

The Planning and Zoning Commission of the Town of Avon held a *special GoToMeeting* on Tuesday, February 22, 2022. Present were Peter Mahoney, Chair, Lisa Levin, Vice Chair, Mary Harrop, Dean Hamilton, Joseph Gentile, Chet Bukowski, Robin Baran, and Alternates Elaine Primeau, Thomas Armstrong, and Julie Rousey. Also present was Hiram Peck, Director of Planning and Community Development, and Town Attorney Kari Olson.

Mr. Mahoney called the meeting to order at 7pm.

OTHER BUSINESS

Legislative Updates and Training Requirements – Town Attorney

1. Basic P&Z Commission training and legal requirements, and
2. New Land Use legislation and its implications for Avon

Kari Olson, Town Attorney, displayed a PowerPoint presentation starting with the Freedom of Information Act (FOIA). The purpose of FOIA is to promote open government and to provide the public with the right to attend meetings and obtain public records of some public agencies. The Planning and Zoning Commission is a public agency and all its members are public officials meaning that FOIA applies to you. A meeting is any hearing or other proceeding of any public agency or the convening of a quorum of a multi-member agency and communications to and from a quorum in which you are discussing or acting on any matter over which you have control or advisory power. The public is entitled to advanced notice so they have an opportunity to hear what is being discussed. She explained that a “meeting” as defined under FOIA is a quorum of your agency discussing any business under which you have supervision or control. The requirement for a having a quorum was established to ensure that important decisions are not made by only a few people. A full quorum needs to be present at all times for any substantive actions to occur. Illegal meetings can happen anywhere. A quorum of the PZC could run into each other at the Town Hall, or via email, texting, on the telephone, or on social media. There are situations where a quorum is not a meeting; for example a commission can get together at someone’s house for dinner and as long as no substantive business is discussed it is not a meeting. She noted that members should always be cautious when using the “reply all” in an email.

In response to Ms. Levin, Ms. Olson explained that, for example, if three members of a commission (not a quorum) were communicating via email that does not constitute an illegal meeting. However, as land use officials, when an application is pending that has a public hearing component the members should not be communicating amongst themselves as everything should be discussed within the public forum because otherwise it is unfair to the applicant.

Ms. Olson continued by explaining that people have rights to access meetings, access/notice of an agenda, access to minutes; people have a right to attend a public meeting without being required to register or disclose who they are. People cannot be denied the ability to speak if they choose to not give their name. People can also record, photograph and broadcast meetings. At regular meetings where there is no public hearing there is no right of the public to speak or be heard. This is allowed at the discretion of the commission but must be fair such that if one person speaks everyone that wishes to speak must be allowed. Executive Sessions are permitted under FOIA but require a 2/3 majority vote in an open session to enter into an executive session; the basis for the session must be stated.

Certain people (e.g. town attorney for pending litigation or Town Staff) may be called into the session for information but must leave once the information has been delivered. Voting is not permitted in executive sessions; all voting should be done in the public eye.

In response to Ms. Levin, Ms. Olson explained that under the land use Statutes an appellate has the right to ask the court for discovery beyond the scope of the record (e.g., emails) when they have reasonable grounds to believe that it would be relevant to the appeal. If someone knows that there was an *ex parte* communication they might ask the court for discovery on that. In addition, if someone brings a claim to Superior Court that a decision deprived them of a property right, separate from a land use appeal, they could subpoena any member of the commission and ask you to bring your emails. Ms. Olson suggested that it's a good idea to create a separate email address for Town business.

In response to Ms. Baran, Ms. Olson explained that if anyone sends you anything during a pending application you should forward that information to Mr. Peck right away so that it can be made part of the public record, as well as distributed to the rest of the commission. This type of *ex parte* communication is what can get commissions into trouble with the courts.

In response to Ms. Levin, Ms. Olson explained that it's ok to respond to the sender of the email that you are forwarding their questions to the Planning Director for the record. If an email is received after a public hearing is closed but a vote not yet rendered it is a good idea to respond to the email by noting that you are passing the information along to the Planning Director and/or the Town Attorney.

Ms. Olson continued her presentation addressing the Planning and Zoning Commission noting that the duties and authority is outlined in Title 8 of the CGS. Zoning commissions adopt zoning regulations, amendments, and the zoning map. Planning commissions must consider the planning objectives of the Town such as the POCD, the subdivision regulations, and subdivisions of land. Zoning regulations are important for uniformity; all regulations should be uniform for the kinds of buildings permitted and land uses throughout a given district. The idea of uniform zoning has started to fray somewhat especially since the adoption of PA 21-29 on October 1, 2021. The focus is on housing opportunities, affordable housing, and multifamily housing. The purposes of the Federal Fair Housing Act must now be taken into account when creating zoning regulations to make accommodations for people who may have a need (group homes are one example). She addressed application deadlines noting that public hearings must close in 35 days but the commission has 65 days to make a decision after the hearing is closed. Public hearing notices must be advertised/published in a newspaper of substantial circulation. She recommended that everything be posted on the website. She explained that the record of the meeting is public such that you should be cautious about what you say on the record (e.g. do not make comments that may prejudice any application or make any predeterminations). Applicants have rights to examine witnesses during a public hearing. There should be no *ex parte* communications. You should not have any personal interest (e.g., owning property within 100 feet) in any matter or application that is pending before the commission. She explained that commission members must keep an open mind at all times during application proceedings for all applicants but noted that conditions can be placed on approvals to try to ensure that applicants do what they are supposed to do. The Commission is permitted to hire its own experts (at the applicant's expense) to review applications and projects if they have concerns but all proposals/applicants must be

treated the same. Applications that meet all the terms of the Zoning Regulations (i.e., permitted used) should be approved and cannot be denied because you don't like the use or the applicant; ultimately the Commission determines if the request fits the Regulations. She explained that for affordable housing (8-30g) the burden shifts from the applicant to the commission to prove why an application cannot meet the public health safety and welfare requirements to allow it to move forward. Ms. Olson indicated that the grounds for denying an affordable housing application are very tough (e.g., no reasonable access to sewage control or available potable water or significant safety risk). In accordance with State Statutes, the Commission is obliged to work with an applicant to make reasonable modifications to a proposal to try to make it fit. If this doesn't work the application goes to the Superior Court where the burden is on the Commission adding that it's almost impossible to win these cases anymore. She explained that she encourages towns to offer developers other options that are not as onerous or intense (i.e., require less affordable units while retaining some zoning controls under the Regulations).

In response to Ms. Baran, Ms. Olson explained that Avon created an AHOZ zone which is a compromise affordable housing regulation that reduces the number of units that need to be affordable and reduces the magnitude of affordability for some of the units (i.e., it's easier to meet the affordability for 80% vs. 60%). The AHOZ does not have the burdens of an affordable housing plan but would likely still have to be deed restricted. AHOZ would allow the Commission to control traffic and location of curb cuts as well as landscaping and buffering.

Ms. Olson continued her presentation by explaining that any conditions of approval need to be clearly spelled out in the Zoning Regulations and within jurisdiction of the Commission. The appeal period is 15 days from the published notice of decision. Site plans are administrative decisions while a zoning map amendment is a legislative decision. The courts give much more latitude with legislative decisions.

Ms. Olson addressed PA 21-29 (effective October 1, 2021) noting that Zoning Regulations must now include certain provisions such as the protection of environmental resources, address disparity in housing needs, access to education opportunities, promote efficient review of land use applications. The Regulations must affirmatively further the FFHA meaning it's not enough to say that something is generally not in character with a district unless the character of a district (e.g. a village district) is clearly spelled out in the Regulations. Make allowances for development of housing that meets the needs of the State Housing Plan which will likely mirror the notion of affordable housing and housing diversity options. The Public Act also includes optional items such as solar wind or renewable energy sources and incentives for developers who use them, provide for cluster housing, floating zones, overlay zones, and planned development districts. Vehicle trips will be allowed to be considered instead of LOS (level of service) and traffic mitigation strategies can be provided. Ms. Olson explained that you are prohibited from putting things in the Regulations that deny anyone from have a small cottage food operation in a residential zone. You cannot establish a minimum floor area that is greater than the minimum floor area required by building, health and safety codes. It is going to be prohibited to require more than one parking space for a one-bedroom unit or efficiency or more than two parking spaces for a two bedroom unit unless the Town opts out. She noted that in the past there have been too many parking space requirements for most developments such that the result is a sea of parking lots that are unnecessary and cost prohibitive for giving housing diversity.

In response to Mr. Armstrong, Ms. Olson confirmed that the rules pertaining to minimum square feet are applicable to condo associations where they have their own land and roadways and sewer systems. She explained that the rules would not apply to existing developments but clarified that the new legislation is not just to provide affordable housing but is to provide housing diversity. Not everyone can afford a single-family house and we want to encourage multi-family options, condos, and affordable units and get away from the single-family house on a three-acre lot. It's not a one size fits all.

Ms. Olson addressed ADUs noting that the State wants to create more housing options to make Connecticut more friendly and accessible for people of all walks of life, interests, and financial means. The Regulations should designate zoning districts where ADUs are allowed and ADUs should be allowed by right on the same lot as any single-family house. If the Town doesn't opt out the Town's regulations for ADUs will be void and the State's regulations will take its place. She explained that you cannot force an applicant to make their ADU affordable like 8-30g and additionally, the legislature will not let towns use ADUs to meet their obligations relative to affordable units under 8-30g.

In response to Ms. Levin, Ms. Olson indicated that the only two opt out items in PA 21-29 are for parking and ADUs.

Ms. Olson recommended that Avon's ADU regulations be closely compared with PA 21-29 to see if any improvements could be made to the Town's ADU Regulations to allow for other housing options without causing any significant impacts.

Ms. Olson addressed Affordable Housing Plans (AHP - 8-30j) noting that June 1, 2022, is the deadline for towns to adopt a plan. This can be coordinated with the update to the POCD if the timing works. The AHP should be posted on the website.

Ms. Olson addressed extensions of land use approvals; formerly the rule was five years to complete the build with possible extensions up to 10 years but commissions could review the project again. This is no longer the case and approvals granted prior to 7/1/2011 now have a total of 19 years from the date of approval, if not expired as of 3/20/2020 or are not expired today. We now want to be thinking long term, as much as possible, relative to Zoning Regulations and conditions on approvals. Inland Wetlands permit approvals as part of a project now follow the same timeline of approvals as the special permit/exception and site plan approval.

Mr. Peck thanked Ms. Olson for her very helpful information and presentation.

In response to Ms. Levin, Ms. Olson explained that it appears on the face of the legislation that the Commission would have no authority to require an applicant to come back before them at some point to add conditions to an approval that extends out 19 years. She noted, however, that she feels a commission could add conditions to anything that extends beyond 19 years. Any control that commissions will ultimately have is not yet known.

Mr. Armstrong said that if an applicant came back asking for a modification before the 19 years is up the commission would have the right to review.

Ms. Olson agreed adding that she believes there will need to be some modifications made by the legislature to clarify certain issues.

There being no further business, the meeting adjourned at 9pm.

Linda Sadlon
Avon Planning and Community Development