

Aaron Tevebaugh
President
Avon Town Council
6570 E. US Highway 36
Avon, IN 46123

November 5, 2018

RE: Fairwood PUD zoning process
Plan Commission member bias

Mr. Tevebaugh,

The Avon Town Council appoints the Avon Plan Commission. Therefore, I am writing to advise you of a serious violation of the bias prohibition under Indiana Code 36-7-4-223 which says....

A member of a plan commission is disqualified and may not participate in a hearing of that commission concerning a zoning decisionif

(1) the member is biased or prejudiced or otherwise unable to be impartial;

My concerns emanate from an email sent by Plan Commission member Beverly Stafford to Avon Town Planning Director Jodi Dickey on July 3, 2018.

I have attached a copy.

The nonchalant nature of this email and job titles of individuals who were copied on the email appear to indicate that open advocacy for approval of PUD developments at the Plan Commission stage is routine and a team effort.

Since every PUD development proposed in Avon has been approved, we now know the pretenses of neutrality, which all involved parties continually espouse, are false, citizen input is considered merely an obstacle to overcome, and the outcomes are predetermined.

This email reveals clear advocacy and a collaborative effort to build a narrative to counter public opinion and insure the successful passage of a PUD rezone. This is a blatant violation of Indiana Code 36-7-4-223.

Legal Counsel for the Plan Commission has intervened in public meetings to advise members that simple sidebar conversations were prohibited and everything regarding a rezone petition must be on the record. This situation makes a mockery of those admonitions as it certainly surpasses a sidebar and demonstrates a magnitude of bias that is unquestionably disqualifying.

Some of the more worrisome aspects of this communication are:

1. Ms. Stafford was clearly acting as a Plan Commission member not a legislator in this interaction. She references notes she made at the Plan Commission meeting and the entire email is focused on actions to take before the next Plan Commission meeting as the matter was not yet scheduled to appear before the Avon Town Council. Additionally, she asks about the date of the next Plan Commission meeting.
2. These phrases reveal intent:
 - “we need to get that word out”
 - “we also need to get the word out to this group”
 - “I want to be armed with data”
 - “I am also willing to do the leg work on this little project”
 - “Is there a way we can get a statement from the schools”
 - “I also think it would go a long way for the school to address”
 - “I had wanted to get this to everyone sooner”
 - “I might have more”
 - “give me a different directive that would help”

These are not phrases someone uses when they are fact finding in a neutral fashion and any attempt to excuse this situation as such is absurd. Those phrases are about building a counter narrative and offsetting public input to insure passage of the Fairwood PUD. This is further proven by her admission she composed this email from notes she took during a Plan Commission meeting citizens attended to express opposition. During the public comment section of that meeting, Ms. Stafford was obviously using her time to strategize counter arguments instead of sincerely listening to the legitimate concerns of frustrated citizens.

3. The email clearly indicates the purpose of the upcoming meeting with Jodi Dickey is to gather information for building that counter narrative. It is not merely fact finding (which is still prohibited by a Plan Commission member outside of public purview) but was obviously designed to assure a positive recommendation vote at the next Plan Commission meeting.
4. A desire for the school to advocate in favor of the proposed development is expressed with the phrases “I know they aren’t going to come out and say they welcome another neighborhood but.... “. This is not asking for the school’s opinion, but strongly indicating the desire for a statement from them that goes as far as they feel comfortable making, to give the impression they also support passage of Fairwood PUD.
5. Something amazingly coincidental happens after Ms. Stafford suggests to Ms. Dickey that they get the schools involved in the rezoning process and issue a statement of implied support. The Avon school system did not issue a written statement; in an unprecedented move, they actually sent a representative to the public Plan Commission meeting to read a statement (remarkably similar to the one suggested in this email) on the record. This was not random. Someone contacted this individual from the Avon schools and asked them to write this statement and then appear and read it. Who was it? That question must be answered.
6. All information a Plan Commission uses for the decision making process must also be available to the public. Ms. Stafford gathered extensive information in an ex parte manner and did not disclose it. There is also the additional question of how much of it she shared with other Plan Commission members. This concern is validated by the “armed with data” comment. That “data” was not shared publicly at the following Plan Commission meeting, so how and with who was the “data” shared?
The information Jodi Dickey provided to Ms. Stafford was either shared with other Plan Commission members or it was not. Either action is severely problematic.
If it was shared verbally or otherwise with other Plan Commission members, there are concerns about violations of Indiana’s Open Door laws in addition to intentionally shielding relevant information from the public. If it was not shared with them, then other Plan Commission

members were making decisions without all of the available information. Selective sharing of such information is prohibited.

7. It would be naive to think this email represents the complete interactions of Ms. Stafford regarding the Fairwood PUD. It more likely represents the tip of an iceberg regarding biases and advocacy for the project. It would be unreasonable to assume this much effort was exerted after an initial meeting and the same diligence was not maintained over the next three months preceding the final vote. It is much more likely her efforts increased. This is evidenced by the fact the 9/24/18 Plan Commission essentially followed the script she laid out in her initial email. Mr. Cannon gave a statement on the roads just as she desired and the Avon School representative also did exactly as she suggested. What those additional efforts were and who else was involved in them is essential information, and must be fully disclosed to the public.

Had Ms. Stafford recused herself from the Plan Commission discussion and voting as required by law, the outcome of the vote totals would have been changed to a negative recommendation. Her lack of objectivity and refusal to recuse had material impact on the outcome.

The blatant bias of a Plan Commission member must invalidate the Fairwood PUD vote per Indiana Code 36-7-4-223.

Fairwood PUD is scheduled to have it's first hearing at the Avon Town Council on November 15, 2018. This was preceded by and predicated upon a hearing and recommendation from the Avon Plan Commission. Now that we know the Plan Commission process was tainted in multiple ways and violated the lack of bias provisions required under Indiana Code, the Avon Town Council cannot hear or proceed on the Fairwood PUD before complete rectification of this situation.

In the past, questions raised by citizens on legitimacy of processes have been forwarded to Town Attorney Dan Taylor and he has dismissed them by telling the Town their actions were acceptable. You have referred to these situations publicly as an "investigation". That is nonsense. No investigation or report or disclosure of any results was ever done. As Town Council President, you are the decision maker on Mr. Taylor's contract and compensation with the town. It is hardly reassuring that he continually vindicates his employer's actions in questionable situations.

Since Mr. Taylor has made direct campaign contributions to Ms. Stafford, he is not a neutral party and must be disqualified from any investigation or rendering an opinion on any potential outcome.

Given the high profile nature of the Fairwood PUD and potential for litigation regarding the outcome, anything short of a full investigation by a neutral party with public disclosure of the written results, followed by significant procedural remediation prior to any further action by the Avon Town Council would be irresponsible.

Sincerely,

Rian Wathen
1480 Laurel Oak Dr.
Avon, Indiana 46123

CC: Greg Zusan
Beverly Stafford
Marcus Turner
Steve Eisenbarth

James Petrides

Tom Klein
Jodi Dickey

From: Beverley Stafford <beverley.stafford@yahoo.com>
Sent: Tuesday, July 3, 2018 11:40 AM
To: Jodi Dickey
Cc: Tom Klein; Ryan Cannon; John Taylor
Subject: PUD for Fairwood

Follow Up Flag: Follow up
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Hi Jodi -

I know we are meeting on Friday (and that you are currently out) but I had several thoughts during the Plan Commission meeting last week that I jotted down - I gave myself the most homework but I did have questions for staff and just some general thoughts that I wanted to share with everyone.

I already talked to Ryan about the right of way on Dan Jones - there was a suggestion that the developer donate the right of way to widen Dan Jones in the future - he told me that is standard practice and how we have already benefited from that with other examples including my own neighborhood and the widening of 200 north - we need to get that word out.

We also need to get the word out to this group about the plans for the Dan Jones widening - I think that the bridge to 100 south is scheduled to happen next year - is that right? What is the plan for the leg from 100 south to the Plainfield border so we can also get that out there - yes, I understand it is all subject to change but our intentions at this point.

In our meeting on Friday Jodi - I want to talk about the comparison of R2 to the proposed PUD - I know that it doesn't exist any more but I would like to compare the neighbors of similar density that have been around for a while - It almost felt offensive to me the way the residents of Bridgewater were profiling neighborhoods that I think are very similar to mine - which is full of really nice families that I don't think are a drain on our community - I want to be armed with some data around that. Is it possible to give me a list of neighborhoods that have been approved since 2000 - I would like for the list to include zoning and price point (if we know it) I am also willing to do the leg work on this little project if you can direct me to the right place - or I would be willing to supply you with a list of neighborhoods I am especially interested in after I get my tour I am planning - I want to record the advertised price points for the neighborhoods that still have signs up at the entrance in my research. Let me know which is easier for you and your staff.

Tom - there was an allocation that we don't have our events calendar on the website up to date during the meeting - and it sounds like the guy has an email acknowledgement that we made a mistake. Could one of your interns audit our public notice section that we put out at the beginning of the year of all meetings and our events calendar to be sure we have captured everything? More than ever we need to be conscious of this - in my 12 years on the council we haven't had this much interest in the business of the town - in so many ways it is positive because when the opposite is true we complain of apathy but if we want engagement we have to make it easy and be prepared.

Is there a way that we can get a statement from the schools that talks about the importance of responsible growth - I know they aren't going to come out and say they welcome another neighborhood but I also believe that the schools administration doesn't support a moratorium on

development either - there might be a group of misinformed parents and tax payers that think this will help but it is my understanding that the school recognizes the need for development. I also think it would go a long way for the school to address the safety concerns around adding more homes near the high school (I don't actually understand the logic brought forward in the public comment binders but it is there) and redirecting the southern entrance/exit from the high school to the roundabout.

I had wanted to get this to everyone sooner but have been swamped - I might have more once I get my tour in but if you can help me with the neighborhood list or give me a different directive that would help.

I also had another question - it was suggested at the town council meeting that the plan commission was going to have a meeting on July 23 and July 24 - I have not gotten any communication around that - is that the case? I need to save the additional night on my schedule if so.

Thank you and have a safe and happy 4th!
Bev