The Planning and Zoning Commission of the Town of Avon held a meeting at the Avon Middle School on Tuesday, July 9, 2019. Present were Linda Keith, Chair, Thomas Armstrong, Vice Chair, Peter Mahoney, Mary Harrop, Joseph Gentile, Lisa Levin, Brian Ladouceur, Jr., and Alternates Elaine Primeau, Linda Preysner, and Jill Coppola. Also present was Hiram Peck, Director of Planning and Community Development.

Ms. Keith called the meeting to order at 7pm.

**APPROVAL OF MINUTES**

Mrs. Harrop motioned to approve the minutes of the June 11, 2019, meeting, as submitted. The motion was seconded by Mr. Armstrong and received unanimous approval.

**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

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; Don Poland, Planning Consultant; Mitchell Chester, Chester Environmental; Eric Davison, soil and wetlands scientist, Environmental Planning Services; Dennis Quinn, CTHerpConsultant, LLC; Michael Klemens, conservation biologist; James McTigue, PLS, Joseph Risoli LLC; James Bubaris, traffic engineer; Allan Shope, architect; Bill Ferrigno, Sunlight Construction; Tom Fahey and Carl Landolina, Fahey & Landolina, LLC; and Brian Smith and Evan Seeman, Robinson & Cole.

Michael Klemens commented that he has dealt with rezoning applications and they are complicated; he is the Chair of the Planning Commission in Salisbury. The benefit to the applicant is clear but what is the benefit to the public. He posed the question of spot zoning. He noted that he will review the rezone from his perspective as a conservation biologist. He has a long standing interest in habitat fragmentation and how ecological integrity is maintained. This application goes far beyond the site; the area proposed for rezone is currently mapped as wetlands by the Town; the Wetlands Commission unanimously denied the remapping request. He referenced his letter to the Planning Commission, dated June 15, 2019, noting that it contains a lot of detail regarding delineating wetlands. Avon has been ahead of the game thinking about flooding, floodplain, and the 500-year FEMA standards. The POCD makes it clear that the proposed rezone area is at risk of flooding and it does flood. Building 98 residences and filling for the emergency road access contravenes and is inconsistent with the policies in the 2016 POCD. There is no public benefit to the proposal, only private benefit. The concept of the proposed rezoning from agricultural to development fragments important wildlife and plant habitats by moving and impeding their movements. Animals and plants do not move across the landscape in small corridors but rather move like sheet flow of water across the land. He referenced the Farmington Valley Biodiversity project (7 Towns) noting that is used scientific areas to identify core areas of biological conservation and the land that needs to remain unfragmented and undeveloped to allow movement over time of plants, animals, and habitats. The subject site in its current state as an agricultural use functions as an interconservation area connection, which are not compatible with roads and bricks and mortar. He noted his interest goes beyond the habitat (which the applicant addressed) and includes how this land maintains ecological integrity on a much larger scale, not addressed by either Mr. Klein’s response or the question that was asked relative to detailed watershed information as to the classification and importance is of an interconservation area connection. He referenced his report noting that there are nodes of high value biological diversity, located to the north and south. He commented that he takes exception to Mr. Klein’s comment such that the area is already compromised due to development adding that the compromise makes this section of the connection even more important. In its current state as agricultural the area functions very well, as a golf course, orchard, or hayfield. He asked that the area beyond the site be looked at to understand what the proposed development is going to do over time. If the nodes become isolated they will become island like resulting in reduced biodiversity and increased vulnerability. It is important to allow these connections to continue, especially during climate change like we are now experiencing. The entire eco system is involved, way beyond the subject site. He concluded by noting that there are other agricultural uses that are compatible with watersheds and biodiversity; not being able to have a golf course is not an excuse for not being able to have another more profitable agricultural use.

James McTigue, surveyor, noted he has 30 years of experience in land development throughout CT and near Long Island sound and many projects with flooding issues. He reviewed this application on behalf of Nod Road Preservation. The most important issue in his opinion is flooding; this site sits next to the Farmington River which floods from time to time, a major flood in 1955. Flooding issues will only increase as time goes on; FEMA mapping is based on past events but not the future. Projects in flood prone areas should have some future buffering factored in to protect residents. The POCD notes climate change and increased flooding, which should be an important consideration when making a decision on this application. It appears that 25-30% of the site is encumbered by flood zones. Any land needed for the storm water systems and to offset flood waters for this project should be part of this project and not part of any land proposed as conservation easement; it appears that more land is needed than what has been stated. The Town should consider the direction they want to go in to protect its citizens now and in the future.

In response to Mr. Armstrong’s question, Mr. McTigue confirmed that any make up areas (e.g. storm water system) should be part of the project land area and not part of any conservation area.

Allan Shope, architect and conservationist, commented that he grew in up Weatogue and Nod Road was his playground so he knows it well. There are reasons to deny the subject application based on science/geology/soil quality, setting a legal precedent that will negatively affect the ability to manage similar future applications, fiscal policy for Avon, and ethics. Less than 10% of all the soils in CT are classified as prime agricultural. Avon has built houses on most of its agricultural soil and do you want to give away the last of the prime soils. He asked that a precedent not be set; please deny the application. Don’t saddle the next generation with paying for this development (he urged the Commission to read a document he submitted....a comparison of community costs for maintaining farmland vs. housing developments). Approving this application does not make common fiscal sense. Avon has been cared for via the adoption of the Zoning Regulations but the owners of the property are not respecting Avon’s care by submitting the application. When land is viewed as a community to which people belong it commands more love and respect, as an extensive of ethics. The subject application is an ethical issue, not a zoning issue. He asked that the application be denied.

Attorney Smith noted that it is improper to make a promise to the Commission that cannot be legally acknowledged (i.e., dedication of remainder of golf course land into a conservation easement if the zone change is approved). He submitted for the record a post card mailing generated by the applicant that says “build to preserve Avon”. The applicant is not asking that the change of zone be conditioned yet all their materials contain information relative to protecting 180+ acres of land as open space. He noted that while the applicant may be sincere on this point the Commission cannot rely on it because the applicant has no legal obligation to follow through; it’s a fundamental flaw in the application.

Attorney Fahey reported that the waivers requested at the last meeting have been submitted; lab reports were also submitted, in response to Question #14. Consultant resumes have also been submitted.

Mr. Richter indicated that there appears to still be a lot of misunderstanding and inaccurate information relative to the site. He explained that he will answer questions relating to planning and design, in response to Mr. Peck’s memo/questions (to Fahey and Smith) dated June 28, 2019.

***Question #2***

Mr. Richter displayed graphics showing both the 100-year flood line (elevation 162.5, per FEMA) and the 500-year flood line (elevation 166, per FEMA). Information is per the A2T2 survey done for the site by FA Hesketh. There are 24 units shown within the 500-year flood line, which complies with Avon’s Zoning Regulations; all occupied spaces will be above the 500-year line and any unoccupied spaces will be above the 100-year line.

***Question #10***

Mr. Richter explained that developable land is defined by the Zoning Regulations as not floodplain, not wetlands, and not steep slopes. Just under 80 acres is delineated but the developable land shown in the shaded area on the map meets Avon’s Regulations. The red line (on the map) represents the zone change parcel within the shaded area. Of the 80 developable acres the zone change area is just over 37 acres, the single-family lot areas are a little over 5 acres, and a little over 37 acres of developable land is located outside the zone change area. Wetlands on the site is per the approved 2004 Inland Wetlands Map and the 2019 flagging adding wetland spaces to that. The zone change area is outside the wetlands and outside the 100-year floodplain.

***Question #9***

Mr. Richter explained that the applicant has worked with Stephen Kay golf course architect who represents Blue Fox Run; the course reconfiguration is based on Mr. Kay’s design criteria.

***Question #8***

Mr. Richter indicated that there are no photos of the proposed development during winter months but noted that the western-most tree line (second tree line) is predominately large evergreens. The first tree line along the road is a mix of deciduous and evergreen but mostly deciduous. The proposed units are located beyond the second tree line for almost 400 feet from Nod Road. Additional screening would be addressed at the site plan phase.

Mr. Ziaks addressed Questions #5 and #6.

***Question #5***

Mr. Ziaks explained that his report indicates that preliminary conceptual site grading studies have been done. Based on the studies it is believed that the project can be constructed as a balanced site with no large amounts of earth material being imported or exported. All of the existing topsoil on the site is planned to be reused for landscaping. No fill will be placed in the 100-year floodplain and no impact to the 100-year floodplain. It is not required by Avon’s Regulations but a design goal is proposed to provide full compensatory storage for any fill placed within the 500-year flood limit. Referencing the concept plan, he noted that the depth of the 500-year flood plain on the site is between half a foot and one foot; compensatory storage for this can be dealt with. He indicated the strong belief that the project can be designed and constructed in accordance with Section III.G. of the Zoning Regulations without any waivers or variances; this would be presented during the site plan and special exception phase.

Ms. Levin asked for clarification that in order to build within our floodplain regulations that none of the other 79.2 developable acres would have to be used and everything being described to be built could be done within the 37.2 acres, noted as part of this application.

Mr. Ziaks confirmed that all the storm water management could be accomplished but noted that in order to achieve full compensatory storage there may be some additional alterations done around the golf course.

Ms. Levin asked if that would be part of the rezone application.

Mr. Ziaks said that there’s no reason to do that; it’s all one floodplain and the entire golf course is a giant floodplain compensation area that has been manipulated at least twice by applications before this Commission. He commented in their studies they may have to go into some of those areas but it would all be part of the application, adding that he doesn’t see any difference in that.

Ms. Levin said that in order to achieve the residential development (the purpose of the rezone application) other land would have to be used that could actually be used for the golf course.

Mr. Ziaks explained that the golf course currently exists in the floodplain and will be in the floodplain later; most of the holes are in the floodplain now.

***Question #6***

Mr. Ziaks explained that the flood of 1955 was a very historic flooding incident along the Farmington River (this was also noted by one of the experts testifying on behalf of the opposition). Since 1955 the US Army Corps, the DEEP, and the MDC all working together have made significant flood control improvements on the Farmington River. The River has been studied and reevaluated such that the floodplain has been adjusted along the River’s entire length. There have been improvements to the Colebrook River Dam, Goodwin Dam, and improvements along the MDC reservoirs on both the east and west sides resulting in no major floods since 1955. The flood limits in Town are established by FEMA. He explained that the proposed buildable living areas are located well above the 500-year flood line, adding that we have been planning carefully, understand this issue very well, and will be able to meet all the challenges. The internal roadway system will be four to six feet above the 500-year flood elevation. Storm drainage is a combination of techniques, using both retention and detention facilities as well as infiltration throughout the development to achieve peak rate of runoff off the site to be well below existing conditions. Total runoff volume will be matched to the extent possible. He noted that everything will be in conformance with the Regulations, adding that he has worked closely with Town Staff for many years, who are very thorough and professional. Any subsequent applications for site plan will meet all the requirements of Avon’s design ordinances.

In response to Mr. Armstrong’s question, Mr. Ziaks explained that the peak rate of runoff will have to be matched for all storm events from the two-year to the 100-year events; whatever the runoff from the subject portion of the site (zone change area) to the Farmington River has to be throttled down to below what is currently leaving the site to the watercourse or the River. This will be accomplished. The volume is a bigger challenge but will be met or get very close because of the amount of infiltration that will be done on the property, returning the water back to the groundwater as is happening today. Peak rate of runoff will match existing rate of runoff or be considerably below the existing rate; the goal for volume is to get it as close to what exists currently.

In response to Mr. Ladouceur’s questions, Mr. Ziaks confirmed that the zone change area is proposed to become a common ownership condominium community. He also confirmed that 100% of the ponds and everything else just described will be located within the property that will be owned by the aforementioned common ownership condominium; none of the areas located outside the red dotted line will be used to accomplish any requirements for storm water or any water infiltration setup.

Mr. Hesketh addressed traffic.

***Question #7***

Mr. Hesketh indicated that the answer to the question about LOS F at the area intersection is explained in great detail in his written report. The Level of Service (LOS) at the intersection of Nod Road, Route 44, and Route 10 is mainly driven by the through traffic volume on Route 44 through the intersection; eastbound through traffic in the AM peak is 1,600 vehicles in two lanes. That approach is currently operating at 124% of capacity during peak hour. The afternoon peak hour for the westbound traffic has 1,100 vehicles in two lanes, and operates at 101% of capacity with an overall LOS D in the afternoon peak hour. To improve the LOS you can adjust the time between movements to balance the LOS and delays. Consideration must be given to the fact that the State DOT wants to move traffic along State highways as efficiently as possible. Additional lanes of traffic (left and right turn lanes) can be added to an intersection to add capacity. He noted that there may be potential to add an additional lane on Route 10, opposite Nod Road. If the Nod Road approach is restriped to provide a left-turn lane, a single through lane, and a shared through and right-turn lane the capacity of the southbound movement at that location could be doubled. Route 10 would have to be widened to provide two lanes to accept two through lanes from Nod Road. If the existing lanes on Route 10 were narrowed from 12 feet to 11 feet (which is now the current standard for the State DOT) the approach could be restriped to provide a dedicated through lane and an exclusive right-turn lane providing excess capacity at that approach. He explained that by adding capacity to both north bound and south bound approaches the intersection could be retimed to return the overall intersection to a LOS D during the morning peak hour (a significant improvement from the existing LOS E). He explained that while no detailed surveys have been done it appears that the aforementioned proposed improvements could be accomplished from a review of the available mapping. He concluded by noting that more study is needed and also plans would have to be submitted to the State DOT.

In response to Mr. Gentile’s question about a 1992 Planning Land Use Study for Nod Road,

Mr. Hesketh confirmed that Nod Road was reconstructed to a 30-foot wide roadway from the Simsbury Town line to the intersection of Route 44. He explained that the road curvature in the vicinity of the subject site was also made straighter at that time. He indicated that while he is not sure what year this took place, he noted his belief that it was after 1992.

Mitchell Chester addressed Question #12.

***Question #12***

Mr. Chester explained that no groundwater testing was done because there is no exposure to anyone in the area; the area is served by municipal water. The groundwater depth would be located below the structural features of anything proposed to be built and pesticides generally do not have any volatile characteristics. No testing for EDBs was done because there was no anticipation of finding any there but noted that these tests could be done, if wished, as part of the continued approval process.

Eric Davison stated that his firm has been providing biological, wetland, and soil science work on this property for a number of years. He addressed Question #13.

***Question #13***

Mr. Davison explained that an application was submitted to DEEP for the NDDB and a review letter was received last October 2008; the presence of four species were indicated. Three of the species are fresh-water mussels that live in the River but not in the ponds or wetlands on the site. The recommendation was a 100-foot no disturbance buffer from the limit of the River; the subject application proposes a no disturbance buffer of 400 feet. Storm water recommendations were also received; he referenced Mr. Ziak’s presentation noting a detailed storm water management plan. The fourth species is the eastern box turtle adding that Dennis Quinn (herpetologist) is currently studying the site for box turtles as well as other species.

In response to Ms. Keith’s question regarding road runoff (salt) into the River, Mr. Ziaks explained that there will be no direct runoff from the site that does not pass through treatment systems. This issue will be carefully addressed and also is required to meet all the requirements of DEEP.

Mr. Ladouceur asked about the meaning of compensatory storage for quantity of fill within the 500-year floodplain. Mr. Ziaks explained that if you put in 1,000 yards of fill you have to find another place to excavate out below that elevation for 1,000 yards, such that the net effect is zero. He further explained that while the goal is to provide all compensatory storage within the zone change area, other areas on the site around the golf course may be needed.

Ms. Levin commented that if other areas on the site are used for compensatory storage that would eat into the alleged easement area.

Mr. Ziaks explained/reiterated that the entire golf course, aside from the holes that exist in the proposed zone change area, is already providing compensatory storage for the Farmington River; the area is a floodplain and there would be no effect to this at all. The proposed conservation area is a golf course and most of the course is located in a floodplain. He noted that while there may be some contouring changes there have already been changes, at least a couple of times in the past, from improvements made to the golf course over the last 15-20 years.

Mr. Richter clarified that discussions relative compensatory storage would be addressed at the site plan phase not at the zone change phase. Application for site plan approval for the proposed development would also be accompanied by a companion application for golf course modifications such that everything can be reviewed and balanced together; both applications work together and depend on each other.

In response to Mr. Mahoney’s question, Mr. Fahey confirmed that Blue Fox Run (golf course) would not retain ownership of the subject 37-acre area proposed for residential development; there will be a different owner.

Dennis Quinn, herpetologist and conservation biologist noted he will address Question #21.

***Question #21***

Mr. Quinn explained that the interconservation area connections are areas that are not suitable for wildlife species to occur. They are areas designed or function for species dispersal to connect primary and secondary conservation areas but do not support large groups of special concern species. He noted that 465 feet within the proposed conservation easement between the Farmington River and the proposed development will be maintained and function in part as an interconservation area connection. He pointed out that the subject landscape is fragmented such that the function of an interconservation area connection is already impacted primarily by Route 44 and Nod Road. Two-legged and four-legged wildlife will not be able to disperse from the golf course to the south because they will be completely impeded by Route 44 and Nod Road (very difficult for wildlife to cross these roads). He explained that golf courses do not provide high quality habitat for wildlife, except for those species that have adapted to urbanized landscapes. Species of special concern or conservation concern do not function well within golf course environments unless the habitat is specifically managed for those particular species. The golf course can be managed within a conservation easement to help improve the area as an interconservation area connection. Agricultural lands are one of the most impactful uses as far as wildlife conservation is concerned; haying equipment causes high levels of mortality for wildlife. He pointed out that if the subject site were to revert back to an agricultural use, the areas noted as interconservation area connections are being overstated relative to their actual functions and values. He concluded by noting that while it is important to protect and improve these area connections, there are some issues with the current land use practices.

In response to Mr. Gentile’s question, Mr. Quinn clarified that the proposed development itself will not improve interconservation connections but noted that the ability to manage the golf course better via a conservation easement, as part of the proposal, will help improve the connections, especially the area west of the River. He noted that we will be working with the golf course during the environmental studies such that anything identified will be improved as part of the wildlife management for the site.

Attorney Smith questioned the exact acreage of the zone change area. He referenced

Mr. Poland’s information that indicates that 48.48 acres is being used for this project which is more land than the 37.28 acres noted for the proposed zone change. It is important to understand what exactly a common interest community is going to be responsible for. He submitted to the Commission written information as to why the zone change is inconsistent with current POCD as well as historic Plans. He also submitted two different wetland maps (generated by Richter & Cegan) noting that the 2004 Town wetlands map is not the same map that was before the wetlands commission in connection with the wetlands application seeking redelineation. He commented that the subject proposal meets the legal criteria for spot zoning such that the site is out of character with the essence of the RU2A zone at Hunters Run and Woodford Hills relative to the topography and floodplain at the golf course. The zone change area is small compared to the golf course as well as to the agricultural zone itself. He referenced CRCOG maps (prepared by Milone & MacBroom) that show a dam upstream from the Farmington River such that if there were a breach of this dam the entire farm side of Nod Road in the floodplain would be completely flooded. There is a risk of putting housing at any dam area. Mr. Smith concluded by noting for the record relative to Dr. Klemens’ testimony adding that what Mr. Quinn is saying – what about his involvement in the Farmington River Biodiversity Project – was Route 44 there when he conducted his study – many species use agricultural lands such as spade-foot toads and that sort of thing.

Mr. Armstrong asked if pushing the proposed development further back from Nod Road actually creates more spot zoning.

Mr. Smith commented that Nod Road Preservation doesn’t think that construction of housing anywhere in the floodplain area is appropriate; an agricultural use is appropriate.

Mr. Ladouceur asked if the entire golf course site was rezoned to residential would the spot zoning issue go away.

Mr. Smith commented that he doesn’t know the answer to that question. Rezoning the entire golf course is something else; it may not be spot zoning but has a lot of other issues. Creating a small island of housing within a parcel zoned agricultural doesn’t make sense and is classic spot zoning.

Anna Baran, 182 Woodford Hills, said that the land across the road from where she lives is very scenic and beautiful with lots of wildlife; she wants to help save Nod Road. There are many people in opposition to this development to save a large piece of land, proving how much it means to the Town. Wetlands once dug up would not return to its natural state for many years.

Neil Leibowitz, 58 Woodford Hills, commented that the proposed development benefits a small number of people and the Commission is in place to protect the entire community; the Commission has a tough decision to make. The subject land is already preserved by zoning; changing the zone no longer preserves this land and once changed its permanent. There is a lot of wildlife in this area. He asked that the Commission be fair in any decision they make and not be influenced by any personal interest.

Rinaldo Tedeschi, 100 Woodford Hills, commented that the entire golf course site contains approximately 210 acres with only 45 acres being non floodplain. The petition is asking to rezone 40 acres. He referenced the acreage proposed to be preserved by the applicant and noted that 45 minus 40 doesn’t equal 180. The applicant presented a lot of information to support their position but all they are asking for is a change of zone from agriculture to high-density residential without any restrictions meaning the applicant could not be held legally responsible in the future for any of their stated promises. The Commission’s job is to protect open space unless it can be proven that developing open space won’t violate safety or environmental requirements and will benefit the Town. The proposed development will result in increased traffic and congestion; will not help wildlife; will not help Town revenue and Town services; and will reduce quality of life by paving over open space. There is no housing shortage in this area and the opposition to this application is overwhelming. It is hard to see any benefit from the proposal such that the Commission’s decision is easy and they should deny it to maintain the current agricultural zone.

Cheryl Jackson, 232 Nod Road, referenced Paul Kramer’s writing, *The Timeless Soul of a Town.* Mr. Kramer did not support the application and noted that the proposed development would impact the entire aquifer expanse from Tariffville to Plainville. The farms along Nod Road are an ongoing gift to us all. She pointed out that there is a lot of historic information at the Avon Library, noting names such as Alsop and Woodford. She referenced an author/architectural preservationist named Brendan Gill, who wrote about Avon and knew the area well. She asked that the application be denied to save Nod Road and allow the area to remain special and peaceful.

Shelly Perron, 37 Tallwood Hollow, commented that the Town is not obligated to up end decades of precedent so one business owner can increase his profits. The land is zoned agricultural and floodplain and the land owner knows it. The residents should not be burdened with increased traffic and flooded roadways just because the golf course isn’t generating enough profits. She referenced the proposal for a permanent conservation easement such that the development would benefit the public. She asked if such an easement is legally binding noting that an owner can still sell the land and pass it on to heirs. Rezoning the subject land would set a terrible precedent while ignoring past decisions of the Commission and also leave the proposed conservation area vulnerable to development. The proposed conservation area could be donated right now to the Town, if it’s true that no development there would ever occur.

Andrew Rothstein, Hunters Run, noted that he submitted a letter regarding this application adding that the proposal violates many of aspects of Avon’s POCD. He alluded to an analogy between the subject proposal and the 911 terror attack and noted that something very bad happened despite the assurances of many professionals charged with prevention. He said that we don’t need to imagine how bad things could turn out should the decision to change the zone be granted. Flood prone areas will become more so over time; there is huge taxpayer liability from building houses in the floodplain. Traffic on Nod Road is already bad. If finances are a problem for the golf course owner there are many viable solutions that do not involve residential construction and it should not be the residents’ responsibility to sacrifice open space for the owner’s benefit. None of the applicant’s consultants made the case that the proposal conforms to Avon’s POCD, which it doesn’t. The community at large is opposed to the zone change; the majority of residents favor open space preservation. He noted that he wants to be able to commend the Commission for adhering to the POCD when they reject this application.

Harry Werner, veterinarian in North Granby, commented that he knows the natural beauty of

Nod Road with its plant and wildlife. The applicants have denied FEMA’s definition of flooding; the heart of this discussion is what development in the floodplain can lead to. Avon’s POCD has made the Town’s position clear. Development can increase the cost of services while causing permanent destruction of natural beauty. The portion of the Farmington River that runs along Nod Road is federally designated as Wild and Scenic but could be rescinded if devaluation of the River and nearby areas occurs. We all have a responsibility and obligation to preserve this area for future generations to enjoy. He concluded by noting that if this land area is permitted to be developed, nothing wild or scenic about Nod Road will be preserved and we will have turned our backs on future generations. He urged that the application be denied.

Matt Guyer, 78 Woodford Hills, commented that he learned from his father that everyone must do their own research because expertise can come from unexpected places. You have to be willing to listen to everyone carefully, not just the people with advanced degrees and/or “expertise” in certain areas. No matter the issue, there is always an expert for hire that can present an opposite perspective. He noted that he attended a recent wetlands meeting where he asked the Commission if he could ask some basic questions of the experts in attendance; they said yes. He asked his questions of the experts who were instructed to not answer even basic questions from a non-soil expert such as himself (Guyer). He conveyed his cynicism at the realization that experts know that their bread and butter is with development and not with the individual residents. He noted that after having read 20 years of meeting minutes from the wetlands commission he never found a single case where the experts brought in by the developer disagreed or found any issues with the project. He said that he called some soil scientists to hire and pay for himself but it wasn’t possible; calls either weren’t returned or he was told they can’t work for an individual or a neighborhood. He noted that the traffic volume in the area of his home on Woodford Hills, since 1997, has increased quite a bit as well as the speed of drivers. This is not just from resident vehicles, as there are significant amounts of unmarked delivery vehicles (Amazon deliveries). He pointed out the large number of living units being constructed in the area (Granby, Simsbury, Farmington, Avon) and noted that more and more people will use Nod Road as a way to avoid the traffic congestion at the intersection of Route 10 and Route 44.

Dorry Cinti, 4 Whitfield Heights, commented that the subject site has been a protected agricultural zone for many decades via Avon’s POCD noting that it is inappropriate for development. She asked what has changed other than the wishes of a land owner and developer.

There is rampant development in Avon and nearby towns. Avon’s POCD states that open space preservation allows a connection with our rural past. There is more reason than ever to work aggressively towards preserving what remains of our open space and maintaining the agricultural zone designation of the entire subject site. She noted the importance of protecting the Wild and Scenic designation given to the Lower Farmington River. Climate change is another important consideration, especially when proposing to build houses in the floodplain.

Lisa Anderson, 2 Henderson Drive, commented that she moved to Avon 25 years ago, attracted by the Town’s charm. She noted her agreement with comments made by other residents. Nod Road is a charming place; she noted her opposition to the development. This Commission is in a lucky position because zoning drives charm. Making highways wider for increased traffic is not charming. Lots of Towns have good schools, access to highways, and lots of shopping like Avon but what sets Avon apart is its charm. The POCD makes many references to character and charm. She said the answer is easy, just say no to the zone change request.

Laura Young, 57 Hitchcock Lane, commented that the flyer she received in her mail from the developer that said responsible development preserves land while denser development provides no protections; it was almost intimidating. The number of people who have shown up at the meetings to voice their opposition to the proposal is not a small minority. This Commission has power via the Zoning Regulations to vote this application down. The site is zoned agricultural with no precedent to change it. The cost to maintain the land as it is now is within the Town’s means to keep it this way but if it can’t maybe it should be purchased by the Town as open space or maybe the developer wants to donate the land to the Town. Whatever decision is made will affect this Town and community for generations to come; vote down the zone change.

In response to Ms. Keith’s question, Dr. Klemens explained that corridors work for some animals but they don’t work for holding together the landscape. He noted his disagreement with Mr. Quinn such that in order to keep habitats fully connected you don’t use corridors but rather contiguous blocks of land. Different species move through habitats at different rates and ways; some species will use the corridor along the River but many will not. When the Farmington River Biodiversity Project was done Route 44 was there and the interconservation connection area was drawn using that data. Wildlife biodiversity, including plants, moves across the landscape more like sheet flow of water (rather than via corridors) across the land. He noted that while it is not a perfect environment, he noted his disagreement with Mr. Klein such that the area is so compromised as to be written off. He noted his disagreement with Mr. Quinn such that agricultural land does not work for many species, adding that agricultural land can be managed to enhance biodiversity. Keeping large blocks of land intact between nodes of higher diversity is the way to protect habitats for the future; this was the goal of the interconservation connection areas.

Mr. Smith said that the applicant has used both a carrot and a stick approach to this application process, as indicated by some of the public testimony. The carrot is rezone and preserve the remaining land; the stick is if the Commission turns down the zone change there is a threat of an 8-30g application in the future. Setting aside the spot zoning issue still leaves plenty of other reasons to deny the application and not fear an 8-30g application. The overarching issue is the fact that the site is located in a floodplain. What the developer is really saying is…*Well, I’m somewhat upset that Nod Road Preservation doesn’t seem to want to compromise…the proposed development has been moved back from Nod Road and there are two lines of trees so it’s a compromise.* He commented that it is the developer who wants to compromise the floodplain itself. Our suggestion is that any type of housing is inappropriate in the floodplain and is dangerous and the dangers outweigh the need for housing in this location. An owner is allowed to maximize their profits but the Commission is in place to provide a balance and to make determinations on the appropriateness of uses for specified locations. The subject site has been rightfully designated as an agricultural zone; it’s a floodplain and one of the most scenic areas in Town. For the area to be compromised by the developer for a short-term gain while there is a danger of a long-term loss is not appropriate. In fairness to the land owner and as an alternative to the subject proposal, an application request can be made for an overlay zone to allow for Transfer of Development Rights (TDR); it’s not a simple solution but it is economically feasible.

The POCD has consistently noted that this site is not appropriate for residential development and nothing has been presented/heard by the developer’s consultants that suggests that it is now appropriate by what they propose for the site. Mr. Smith concluded by asking that the zone change be turned down, as the subject site is not an appropriate location for any type of housing.

Donald Poland addressed Question #4.

***Question #4***

Mr. Poland explained that his testimony at the last hearing he made it clear the difference between the Comprehensive Plan of Zoning and the POCD. He noted that there has been continuous testimony from the opponents’ attorney, experts, and the public that the application before the Commission is inconsistent or not in conformance with the POCD. Section 1.b. (Purpose and Authority) of the Regulations states that guidance for the Town is in accordance with the Comprehensive Plan of Development. Section X.A.1.c. (zone change) states that the proposed zone change will be in conformance with the POCD. He noted, for the record, that neither of these phrases actually exist in Section 8.2 of the CT General Statutes, which provides zoning authority and is the only thing that is guiding the subject decision making process. Section 8.2 states that such regulations shall be made in accordance with the Comprehensive Plan and in adopting such Plan the Commission shall consider the POCD. The regulations shall be made with reasonable consideration as to the character of the district and peculiar suitability for particular uses. Mr. Poland explained/clarified that the Comprehensive Plan refers to the Zoning Regulations and Zoning Map, as a plan for the future development of the community. When contemplating a zone change you can consider whether or not it is a reasonable consideration as to the character of the district; that is the statutory directive before the Commission. Ideas have been mixed up such that the proposal must be in accordance with the POCD, which it doesn’t. The POCD is a non-binding advisory document for the Commission to consider but what has to be demonstrated is that the proposal is in accordance with the Comprehensive Plan of Zoning. The concept plan presented was criticized but it is reasonable, if you put it in the context of consideration for the Comprehensive Plan of Zoning and reasonable considerations for the character of the district and peculiar suitability of a particular use. Comparisons to Hunters Run and Woodford Hills were used to show similar density and intensity and suitability to the character of the district. The zone requested is RU2A, the predominant district on Nod Road. Suitability and public welfare considerations also include traffic and flooding as well as site design, trip generation, elevation and offsite improvements as mitigation or to demonstrate compliance with the Comprehensive Plan of Zoning. Building in accordance with the Town’s floodplain regulations. Open space can be considered in the context of the POCD - not like dangling a carrot or a stick, as has been indicated - but rather to demonstrate consistency with the POCD. It has been said that none of the aforementioned information has been demonstrated; however, there is an 11-page summary in response to the questions as to how the proposal fits in with the POCD. He indicated that there is also seven pages of his testimony that he is now summarizing. Mr. Poland stated that he believes the proposal meets the size test for spot zoning; 37 acres is not too small of an area. In addition, the zone being requested is RU2A which is in harmony with the Comprehensive Plan of Zoning; RU2A is the predominant zone on Nod Road. The zone that provides the character and charm is the RU2A Zone; the outlier spot zone is the agricultural zone, as it is sandwiched in by RU2A and commercial zoning. The proposal is in accordance with the Comprehensive Plan of Zoning. He referenced his former testimony regarding fiscal impacts and school enrollments. Three reports were given to the Commission relative to fiscal impacts; agricultural compared to residential. He noted that while he has not seen the reports he voiced his confidence that the information relies on a higher generation of school-age children. Residential properties in Avon are generating 83.5% of the Grand List, per the Assessor’s records; residential development carries its own weight and pays its own way. The POCD acknowledges that no future school sites have been identified, based on most recent projections by the BOE. Mr. Poland concluded by stating that the proposal is in accordance with the Comprehensive Plan of Zoning. It has been demonstrated that the proposal fits within the policies and recommendations of the POCD. These are the criteria the Commission should be using to evaluate the proposal and not the blurring of information that has been presented such that the proposal is not consistent with the POCD or out of conformance.

Mr. Fahey explained that he submitted detailed information taken from the 2016 which shows considerations that support this application. He referenced information and testimony from Save Nod Road from the POCD regarding non-developable floodplain land that is zoned agricultural. The land is shown as open space probably because its use is a golf course. He explained that all those designation were made with various types of mapping without any onsite studies done to determine what was in or out of the floodplain. Studies have since been done to determine that there are 80 acres of developable land on the site; the entire site is not in a floodplain. The size element of spot zoning is obsolete. The question is whether the proposal is in the best interest of the community, is it compatible with the neighborhood, and is it consistent with the Comprehensive Plan. The Planning and Zoning Commission needs flexibility to deal with such situations. The subject parcel is 37 acres in size; it would be difficult to find a case in Connecticut that has considered any land areas containing 16 acres or more as spot zoning. The RU2A zone, single family, exists to the north of the subject site and also across the street. There is also approximately 14 acres on Nod Road that was changed from the Agricultural zone to the Office Park zone; this was not spot zoning and determined to be consistent. He noted that there isn’t much land zoned Office Park in the area but there are other mixed uses in the area and added that he’s sure the Commission rightly considered the Office Park zone to be appropriate as it is compatible with and proximate to similar uses. He commented that he can’t image anything being more compatible with all the existing residential RU2A zoned land than the subject proposal. He noted that a few years ago a portion of the Avon Country Club (6 acres) was rezoned from ROS to R40 for a 5-lot subdivision; similar arguments were made by the neighbors at that time. The concept plan is very detailed but is not beyond the scope of what the Commission is permitted to review, under the State Statutes. The Commission cannot do their job in reviewing the zone change request without getting all the detailed information. The idea that the site could utilize the TDR Regulation makes no sense because the site is zoned agricultural meaning it has no density and does not permit residential uses. A transfer of development requires a residential parcel with some density. The TDR Regulation has never been used because it’s too complicated, as noted in the POCD. The proposed changes to the golf course will result in a better course and maintenance plan; golf is certainly compatible with residential communities (Farmington Woods, Gillette Ridge). He addressed the permanent conservation easement noting that CT law does not allow conditions to be placed on zone changes but the property owner will be present at the special exception application stage to answer questions about the proposed conservation easement, which could be a condition of an approval. He commented that Mr. Ferrigno has been building in Avon for many years resulting in quality housing. A contract and complete agreement are in place such that the property owner is obligated to give a conservation easement; all this information will be available at the next phase (site plan, special exception). Farming is not a viable economic option in Avon today, per the POCD. Mr. Fahey concluded by noting that Dr. Klemens’ comments will be addressed at the next meeting.

Mr. Mahoney motioned to continue the public hearing for App. #4895 to the next meeting, scheduled for July 23. The motion was seconded by Mr. Armstrong and received unanimous approval.

There being no further business the meeting adjourned at 11:15pm.

Linda Sadlon

Avon Planning and Community Development