come to this lectern without even having copies of their own documents like their fiscal study or traffic study.

Why would they do this? Because they do not expect they will be asked specific, detailed questions about their proposals or the supporting documents either by the Plan Commission or the Town Council. Unfortunately, their assumption is usually correct.

At whatever time the Fairwood PUD or any other PUD is heard in the future, I would ask this body to prove the developer's assumptions wrong by asking the tough questions and intensely scrutinizing ALL supporting documents and studies which have been submitted.

One last note to address, the contemptuous attitude shown by this developer and our town planning director towards the citizens of Avon.

EMAIL 1

This developer wants to put a 300 home subdivision that does not meet our zoning standards and then have it empty onto 2 lane already over crowded Dan Jones road but when citizens ask questions, we are "nitpicking". Absolutely outrageous.

The Town of Plainfield is currently taking actions regarding vacating right of ways to the south of the proposed Fairwood PUD which will dramatically alter the original access plan.

The Town of Avon has been notified of this change and I am aware of the following email exchange.....

EMAIL 2

Here is my question. Who are the people that suck?

Do the homeowners who oppose this development because they do not want a huge amount of traffic thru their neighborhood suck?

Does the Plainfield town council, who listened to the wishes of their citizens and acted accordingly , suck?

Apparently, the planning director believes one of these two groups suck, either the Plainfield Town council or the citizens.

I would ask the Plan Commission to consider this exchange and ask the Planning Director to enlighten us as to which group she was referring to in this email.

(Remarks by Rian Wathen at Avon Plan Commission 7/24/18)