The Planning and Zoning Commission of the Town of Avon held a meeting at the Avon Middle School on Tuesday, July 23, 2019. Present were Thomas Armstrong, Vice Chair, Peter Mahoney, Mary Harrop, Lisa Levin, Joseph Gentile, Brian Ladouceur, Jr., and Alternates Elaine Primeau, Linda Preysner, and Jill Coppola (none of the alternates sat). Absent was Linda Keith, Chair. Also present was Hiram Peck, Director of Planning and Community Development.

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

**PUBLIC HEARING**

App. #4895 - Blue Fox Run Golf Course, LLC, and Nod Road Properties, LLC, owners, The Keystone Companies, LLC, and Sunlight Construction, Inc., applicants, request for Zone Change from A to RU2A, 32.46 acres, 65 Nod Road, Parcel 3290065, and 4.82 acres, 117 Nod Road, Parcel 3290117

The public hearing was continued from July 9.

Present were Bill Richter, Bill Weckman, Jeff Peracchio, and Gary Guimond, Richter & Cegan, LLC; Dave Ziaks and Scott Hesketh, FA Hesketh & Associates; Tony Giorgio, Keystone Companies; Dennis Quinn, CTHerpConsultant, LLC; Dr. Michael Klemens, conservation biologist; Bill Ferrigno, Sunlight Construction; Tom Fahey and Carl Landolina, Fahey & Landolina, LLC; and Brian Smith, Robinson & Cole.

The hearing was opened for public comment.

Lynn Pollack, 7 Saddle Crossing, noted information received from the applicant telling people not to be misled as development will happen…all the signatures and nostalgia won’t change it…..Save “Save Nod Road” from themselves…Save Nod Road isn’t saving anything and don’t allow a small minority to dictate Avon’s future. We are insulted by the applicant’s campaign of fear and threats of affordable housing. She submitted copies of ads seen in various publications.

Maureen Brouillard, 35 Gatewood, noted her opposition to the application. She commented that she lives in Hunters Run, which has 185 acres, 263 units, and is an abutter to the golf course. 163 of the units are represented by 263 residents who signed the legal petition that was submitted to oppose the application. The Board of Directors at Hunters Run also opposes the application. She asked that the application be denied.

Jim McGarrah, Sylvan Street, commented that he is not in favor of the application. The Town spent $2M to acquire 39 acres on West Avon Road to preserve the site for the Town. The Town has the same opportunity here and cost free; all that is needed is a denial of the zone change which would keep the site in the existing correct zone and keep the land near the River open. Sconsett Point (Sunlight Construction) was built 20 years ago in the 100-year and 500-year floodplain; no finished basements were a condition of the approval. The same developer proposes to build on the subject site. The Town is inviting a problem by changing the zone and allowing development in a floodplain. Regarding the Petition and the 20% of land owners, the Commission will be told whether the conclusion is reached such that there needs to be 5 out of 7 votes to approve the zone change.

Lynn Kenney, 44 Country Club, commented that she has 2 kids in Avon’s Schools and the Schools are already overcrowded, noting her disagreement with the expert testimony received for this application. Kindergarten classes are being added and redistricting is ongoing. A music room is being used as a classroom at Pine Grove. All this is before the proposed development. Golf is a dying sport. Daycare is very costly for many of the households in Avon. There is no way the tax benefit to the Town from the proposed development will be as has been represented. There will be more traffic, more chaos, and more school crowding. The Town is already an eyesore with all the development that has taken place; we need to stop and leave the green space and agricultural land alone.

Carol Griffin, 95 Haynes Road, commented that Nod Road has been agricultural since the time the Indians lived there’ it’s been zoned agricultural since zoning was first adopted in Avon. Agricultural generally means growing of plants and while it was a stretch when the Commission allowed a golf course on the subject site at the time it seemed to make sense. The Commission should have a very good reason to change the zone and money cannot be the reason, although it appears that way. Once you change the zone, the agricultural designation on this site is gone and there isn’t much agricultural land left in Avon so let’s preserve the Town’s beauty and character by denying this application.

Alan Luberk commented that he lives in Hartford and grew up in Avon but has been gone for 20 years. He noted that he has watched lots and lots of development all over Avon since 1995. The 90s boom given the low interest rates and CT tax structure resembles a Ponzi scheme which has devoured anything we have seen in the Town that attracts residents and the type of community that attracted most people here in the first place. Overcrowding of the schools has happened and any type of perceived tax benefits will be eaten up by expenses. The Town has turned into an unmanageable metropolis.

Pam Oday, 275 Waterville, commented that traffic in Avon right now is bad; it took her 20 minutes to travel 2 miles away from her house.

Susan Barney, Bloomfield resident, asked that the zone not be changed adding that she is a member of the FRWA. The subject site is flood prone and has high quality soils. There is a reason that there is a lot of open land and no houses on either side of the Farmington River in Avon. Avon’s POCD notes that undeveloped floodplain plays a key role in protecting residences and businesses from damaging weather events due to climate change. Storm water retention and water quality are enough reason to leave the land alone and not build.

Rinaldo Tedeschi, 100 Woodford Hills, commented that the request is for a zone change and all the extra information supplied is irrelevant because the decision should be based only on how this zone change would benefit the Town. A zone change would result in no benefits to the Town but would be financially beneficial to the land owner. The site is floodplain and doesn’t need to be developed and it’s ridiculous to even consider it. Many people worked hard to get the Wild and Scenic designation for the Farmington River. There is strong public opposition to the zone change and it should not be approved under any circumstances.

Mr. Smith, representing Nod Road Preservation, presented his summary noting that rezone petition #4895 should be denied. It is inconsistent with the 2016 POCD; Chapter 4, Natural Resources, notes that Avon’s natural resources are a tremendous value as they define community character, provide recreational resources for residents, affect health in a positive way, provide environments needed for survival of animals and plants that need protection for future generations. He referenced information from Dr. Klemens who indicates that the proposal would fragment a large and continuous area of open space and likely to cause unreasonable harm to public trust in the natural resources of this State, and particularly Avon, while also posing a threat to human health, safety, and welfare. He indicated that the Commission does have jurisdiction to consider wildlife and plant habitats, as well as many other things, contrary to representations made by the applicant. The Commission when making a decision on a rezone shall take into careful consideration the POCD and shall state on the record its finding on consistency of the proposed change with the POCD, per Connecticut General Statutes. He commented that what he took from the testimony from the applicant’s consultant (Mr. Poland) is that the proposal is consistent with most of the POCD but not all of it. Mr. Smith noted his agreement that the proposal does not match up with the POCD. Flooding is a major concern that must be considered by the Commission during the rezone stage, which is right now. The applicant claims that flooding concerns are part of the design criteria, per the Zoning Regulations, such that the Commission doesn’t need to think about it now. Fill is proposed to elevate the proposed houses which means there may be a threat of flooding. The applicant acknowledges that the zone change would increase traffic congestion. There is a feasible alternative to the proposal and that is the Transfer of Development Rights (TDR) Regulation, which would not have the same adverse impacts that the current proposal has. The rezone application is premised upon a promise to dedicate 180+ acres of open space, which is illegal to require, condition, or enforce at this stage. He confirmed that while he believes the applicant is sincere in their proposal to dedicate land, it is not something that should be proposed at this stage as it is improper and unethical. Mr. Smith commented that the proposal constitutes spot zoning, as it’s only a small portion of the golf course property within which the rezone is being sought. Unlike the east side of Nod Road, the subject rezone area is in the floodplain. The POCD makes it clear that housing is not suitable in the proposed area. The Commission should not be afraid to deny this application for fear of an 8-30g application that does not require a rezone. An affordable housing application (8-30g) must still not be a threat to public health and safety and given what is known about the site location an 8-30g is no sure thing. The Commission must protect the Town and we are here to back you up. Nod Road Preservation is dedicated to preserving this land not for the view but rather for flood storage, farmland preservation, and protection of the wild and scenic River. Mr. Smith concluded by asking that the rezone be denied. He submitted copies of his notes to the Commission.

Mr. Richter indicated that the land is not a floodplain, despite everything that has been said. The 100-year floodplain, as defined by FEMA, FIRM, US Army Corps of Engineers, and the Town of Avon, is at elevation 162.5. The land area proposed for the zone change (outlined in red on the maps) is all high ground above the floodplain (the area shown in blue on the maps is the land that is below the 162.5 floodplain line). This information is per the Zoning Regulations as well as affirmed by the 2004 site plan and special exception approvals granted by this Commission. None of the proposed units or roads are located in the 100-year floodplain. He noted that contrary to recent presentations, we are thinking about this now. Per Avon’s Regulations, any unit with a basement must be one foot above the 100-year flood line and the first floor elevation must be nine feet above that, which is more than 6 feet above the 500-year floodplain at elevation 166. Regarding spot zoning, the only land being requested for the zone change is the area needed for the proposed development. He noted that we are not asking for any more land because we don’t want the impression that others thing could happen. The conservation area can be maximized as part of the concept plan. The zone change area could have been extended closer to Nod Road to square up the area to be consistent with other RU2A areas along Nod Road but more land is not needed for the concept plan. Regarding statements about the site being flood land, there are close to 80 acres of developable land, as defined by Avon’s Regulations; land that is not wetlands, floodplain, or steep slopes. The zone change area has over 34 acres of developable land with another 37.5 acres of available land for development including Nod Road frontage. The present land owner agrees with the concept plan that the remaining 182 acres, located outside of the zone change area, would be placed in a conservation easement; the proposal benefits both sides. He explained that there are thousands of residential developments around golf courses nationwide. Mr. Richter concluded by noting that Farmington Woods is one such development that he has worked on for over 40 years here in Avon.

Dennis Quinn addressed habitat fragmentation and this parcel serving as a corridor for wildlife dispersal. The site is already highly fragmented by both Nod Road and Route 44 preventing access for wildlife, both in and out of the site, without potential death from crossing roads. He explained that if the site were to return to an agricultural use, it has been widely shown in scientific literature that agricultural land is not suitable for wildlife. He stressed that this is not his opinion but rather it is the overwhelming opinion of the scientific community regarding agricultural land. He noted that he has provided some of the most relevant studies as part of his PowerPoint slide presentation. The subject proposal would allow better/improved wildlife management on 180 acres of the golf course, which is a rare occurrence in a development project that he has never before encountered.

Scott Hesketh addressed traffic and referenced a letter dated July 8, 2019, from the traffic consultant for Save Nod Road to the Commission…Item #3 reads…”*the surrounding roadway network can accommodate the change in use with its additional traffic volumes although there are existing problems in the area that will apparently continue to exist and no recommendations for corrections have been offered most likely because these are existing problems only minimally impacted by the subject proposal and/or feasible improvements are not practical”.* Mr. Hesketh clarified that this is not his opinion but rather the opinion of the consultant for Save Nod Road. He referenced his testimony from the last public hearing such that there is potential for roadway improvements at the intersection of Nod Road and Route 44 and Route 10 that would improve the Level of Service (from LOS F to LOS D) at the intersection during the morning peak hour. While such improvements have not yet been designed and there may be a need to obtain additional Rights of Way and/or easements in order to accomplish the work but the potential does exist for the applicant to provide improvements as mitigation. He explained that in his opinion mitigation is not necessary, as indicated by the minimal impacts of the proposal, but confirmed that the applicant is willing to make improvements if possible. He referenced UConn crash data information and CT DOT traffic volume numbers. Nod Road has about 135 accidents for every 100 million miles of road traveled; Old Farms Road is 650 accidents; Country Club Road is 205 accidents; Hollister Drive is 325 accidents; and Stratton Brook Road (Simsbury) is 235. All these roadways are similar in that they connect traffic to and from major State highways. He indicated that per the information from Conn DOT and UConn it appears that Nod Road is not a significantly dangerous intersection. He explained that from information he has studied very recently it appears that the threshold to reach before real concern is noted is 185 accidents per 100 million miles of travel; Nod Road is significantly lower than 185. Mr. Hesketh concluded by noting that the belief is that the zone change can be accommodated by the local roadways and especially so if the aforementioned improvements could be accomplished.

Mr. Fahey stated that all the points raised by Mr. Smith have already been addressed in their answers to the Town’s questions.

Anthony Giorgio, managing director of Keystone Companies, noted that he is a co-applicant. All the activity will be above the 100-year floodplain; all 80 acres is located above the 100-year floodplain and the majority of the land is above the 500-year floodplain. He explained he has done business with Mr. Ferrigno for a long time and would not be here and insult your intelligence by asking for something that is not consistent with Avon’s Regulations. The concept plan is within the Regulations. He noted that his intention is not to engage in any disrespectful behavior towards the opposition. Key points that should be focused on are private property rights, responsible development, environmental preservation, economic benefit to Avon, maintenance and improvement to a public golf course, traffic improvements, and a long-term community benefit that most residents will experience. The concerns raised by a small minority are about a borrowed vista that puts at risk rights of private property owners. The signatures received from those who are against the proposal is a small minority and many may not even be Avon residents. The Commission is being asked to evaluate all the information/expert testimony received and make a decision that will benefit all of Avon as well as all residents of the Farmington Valley. A zone change approval would result in an increase in annual tax revenue, road improvements at Nod Road and Route 44, preservation of the streetscape on Nod Road, the need for homes for empty nesters will be met, an improved 18-hole golf course, and 80% of the site will be preserved for future generations as only 20% of the site will be developed. It has been represented that the best way to preserve the site is to leave the zone as is, which is not true. Property owners have rights – 80 acres of land exist outside of the floodplain that could be developed on this site. Solar farms and 8-30g applications are real possibilities and options for property owners, not scare tactics. He noted that the concept plan that was presented was very detailed; no smoke and mirrors. He noted that he has a contract obligation with the land owner such that if they are successful in their endeavor that a conservation easement will be placed over land to the Town’s benefit. He acknowledged his understanding that a zone change is discretionary on the part of the Commission and asked that the facts be reviewed and the emotions removed. He concluded by noting his confidence that the Commission will make the right decision that will benefit the silent majority.

Mr. Smith noted that the comments just made reinforce his (Smith) point such that Mr. Quinn said that this is an opportunity to manage wildlife for 183 acres beyond the rezone area; this is completely counter to a rezone application. Mr. Smith commented that the applicant may be telling the truth but it doesn’t matter because legally this is the wrong time to be having such a discussion. It is inappropriate because it is trading a conservation easement in return for a rezone.

Mr. Klemens commented that he could not see the documents from the scientific community demonstrating their united agreement that agricultural uses are bad for biological diversity; the scientific community is not monolithic in its sense of the value of agricultural land. There is a difference between open land and bricks and mortar when it comes to wildlife movement. To dismiss farmland as having no biodiversity value is incorrect and it is not the opinion of the scientific community as it varies species by species. He noted there have been other development projects in CT where large amounts of land (far more than 183 acres) were set aside as open space and managed for a variety of species, including some on the State endangered list. He noted that he served on the CT Siting Council adding that the Council would never allow development in the 500-year floodplain. The solar field in Simsbury is a temporary use and there is most likely a plan to restore the site to an agricultural use at some point. There’s a big difference between a solar field, a farm, and a golf course as opposed to bricks and mortar with regard to ecological resiliency and future purposes.

Mr. Smith referenced comments made by Mr. Hesketh regarding their traffic consultant’s report. He noted that their traffic consultant is going to tell it like it is; if it’s not bad he will say that. Mr. Smith reminded the Commission that their traffic engineer said that the best solution is what we’re suggesting overall such that the way to minimize traffic impacts is to deny the rezone.

In response to Mr. Armstrong and Ms. Levin, Mr. Fahey explained that while the Plan of Conservation and Development (POCD) is required to be updated every 10 years, it is an advisory document that must be considered. Many sections of the POCD were reviewed and referenced with regard to the subject application. The Comprehensive Plan (the Zoning Regulations and the Zoning Map) is ever evolving and must be taken into consideration to provide consistency. He referenced Mr. Poland’s comments such that the aforementioned documents are not 100% binding but the Commission needs to review them when making decisions.

In response to Mrs. Harrop’s question, Mr. Klemens stated that leases for solar fields are generally 30 to 40 years followed by a decommission plan to remove all the solar components and restored to another use. Solar is a temporary use that wildlife can continue to move through, which is very different from bricks and mortar.

In response to Mr. Ladouceur’s question, Mr. Klemens confirmed that the solar lease could be renewed at the end of the 30-40 year time period.

Mr. Giorgio commented that solar farms need clear access to sunlight. All the trees on the subject site located above the floodplain would need to be cut down so the solar panels could operation. Other options will dramatically change the land forever, whether temporary or not.

In response to Ms. Levin’s question regarding the difference between AHOZ and 8-30g,

Mr. Smith explained that 8-30g developments are governed by a State Statute that permits developers to set aside a certain amount of housing that meets income qualifications. Avon adopted the AHOZ Regulation to address the 8-30g State Regulation but developers do not have to use the AHOZ Regulation. Developers could come in with an application that they say meets the health and safety regulations and try to impose it on the community. The Courts typically would rather look at a Town’s own enactment first such that if a developer is thinking clearly that they would come in under the Town’s Regulation rather than submit a straight 8-30g without a rezone. Applications for 8-30g are faced with the same burdens of public health and safety; it’s not a sure thing and the Courts have been turning down more than have been succeeding. Nod Road Preservation is asking that everyone use their common sense in review of all the evidence presented. The Comprehensive Plan is the Zoning Regulations and the Zoning Map, such that if a rezone is granted the Comprehensive Plan is being changed because a change is being made to the Zoning Map. The POCD is an advisory document that the Commission must review and consider and the law states that the Commission must determine whether the subject rezone is consistent with the POCD when making a finding. Mr. Smith respectfully submitted that the application is not consistent with the POCD and asked that the application be rejected.

In response to Mr. Ladouceur’s questions, Mr. Smith confirmed that anything located within the 100-year and 500-year floodplain is definitely within the floodplain. Half of the alluvial plain (wetland) area shown on the Town’s Wetlands Map is within the rezone area. He confirmed his understand that Avon’s Regulations permit some building in the 500-year floodplain is allowed with restrictions such as no first floor and inhabited areas located below the 500-year line. He noted that the proposal is not appropriate in the subject location when you take into consideration the entirety of the proposal; the floodplain is only one issue.

In response to Mr. Ladouceur’s questions, Mr. Fahey explained that while the 100-year floodplain is the standard and the requirement for building. Avon’s Regulations go behind this such that the first floor elevation be at the 500-year floodplain. All property owners need to know what the rules are when they look at a piece of property and want to build. The 500-year floodplain is not the standard, the 100-year floodplain is the standard per the DEEP.

There being no further comments, the public hearing for App. #4895 was closed.

Mr. Mahoney motioned to table App. #4895 to the September 10 meeting. The motion seconded by Mr. Gentile received unanimous approval.

**OTHER BUSINESS**

Update on Avon Village Center

Mr. Peck reported that revised plans have just been received yesterday for Avon Village Center relating to earth removal, temporary roads, drainage, and storm water management. The Staff has not yet reviewed the plans. The special meeting to be held on August 13 will be to discuss the Avon Mill Apartments and Avon’s Regulations relating to Café permits.

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

Linda Sadlon

Avon Planning and Community Development