

Chairman Petrides
Avon Plan Commission
6570 E US Highway 36
Avon, IN 46123

July 2, 2018

RE: Fairwood PUD Application

Dear Chairman Petrides,

Section 5-7 of the Avon Zoning Ordinance specifically states...

“Upon completion of elements 1-4 of this Section, the proposed PUD zoning district shall appear before the Avon Plan Commission for an informational presentation of the proposed PUD zoning district”

Contained in item 2 of those 4 mandatory elements required before informational presentation at a regular Plan Commission meeting is the following requirement.

“The submitted PUD zoning District request shall consist ofSupporting information as identified in Appendix A-8 of the Town of Avon Zoning Ordinance “

Appendix A-8 is titled “Minimum Submission Requirements for Planned Unit Developments District”. 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.

The following required submissions mandated by Appendix A-8 of the Town of Avon Zoning Ordinance appear to be missing, improper, or incomplete:

D. Comparison of Proposed PUD zoning standards and existing Avon Zoning Ordinance standards:

(a) Shall use the current standards of the Avon ZO as the basis for the comparison.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting. (Also, it should be noted, because of this property's location and proposed usage, this comparison must contrast the proposed PUD zoning standards against the existing Avon Zoning Ordinances of Residential Matrix R1- Chapter 8, Subdivision Control Ordinance, and the Signature Streets Ordinance - Chapter 25 as all three are applicable)

E. Permitted use table:

(a) Shall use alternating colored background shading to distinguish and separate individual

proposed uses; and

(b) Shall include a legend or key identifying indicators for "Permitted," "Conditional,"

"Prohibited," and any other manner of listed use.

(c) Shall include any specific restrictions for any specified uses either

(1) Within the text of the permitted use table or

(2) As a numbered footnote, referencing a list of specific restrictions.

(d) Shall provide a list of uses specifically prohibited within the proposed PUD zoning

district, and

(e) Shall include a note stating that uses not expressly listed within the table shall be considered prohibited.

F. Comparison of permitted uses and existing Avon ZO standards:

(a) Shall use the current permitted uses of the applicable district of the Avon ZO as the basis for the comparison.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting.

I. Market Survey:

- (a) Shall identify the extent of market demand for the uses proposed in the planned unit development;
- (b) Shall provide analysis of:
 - (1) Demographics;
 - (2) Sales potentials;
 - (3) Competitive alignment;
 - (4) Assessment of market share; and
 - (5) Market positioning of each component of the planned unit development.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting.

J. Fiscal Impact Analysis:

- (a) Shall indicate the anticipated fiscal impact of the planned unit development on major taxing bodies which shall include, but not be limited to:
 - (1) The municipal corporation,;
 - (2) School district(s); and
 - (3) Other taxing bodies as identified by Town of Avon staff.
- (b) The study shall include detailed estimates of:
 - (1) The expected population of the development;
 - (2) the operating cost to be incurred by each taxing body;
 - (3) Any additional major capital investments required, in part or in whole, because of the planned unit development;
 - (4) The value of any land to be dedicated or donated; and
 - (5) The revenue generated for each taxing body by the planned unit development to offset service and fiscal demands created by the planned unit development.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting.

H. Yield Plan

- (a) Shall demonstrate potential development of subject site in accordance with provisions of existing Avon Zoning Ordinance districts identified in (g) above.
- (b) 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.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting. (A brief, unspecified, prospective and vague reference to a commercial development, which is not scheduled to begin building for at least 6 years, 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.)

M. Sample Floor Plans and Elevations;

- (a) Shall include typical floor plans and elevation plans, including foundation styles and building materials, for all potential buildings.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting.

N. Sample Lighting Plan;

- (a) Shall depicting the proposed location, style, size, and level of illumination of all outdoor lighting fixtures for the planned unit development for any proposed right-of-way, entry feature, or required open space.

Petitioner for Fairwood PUD did not meet this minimum submission requirement of Appendix A-8 prior to the 6/25/18 Avon Plan Commission meeting.

Although Appendix A-8 does say “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.

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.

Additionally, Avon Zoning Ordinance 5-7 provides “Any person or persons in attendance at the Neighborhood Meeting may submit written questions, concerns, or desired changes to the petition file a minimum of ten (10) days prior to the scheduled Informational Meeting” and “Copies of comments submitted by persons in attendance at Neighborhood Meetings will be provided to Avon Plan Commission members as indicated in (ii) above”.

It does not appear that all written questions or concerns from affected property owners were included in the Plan Commission member’s packets for the 6/25/18 meeting. I have confirmation that several did submit written questions and concerns, per the ordinance.

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.

For these reasons, I 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.

Sincerely,

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