The Planning and Zoning Commission of the Town of Avon held a meeting at the Avon Town Hall on Tuesday January 15, 2013. Present were Duane Starr, Chair, Linda Keith, Vice-Chair, Carol Griffin, David Cappello, Marianne Clark, Christian Gackstatter, and Peter Mahoney and Alternates Donald Bonner and Jenna Ryan. Mrs. Primeau was absent. Also present was Steven Kushner, Director of Planning and Community Development.

Mr. Starr called the meeting to order at 7:30pm.

APPROVAL OF MINUTES

Mrs. Clark motioned to approve the minutes of the December 11, 2012, meeting, as submitted. The motion, seconded by Mr. Mahoney, received approval from Mesdames Clark and Keith and Messrs. Mahoney, Starr, Cappello, and Gackstatter. Mrs. Griffin abstained noting that she had not been present at the December 11, 2012, meeting.

PUBLIC HEARING

Present on behalf of this proposed settlement were Town Attorney Michael Zizka, Attorney Lewis Wise, Rogin Nassau LLC, representing the Golf Club of Avon and JZMAR LLC; Jon Zieky, a principal of JZMAR LLC; David Whitney, PE/project engineer, Consulting Engineers LLC; Michael Monts, President of the Golf Club of Avon; and Glenn Chalder, principal and planning consultant, Planimetrics.

Proposed Settlement of Litigation: *Golf Club of Avon, Incorporated and JZMAR, LLC v. Town of Avon Planning & Zoning Commission,* Superior Court, Judicial District of Hartford, Docket No. HHD-CV-12-6034458-S. Property owned by Golf Club of Avon, Incorporated, located north of Country Club Road and south of Pioneer Drive in the Town of Avon. Subject matter of settlement involves proposed rezoning of approximately 6.25 acres of land from ROS to R-40 and resubdivision of the same land into five lots.

Mr. Starr requested that Town Attorney Michael Zizka provide a summary to the public explaining the process that is followed to get the Commission to this stage. Mr. Starr read aloud, into the record, a petition dated January 10, 2013, signed by 19 property owners on Pioneer Drive, Woodland Drive, and Oakridge Drive, opposing the proposed settlement:

> ñWe the undersigned are writing to protest against the:
>
> > Proposed settlement of Litigation: Golf Club of Avon, Incorporated and JZMAR, LLC v. Town of Avon Planning and Zoning Commission, Superior Court, Judicial District of Hartford, Docket No. HHD-CV-12-6034458-S. Property owned by Golf Club of Avon, Incorporated, located north of Country Club Road and south of Pioneer Drive in the Town of Avon. Subject matter of settlement involves proposed rezoning of approximately 6.25 acres of land from ROS to R-40 and resubdivision of the same land into five lots.
>
> We object to both the rezoning and the resubdivision of this land:

> We understand that the above referenced Proposed Settlement is on the Agenda for the Tuesday, January 15, 2013 Public Hearing before the Town of Avon Planning and Zoning Commission, as announced in the Legal Notice that appeared in the Hartford Courant on January 3, 2013 and January 10, 2013.
>
> We hereby document our protest by our signatures below and on page 2. We understand that, with these signatures from owners of lots within five hundred feet of the property included in the proposed zone change, such change shall not be adopted except by a vote of two-thirds of all members of the Commission pursuant to C.G.S. Section 8-3(b) (please see attached copy).ò

Mr. Starr explained that he cannot comment on the aforementioned petition but asked Attorney Zizka to provide comments as to whether the petition is an appropriate position, if possible.

Attorney Zizka provided background information and explained that a prior version of this application was before the Commission last year as a proposal to rezone the subject site and to approve a 5-lot residential subdivision. The Commission denied the application and the applicants appealed that decision to the Superior Court. In all litigation, including land use litigation, the Superior Court tries to encourage settlements of the litigation wherever possible; typically a Superior Court judge will generally ask the parties to come to court to find out if there is any opportunity to settle litigation in connection with a land use appeal. There is also a court-sponsored mediation available via State law. He explained that the first stage of litigation is for the agency, in this case the Planning and Zoning Commission, to file its record, which is copies of all of the documents that were submitted in connection with the application; transcripts and minutes of the meetings/hearings in connection with the application are also submitted. The next stage, which is the most labor intensive and expensive, is where each of the parties must write legal memoranda to the court. Following this is where the courts hear the parties make arguments from their legal memoranda and then the court renders a decision. Mr. Zizka explained that the legal record for the subject application/settlement has been returned to court but neither party has been required to write any legal memoranda; he added that while the applicant has incurred some legal costs at this point, as well as the Town, he noted that the major legal costs would be yet to come. Mr. Zizka explained that settlement at this stage gives the Commission and the Town its best opportunity to avoid the expenses of litigation. He clarified that while not all litigation needs to be or should be settled, he pointed out that if there is an opportunity for settlement this is the time in the process that is best for all parties to try to come to a resolution.

Mr. Zizka stated that he reviewed the meeting minutes for the subject application and noted that it appeared to him that there was at least some opportunity to discuss settlement with the Commission because it appeared from the record of the proceeding that much of the Commissionôs concern was related to a lack of information that was provided during the application process; the Commission was also concerned about possible impacts to the adjacent neighborhood on Pioneer Drive. There were also some concerns as to whether this was the type of application that could be repeated on a ñpiece mealò basis by the golf course in the future. He explained that he contacted the applicantsô attorneys to explore these issues and inquire if there was any way to resolve these issues in order to possibility present a settlement proposal to the Commission. The applicant responded with a new application that increased the buffer area next to Pioneer Drive and also prepared a map showing the location of excess land on golf course

property. Mr. Zizka noted that it appears to him, from the map showing excess land, that there is very little opportunity for the golf course to present this type of proposal again. He noted that the Commission decided that it would be appropriate to have a public hearing on the proposed settlement so that the public would have an opportunity to comment and also allow the Commission to make a final determination about whether they would or would not proceed with the settlement. He explained that State law/State Statute requires that a proposed settlement be placed on the Commissionôs agenda and discussed at an open meeting; a decision must also be made at the open meeting. Mr. Zizka explained that none of the State laws require public comment and the Commission could enter into this process without entertaining any public comment at all; he added that the Commission, to its credit, decided to hold a public hearing with all of the same notices that would be presented for any public hearing. State law doesnôt even require public notice only that the item be placed on an agenda. He noted that the subject settlement proceeding is unusual in the amount of notice provided and public participation permitted. Mr. Zizka further explained that if the Commission decides to approve/accept the settlement, the next stage would involve the Superior Court for a hearing on the settlement; an appeal cannot be withdrawn or a settlement approved without a hearing in Superior Court. Mr. Zizka noted that, normally, this is the only way that an objection can be made but added that in this case, the Commission is also entertaining public comment such that the public could present any objections they may have.

Mr. Starr asked Attorney Zizka to review and offer comments, if possible, on the neighborhood petition/protest (read into the record at the start of the public hearing) as well as the two-thirds majority requirement. Mr. Zizka concurred.

Attorney Wise stated that he is present on behalf of JZMAR, the original applicant, together with the Golf Club of Avon. He explained that both of his clients were applicants in the original application that was denied. He announced that present tonight is David Whitney, PE, project engineer; and Michael Monts, President of the Golf Club of Avon; and Jon Zieky, a principal of JZMAR; and Glenn Chalder, principal and planning consultant, Planimetrics.

Mr. Wise confirmed Attorney Zizkaôs earlier comments noting that, typically, there is no public hearing in connection with a settlement proposal and therefore tonightôs agenda is somewhat unusual. He explained that the reasons for the settlement are supposed to be put on the record and added that, typically, the Town is responsible for doing that but noted that he and the original applicants have been asked to participate and assist in presenting the various reasons for entering into a settlement.

Mr. Wise addressed the concerns voiced at the original application heard by the Commission at their July 17, 2012, meeting. The application involved both a rezoning of the property from ROS (recreation open space) to R40 (residential) as well as a 5-lot subdivision. He noted that one of the concerns involved protecting the 3 or 4 neighbors most affected by this proposal. The original 30-foot buffer area has been increased to 40 feet. He pointed out that the Regulations do not require any buffer (the proposed R40 subdivision would abut an existing R30 neighborhood and no buffers are required between residential zones).

David Whitney, PE, displayed the site development plan and explained that the proposed layout has remained substantially the same throughout the course of the project. The site is approxi-

mately 6.5 acres and zoned ROS but proposed to be changed to R40 residential. An 800-foot public Town road terminating in a permanent cul-de-sac is proposed with 5-single family residential building lots, all of which conform to the Townôs Regulations. Public water is proposed and onsite septic systems have been approved by the Farmington Valley Health District. The conservation easement/buffer area has been increased to 40 feet; the intent is to provide some screening for the existing homes on Pioneer Drive from the proposed subdivision.

In response to Mr. Starrôs question, Mr. Whitney explained that the conservation restriction area that was originally proposed from the proposed lots to the golf club was a private restriction to permit limited clearing and noted that it has been removed from the plans.

Mr. Wise commented that because the proposed buffer is subject to a conservation easement it guarantees that the property will remain in a natural state. The easement would be in favor of the Town who could police the area to ensure that the terms are being adhered to. He noted that the parties he represents feel that steps have been taken to address the concerns relating to effects on the abutting neighbors. He noted another concern relating to a fear that there may be many other pieces of surplus golf club property that could be developed similarly in the future and there were members of the Commission who felt uneasy about it. He commented that the golf club has reviewed the map of the property and concluded that there really are no other pieces of property that could be classified as surplus; there are no others areas that are not being actively used for golf club activities.

Michael Monts displayed an aerial map of the golf course property; he noted that in the 10 years that he has been on the Board for the golf club, the subject acreage is the only property that has ever been identified as something that might have been susceptible to sale. Mr. Monts explained that the principal object of the proceeds from the sale of the land would be to purchase additional property located at 215 Country Club Road (1.14 acres). Purchase of this property would allow for relocation of the existing nursery, currently located near the clubhouse at the edge of the parking lot. He further explained that the purchase of this property would provide greater opportunities for consolidation of maintenance activities. Mr. Monts communicated that the Club is looking to remain viable within the community and certainly want to be a good citizen. He concluded by noting that 75% of the members come from Avon.

Mr. Wise commented that he and his clients believe there are several other reasons for the Commission to adopt the settlement. He addressed the Plan of Conservation and Development (POCD) and noted that there was some confusion back in July, 2012, regarding some of the language. He noted that some members of the public, as well as the Commission, relied on the language and believed that somehow the golf club property is restricted to open space only. He indicated his hope that everyone understands that the language that people were referring to in the POCD was erroneous. He explained that the golf club property is the only property that is privately owned and located in the ROS zone; all other ROS zoned land is either government owned or is otherwise deed restricted as to any development. He commented that he thinks some people were misled a little bit by that language and that it may have contributed in some way to the vote. Mr. Wise noted that it is his understanding that the POCD is going to be amended to correct any mistakes and make it clear that the subject property is not deed-restricted open space. He indicated that he thinks that the Town recognizes that the issues that were raised in the appeal are serious issues and are not at all frivolous. The most serious issue being that a town cannot

prohibit all development of private property by zoning it as open space, as that violates very fundamental constitutional principles. Mr. Wise explained that although these constitutional issues will not be resolved tonight he noted his agreement with Mr. Zizkaôs earlier comments such that this is the time to settle this matter, as litigation would be very lengthy and costly. He commented that he doesnôt think all the members of the Commission were aware of the zoning history behind the ROS (recreation open space) zone; the classification of ROS was never meant to be permanent.

Glenn Chalder reviewed zoning classifications and explained that the adoption of zoning in Avon dates back to the 1940ôs. The first zoning for the golf club property was an R15 zone but was changed over time. A ñreserved landò zone (RL) was created for many different properties and is not like any zone that exists today. The uses permitted in the RL zone were any use undertaken in accordance with the charter of the owner. This zone was meant to be an allowance for Avon Old Farms School, the golf club, churches, and Town schools. In the 1970ôs Avon grew extensively and it was decided that RL was not the best zone for many properties. Mr. Chalder explained that it was decided to put Avon Old Farms School into the EL (educational land) zone; he indicated that, according to the record, this was the primary motivation for eliminating the RL zone. Churches were changed to be allowed by special permit in a residential zone and the Town and State properties and the golf club were put into the ROS zone. There have been examples of land that was zoned RL, EL, or ROS that have been changed to residential zones. He noted that the record states (in a quote from 1969) where the Commission explains the concept of a holding zone, which is a zone that is in place until circumstances change and a new zone is created that is appropriate for the use of the land. Mr. Chalder explained that the golf club may have been placed in the ROS zone because at that time the Assessor advised that the ROS zone might have tax benefits. The 1979 Plan of Conservation and Development (POCD) stated that this land was private and subject to taxation, therefore a tax benefit would be advantageous. The 1979 POCD recognized that these areas would be developed for residential purposes. The Buildout Analysis in the 1991 POCD includes the golf club land. In the year 2000 (when the Town adopted a digital zoning map) all the Avon Land Trust properties as well as all Town open space properties were put into the ROS zone. Mr. Chalder explained that it was at this time (in 2000) that the ROS zone went from Town and State open space to a much broader category and added that he feels this observation may have created some of the confusion by the Commission back in July 2012 as to how the golf club land was going to be treated. Mr. Chalder concluded by noting that the ROS zone was never meant to be a permanent designation for the golf club property but, rather, was meant to be a designation to encourage the use of the golf club property in its present use.

Mr. Wise summarized by noting that it is felt that concerns of the neighbors, as well as the Commission, have been addressed with the enhanced buffer. He indicated that no future piece-meal development of the golf club property is going to happen because there is no other surplus land appropriate for development. Any language in the POCD that stated that any golf club land was permanently restricted to an open space use was erroneous. He pointed out that there are some very serious legal issues that were raised by the denial of the applications in July 2012; he added that he hopes the Commission has a better sense of the history and intents behind the ROS zone. Mr. Wise indicated that, in light of all the issues and concerns, he thinks the settlement should be approved by the Commission now before lots of money is spent on both sides.

Mr. Wise concluded by stating that settling now will eliminate various risks that always seem to occur during litigation.

Mr. Starr opened the hearing for public comment.

Richard Emmings, 23 Pioneer Drive, noted that he was present at the first hearing in July. He commented that it appears that thereôs a lot of legal implications but not much about the neighbors. The only thing that has changed is the addition of 15 feet of buffer which will belong to the new owners of the development. He commented that the developer has indicated that he wouldnôt be planting anything in the buffer and the person who owns the buffer can do whatever they want with it. Mr. Emmings noted that he is still opposed to the development and asked the Commission to consider the existing neighbors.

Mr. Kushner addressed the buffer and noted that extensive language for a conservation easement has been prepared by the Town Attorney. The language in the document would ensure that all the existing living trees within the 40-foot buffer area could not be touched by any future owners. He noted that the buffer land would be owned in fee by the new lot owners, should the settlement agreement be approved. The easement allows for placards on the trees to clearly identify the beginning and ending of the buffer area. The recorded plans would make reference to the easement as well as the deeds to the lots. Mr. Kushner confirmed that significant thought has been put into the proposed easement; itôs the best that can be done.

Mr. Emmings commented that there arenôt really any shrubs in the 40-foot buffer area; there are large pine trees but the only branches are 35 to 40 feet high so itôs not a buffer as far as not being able to see the houses.

Mr. Starr explained that, normally, no type of buffering would be required between residential properties; buffers are only required between residential and commercial developments. He noted that the proposed buffer was not the Commissionôs idea but rather was the original applicantôs idea to provide more separation between the new houses and the existing houses.

Adele Emmings, 23 Pioneer Drive, commented that when she bought her property they were told that the golf club land would never be built upon; she conveyed her concerns about having homes in her backyard. She noted her concerns for decreasing property values.

Sue Fitzgerald, 17 Pioneer Drive, commented that they bought their home many years ago with the notion that the open space would remain unless the golf course was sold or closed down. She noted that she paid a premium for her property and that she will lose out on the resale of her house if the open space goes away.

Ann Kammerer, 11 Pioneer Drive, noted that the proposed development abuts the rear boundary of her property. She noted that she and her husband are opposed to the proposed settlement, objecting to both the rezoning and the subdivision. She noted that even with the proposed conservation easement any zoning change to the land behind her lot would be detrimental to her property value, as well as the peaceful existence that now exists. She commented that she doesnôt believe the proposed zone change meets the legal criteria set forth in Section XA.1.C. of the Avon Zoning Regulations. She commented that she wants to know why this section doesnôt

apply noting that the Regulations state: ñthat before the Commission approves a zone change request the Commission shall determine that the proposed zone change will be in conformance with the Plan of Developmentò. She indicated that she had read the appeal that was filed in Superior Court where both the golf club and the developer claim that the requested zone change is consistent with the Townôs Comprehensive Plan. She noted that we strongly disagree. Chapter 3 is the land use chapter in the Plan of Conservation and Development (POCD) and includes the land in question. Chapter 5, Open Space and Recreation, also shows this property in the inventory of open space in Town. At least 3 of the maps at the end of the POCD seem pertinent to this discussion because they either show this land as open space or they just donôt categorize it, depending on the subject matter. The Future Land Use Plan shows the subject site as open space. Map 6, referencing Chapter 5, shows the site as private open space, not uncategorized space. Map 7, Buildout Analysis, does not show the subject land as either buildable or built space. She noted that it seems that the proposed settlement and the zone change contained in it are consistently inconsistent with the POCD. She conveyed her awareness of the proposed changes to Chapter 5, Open Space and Recreation, but noted that the current POCD is in effect tonight. She noted her confusion as to how the Commission could approve something that seems to be in opposition to that. She indicated that Mr. Kushner told her recently that the Townôs POCD is only advisory and added that maybe that statement is true in some towns but further added that both she and her husband question how it could be true in Avon when Avonôs own regulations require zone changes to be in conformance with the POCD. Section X of the Zoning Regulations states that before a zone change can be approved a determination needs to be made that the proposed zone would be in conformance with the purposes of the Regulations and the use permitted in the proposed change will not adversely affect public health, safety, welfare, and property values. She noted her opinion that the proposed zone change and subdivision do not meet the purposes section of the Zoning Regulations which include encouraging the most appropriate use of the land throughout the Town with reasonable consideration for existing or planned character of the area. She reiterated that she feels the proposed change does not meet the Regulations with regard to conserving the value of buildings and property values. She noted that she and her neighbors feel that the proposed change will adversely affect their property values; the proposed new road could also adversely affect the existing properties in that area as there would be increased noise.
Ms. Kammerer noted her agreement with her neighbors that a house that backs up to open space is more desirable and valuable than a house that backs up to another subdivision. She communicated her disagreement that the zone change would cause no harm to neighboring properties, as stated in the appeal by the golf club and the developer. The golf club and developer claim in the appeal that the denial was confiscatory and therefore unconstitutional, as it deprives the plaintiffs of all beneficial use of surplus property. She indicated that she believes that the golf club stated on the record that the surplus land is being used as dumping area for vegetation and that the wooded perimeter area of the site enhances the natural beauty of the golf course. She suggested that the Commissionôs denial on July 17, 2012, does not deprive the golf course of all the beneficial use of the surplus land. She added that she and her husband cannot see how the denial of one single application for an alternate use could possibly constitute confiscation of property. She stated that she knows there have been many closed-door meetings and executive sessions and apologized for trying to take this on without being privy to that information and not knowing what has already been heard. Ms. Kammerer concluded by conveying her opinion that the settlement, including the proposal and zone change, does not conform to the Plan of Conservation and Development; is detrimental to the value of the homes/

abutting properties in the general area of the neighborhood; reduces the Townôs inventory of open space; and does not seem to address any urgent need or hardship on the current property owner. She requested that the Commission turn down the proposed settlement for these reasons. She added that if an approval is granted she and husband request that the Commission require the proposed conservation easement to be amended to allow dead trees/vegetation to be removed from the easement area and that the developer be required to plant some appropriate understory trees and shrubs to provide screening for both the residents of Pioneer Drive as well as the new lot owners. She further asked that the conservation easement language be attached to the deeds of the new lots and not bind only the developer. She thanked the Commission for their time.

Bon Smith, 6 Pioneer Drive, conveyed his applause for Ms. Kammererôs comments. He noted that his neighborhood experienced a lot of noise last year from the Fairway Ridge Subdivision and the proposed subdivision will add to the noise and confusion. There are small children in the neighborhood which is a concern near a construction site.

Esther Aronson, 12 Pioneer Drive, asked that while decisions are being considered that the rezoning part of the application be looked at first and then the subdivision request. She commented that she doesnôt think these items should be lumped together. She indicated that she has no basis for disputing the history of the zones, whether permanent or not, but added that the site is currently zoned ROS and certain rules need to be followed in order to change the zone. She asked that the Commissionôs decision on the zone change be clearly delineated for everyone.

Adele Emmings, 23 Pioneer Drive, noted her concern that the golf course could sell off some of the land currently being used for golf holes if the club needed money. She noted that she also paid a premium for her house and indicated that she was told when she bought her home that the golf club would never build on the golf club property.

Mr. Starr offered clarification that the master plan prepared for the golf club property shows that there is no other land/space around the existing golf course, in its current configuration, that is considered surplus property.

In response to Ms. Emmingsô question/concern, Mr. Starr confirmed that it is possible that the golf club could decide at some point to reduce the size of the golf course and sell off some land.

Mr. Starr asked Attorney Zizka to provide comments for the public record regarding how the Plan of Conservation and Development ties into the Zoning Regulations and the requirement for a two-thirds vote, as noted in the petition submitted by the neighbors.

Attorney Zizka acknowledged Mr. Starrôs request and also offered to address comments/issues raised by the neighbors. He explained that there were 2 closed-door settlement discussions that involved just himself and the Commission; the developers were not part of any of those discussions. He further explained that he wants everyone to know there was not a situation where the developers came in and everyone sat around figuring out what to do. Mr. Zizka explained the reason for executive sessions noting that the Freedom of Information Act allows most commission meetings to be open to the public; therefore, the public can include representatives of the applicants, as well as everybody else. It is difficult to sit in a litigation discussion with a party to that litigation and try to explain to them the risks of the litigation; that

is, what is the likelihood that things will go against you or that the court will rule in your favor. He explained that you don't want to have this discussion in front of the other party because if you inform the commission of the risks and the other side has never considered those risks, you are shooting yourself in the foot. Secondly, when a commission makes a decision, normally in a public session, another party will often times raise to the court things that a specific commission member has said (i.e., bias/prejudice comments) and sometimes the court will overturn a decision if they determine the language/comments were strong enough. When discussing things in an open session, commission members are not really free to tell the Town Attorney what they are thinking. Mr. Zizka explained that, as the Town Attorney, he needs to have the opportunity to hear what is really motivating the commission without anyone having a fear that what they say could be used against them. He further explained that executive sessions are not intended to keep everything from the public but there are some sensitive matters relating to litigation and that is why these sessions cannot be held openly (i.e., with everyone including the other side). He acknowledged that this Commission, in the context of the proposed settlement, decided to hold an open meeting and invite public comment, which is something that other commissions do not do; the Commission is not bound to do anything one way or the other. Other commissions have meetings and make decisions without public comment.

Mr. Zizka referred to earlier comments made by Attorney Wise about important issues that need to be decided and explained that the point of tonight's hearing is to see if a resolution makes sense. He commented that there may be some misunderstanding about the nature of private property and explained that he wants to ensure that everyone understands what one of the arguments is; he clarified that he is providing this information without giving anyone the notion that he is saying that the applicants have a great case. The Fifth Amendment to the Constitution, as well as Article 11 of the State Constitution, says that private property cannot be taken without just compensation. He referred to a concept known as "inverse condemnation" and explained that when a State or Town formally condemns a property there is no mistake that they are taking your property and must pay you for it. The Federal and State courts hold that towns cannot accomplish the same thing by regulating property to the extent that it can't be used by the land owner for any reasonable purpose without being compensated (paid) for it. He explained that many claims in the context of inverse condemnation are claims that are similar to claims that are being made by the golf club in this case; this is an appropriation of their land by regulation without compensation. Mr. Zizka reiterated that he is not going to comment on the strength of this argument but confirmed his agreement with Attorney Wise that this is not a frivolous claim. He stated that anytime a substantial piece of land exists which, by regulation, cannot be used for normal development, these types of claims are frequently seen; the outcome depends on the factual circumstances and how the judge/court views the situation. Mr. Zizka indicated that while some valid comments were made about how maybe other uses of the property are possible he explained that that scenario is not necessarily how a court would conclude that matter. He reiterated that he has discussed this issue in executive session with the Commission but explained that he cannot discuss it now for all of the reasons noted earlier but reiterated that it is not a frivolous issue and is an issue that a court will look closely at.

Mr. Zizka addressed the Plan of Conservation and Development (POCD) and explained that POCDs have been repeatedly viewed by the Supreme Court and lower courts as advisory. The courts view the planning function separate from the zoning function, even in towns where there is a combined planning and zoning commission (like Avon). He provided the following example

noting that he represented a developer in a town and the town had a regulation that required a special permit for a subdivision of more than 30 lots. He noted the concern that subdivision is a planning function and special permit is a zoning function. The Commission in this instance granted subdivision approval but added conditions to the subdivision approval that were in the nature of a special permit. This was challenged in the Supreme Court who agreed that planning and zoning functions had been combined and that is not permitted. Mr. Zizka explained that in the golf course matter, the POCD is a planning function of the Commission and is intended to be a guideline for the Commission as it moves forward in developing the Zoning Regulations. The Zoning Regulations are what binds individuals with regard to the use of their land. He further explained that when a POCD is created, the Commission is looking at where the utility infrastructure is located to allow certain types of development. The Commission also considers things such as what areas of town are most likely to get developed and have the capacity for different types of development and what areas are most sensitive and, in turn, makes recommendations accordingly via the POCD as to what the likely course of development is and/or what the goals of the town might be. He elaborated by noting that the Zoning Commission is charged with implementing these recommendations and goals and putting them into hard form.

Mr. Zizka read a citation from a Supreme Court decision where someone was making a similar claim: ñthe fact that the change of zone was not in accordance with the Plan of Development is not controlling; the development plan is merely advisory. The facts before the Commission supported fairly and reasonably its conclusion that a change would permit use of the land for a suitable and appropriate purpose and that such use was in keeping with the orderly development of the Comprehensive Plan for the zoning of the entire town.ò He noted that under CT Law, the Comprehensive Plan of Zoning and the Plan of Conservation and Development are considered two different things. The Comprehensive Plan, which is the Zoning Regulations and the Zoning Map, are binding according to the courts; the POCD is advisory. Mr. Zizka provided information on recent court case involving a country club, which had a designation as open space and wanted to obtain a tax benefit from having an open space designation. The town got rid of the open space designation and the country club argued that they relied on the open space designation and that the town could not get rid of it. The Supreme Court said the country club couldnôt rely on the open space designation, as it was part of the POCD and is not binding. Mr. Zizka emphasized that when the shoe is on the other foot, it works the same way.

Mr. Zizka addressed the petition (submitted earlier by the neighbors) and confessed that heôs never seen a petition submitted in this type of situation. He offered his best thoughts but noted that he might be wrong, as he has not had a chance for research. Mr. Zizka indicated that he thinks the petition probably would not be effective in this case for a couple of reasons. The courts consider settlement proceedings to be something completely separate from a normal development application hearing. These types of issues have been raised in other settlement proceedings where certain types of changes were made in a proposed development through the settlement process. Certain parties to the litigation complained that changes were being made via settlement rather than going through the normal process and they wanted to appeal. The courts would not allow an appeal of the decision because itôs not the normal kind of decision. The normal decision-making process of the Commission was not used but rather a settlement proceeding occurred. He noted that he feels that Section 8-3b of the CGS would require that the petition be submitted during the original application process and not for the first time while the

Commission is considering a settlement. Mr. Zizka stated that that is his best view of the situation. Additionally, he noted that the State Statute speaks to the land within 500 feet in all directions and that would include the golf course itself, as well as all of the properties around it. He reiterated that, he doesnôt think the petition would be valid but noted that this information is the best he can do at this point.

Mr. Starr announced that the settlement portion of the hearing will be closed now and the remaining portion of the public hearing suspended to allow the Commission time to deliberate the settlement and then resume the public hearing on the remaining applications.

Mr. Starr announced that the public hearing for the ñproposed settlement of litigationò is closed.

Mr. Gackstatter motioned to temporarily defer/suspend the remainder of the public hearing until such time that the settlement deliberation is complete. The motion, seconded by Mrs. Clark, received unanimous approval.

Mrs. Clark motioned to waive Administrative Procedure #6 to allow the Commission to discuss the proposed settlement. Mrs. Griffin seconded the motion that received unanimous approval.

Proposed Settlement of Litigation: *Golf Club of Avon, Incorporated and JZMAR, LLC v. Town of Avon Planning & Zoning Commission,* Superior Court, Judicial District of Hartford, Docket No. HHD-CV-12-6034458-S. Property owned by Golf Club of Avon, Incorporated, located north of Country Club Road and south of Pioneer Drive in the Town of Avon. Subject matter of settlement involves proposed rezoning of approximately 6.25 acres of land from ROS to R-40 and resubdivision of the same land into five lots.

Mr. Starr explained that if an approval is granted, there is language that needs to be stated for the record. He noted that the Commission needs to decide if all the issues that had been addressed are everything that the Commission is concerned with. One issue relates to the Plan of Conservation and Development (POCD) used as a guideline for zoning; the POCD as advisory versus binding. He commented that there was a request for more presentation by the golf club than was what received initially; primarily, a master plan map was prepared to show any surplus land. Two major changes to the applications include (1) the elimination of a restriction or conservation easement on the property adjacent to the golf club and (2) the expansion of the width of the buffer on the property behind Pioneer Drive and implementation of the buffer with a conservation easement. Mr. Starr asked if there are any other concerns the Commission has that have not yet been addressed.

Mr. Cappello asked about the request to break up the application into 2 parts: one part being the zone change and the second part being the subdivision. Mr. Starr explained that that procedure is followed for a normal application submission but noted that the subject matter is settlement litigation so everything is packaged together.

Mr. Zizka provided information relative to statutory requirements that must be met should the Commission decide to approve the settlement application. He explained that he prepared a proposed motion to approve; he further explained that a motion to approve is the only type of

motion that has statutory requirements/prerequisites that must be met. If the settlement is denied, there is no problem.

Mr. Zizka provided to the Commission copies of the proposed motion to approve language and noted that the Commission does not have to use it and/or it could be used as a guideline to consider the factors that have been discussed. The purpose is not to persuade anyone one way or another but rather to point out the provisions that should be considered should the Commission consider an approval.

Mr. Zizka reviewed the proposed conditions of approval:

1. An effective date for the zone change is needed - February 15, 2013, has been chosen because a motion would have to be submitted to the court for the approval of the settlement and it usually takes a couple of weeks to schedule a court hearing. Mr. Zizka explained that an alternate date, one day after the Superior Court approves the settlement, could be used but noted that he prefers not to use an open-ended date.
2. The effective date of the subdivision approval shall be one day after the effective date of the zone change. Mr. Zizka noted that this date is not as critical.
3. The plans need to be referenced in paragraph no. 3a of the stipulation ï Mr. Zizka noted that there is a blank in the stipulation for the map name. The plans having a revision date closest to but not later than the date of the Commissionôs approval. Additional language states that nothing in the approval shall be deemed to prevent the applicants from seeking or the Commission from granting approval of any future plan modifications. Mr. Zizka elaborated by noting that this means that if this Commission should approve the subdivision the fact that itôs being done through a settlement would not stop the applicant from coming in at a later time, as any other subdivision applicant would be allowed to do, and file a modification. He clarified that a settlement is not intended to change that provision.
4. The Commission can add other conditions if they want. Mr. Zizka noted, for the record, that the applicant has looked at and has agreed to the settlement stipulation that the Commission currently has in hand. He explained that if the Commission decides to add conditions, the applicant may not agree and the settlement may not go forward. He further explained that this is part of the process and the Commission has to decide, just as they would in any other situation, whether there are other conditions that are wanted if an approval is considered.

Mr. Zizka addressed reasons for approval noting that State Statutes and The Practice Book provision requires that reasons for approval be placed on the record. He noted that the following 4 reasons have been discussed and are possibilities that can be used or not used. He explained that other reasons could be used should the Commission decide to approve.

Mr. Zizka addressed <u>Option A</u> noting that additional information was provided.

A. The Commissionôs denial of the original applications was based, in part, on the lack of supporting information provided to the Commission before the denial. The applicant has now supplied sufficient additional information to cause the Commission to conclude that the approval of the applications, as now modified, is appropriate.

Mr. Zizka addressed Option B and explained that the proposed subdivision lots would be in an R40 zone, which was part of the original proposal. The proposed lots are larger than required by that zone plus an additional buffer.

B. The proposed R-40 zoning designation requires greater lot sizes than the adjoining R30 zone, and the lots approved by this action are larger than even the R-40 zone would require. In addition, the subdivision application has been modified to provide a substantial open-space buffer to adjoining residences. The buffer exceeds what would normally be required for a residential subdivision application.

Mr. Zizka addressed Option C and explained that an error, at least, in the understanding of the Plan of Conservation and Development (POCD) occurred. He noted that although public comment is closed he wants to explain that there are two aspects to a POCD. One aspect is to layout the existing resources of the town and the second is to state what the Commissionôs intentions are for the future. If the Commission lays out what the existing resources are and makes a mistake in doing so, thatôs not the same thing as saying that this is what the Commission is looking for. For example, if Ms. Sadlon, Clerk to the Commission, were to provide minutes to the Commission next week and the minutes said that this meeting took place on February 15, that wouldnôt mean that the Commission intended this to be February 15; itôs just an error in stating what the facts actually are. Mr. Zizka stated that he hasnôt reviewed the POCD that is being discussed but indicated that it is his understanding that there is a table that lists the golf course property as being permanently preserved and further added that it is his understanding that that is not correct because the site is private property that is not subject to any permanent provisions.

C. Although the current Plan of Conservation and Development contains language that may suggest that the entire golf course parcel was permanently designated for open space use, it was not the Commissionôs intention then, nor is it today, to establish a permanent designation, nor would it be appropriate to do so. The Commission recognizes that it must retain flexibility to modify its Plan of Conservation and Development and its zoning map and regulations as the needs of the town and its residents and property owners change.

Mr. Zizka addressed Option D noting that it involves the final resolution of issues and that the pending litigation is uncertain; an approval tonight would avoid most of the costs associated with litigation and establishes a result that is consistent with the Commissionôs long-range goals. He confirmed that these items are for discussion purposes only; he added that he feels these items represent the kinds of things being considered for a settlement.

D. The Commission recognizes that the final resolution of the issues raised in the pending litigation is uncertain. This approval avoids most of the costs of litigation and establishes a result that is consistent with the Commissionôs long-range goals

Mr. Starr clarified that the settlement stipulation includes details such as the fee in lieu of open space as well as all standard requirements (i.e., filing of record maps, etc.).

Mr. Cappello commented that he feels that the proposed buffer should be increased.

Mr. Starr noted that the proposed buffer is scaled to 40 feet on the drawings and the stipulation agreement includes the conservation easement.

Mr. Cappello reiterated that he feels the buffer area should be made larger; some extra land area could be taken from the northeast corner of the proposed site.

Mr. Kushner commented that Brien Beakeyôs residence (29 Pioneer Drive) may benefit from making the buffer area larger. He noted that Mr. Beakey attended the July 2012 hearing and was not in opposition to the proposed project, as far as he knows. Mr. Kushner indicated that Mr. Beakey was impacted from the construction of Fairway Ridge, as his house became a corner lot.

Mr. Cappello commented that he feels a larger buffer area would offer some relief to the Emmings at 23 Pioneer Drive. He added that he feels the Town should walk the buffer area to determine if the area is indeed as wide open as has been represented. Possibly some small pines could be added to help the buffer.

Mr. Kushner commented that he has walked the property (with John McCahill) and noted his agreement with what the neighbors have said. The trees are tall and mature and have lost their lower branches. Some limited plantings may be possible but the area is very shady so only certain semi-shade tolerant plants may survive. He explained that this topic has not been discussed as part of the settlement thus far.

Mr. Zizka commented that the question of additional plantings is probably a topic that the applicantsô representatives may want to take back and consider; they may not be in a position to make a decision tonight. He noted that while he understands the concerns of the neighbors he explained that ultimately itôs the lot owners who are going to have to maintain that area. If shrubs are required to be planted, provisions will have to be added to the conservation easement relating to the care of those shrubs and what happens if they die. Mr. Zizka explained that most conservation easements are put in place to prevent the removal of any live vegetation. He pointed out that there isnôt much good live vegetation currently in the buffer area and the Commission should consider that any requirements for affirmative plantings in that area would fall on the subsequent land owners rather than the applicants.

Mr. Starr commented that he feels the purpose of the conservation easement is also to ensure that the area not be used as a dump by homeowners. He noted that, normally, there are not conservation easements between residential properties and a conservation easement will not guarantee good neighbors.

Mr. Kushner noted that, typically, a private property owner is allowed to clear cut the entire lot, unless there are wetlands. Many of the homes on Pioneer Drive have taken full advantage of their lot, which is typical of many homeowners in Town. In this instance, notwithstanding the tall evergreens, that will not be the case; the buyers of the new lots will be restricted from doing any work (i.e., no dog houses, no vegetable gardens) at all in the 40-foot strip of land. The buffer area will have to be left in its natural state.

Mr. Starr clarified that dead trees can be removed from the buffer area. Mr. Kushner concurred.

Mr. Zizka indicated that, currently, the way the easement language is written, the homeowners would have to come before the Commission to ask permission before dead trees could be cut down; the language is very strict.

In response to Mrs. Clarkôs question, Mr. Kushner noted that he didnôt see a lot of dead brush in the buffer area when he walked the area. He indicated that earlier comments may have related to a scenario such that if a significant die off of the trees occurred there could be a concern about falling trees and whether there would be an opportunity for clean up.

Mr. Kushner addressed Mr. Zizka and asked if there was a substantial amount of damage, over time, and there were repeated requests to the Commission by the eventual buyers of those lots would the Commission be in a position to authorize some substantial modification to permit the private homeowners to substitute plants to create a significant buffer.

Mr. Zizka replied, yes, noting that the conservation easement does allow the land owner to come to the Commission and ask for relief that is consistent with the purposes of the easement to maintain a natural vegetative state.

Mr. Gackstatter commented that the terms conservation easement and buffer have two different purposes. A buffer provides a screening between the existing houses and the new houses and the easement is to keep the land in its natural state. The existing vegetation in the easement area doesnôt appear to be enough to provide a buffer thatôs really wanted. He noted that he wonders if the abutters would prefer the buffer area landscaped in a way that would provide a real buffer and then a conservation easement put on the buffer. He reiterated that the current natural state of the buffer area does not provide a buffer and suggested that maybe an easement should not be put in place until a buffer is put in place.

Ms. Keith commented that, in her mind, buffers donôt have to be plantings; they can be a distance separation but not necessarily a screened separation.

Mr. Zizka confirmed that both Ms. Keith and Mr. Gackstatter are correct; the term ñbufferò has been used in a variety of contexts. For inland wetlands the term buffer only means you donôt go in that area; no screening is required. Buffer in the subject context is more of a screening device; the neighbors tonight have indicated that they would be looking for a screened buffer.

Mr. Gackstatter suggested that maybe the two parties can get together and agree on the buffer area before a conservation easement is put in place.

Mr. Kushner clarified that the two parties are the Commission and the applicants, not the neighbors. He further clarified that the neighbors are not a party to the litigation. He added that the 40-foot strip is heavily treed/forested with mature evergreens and conveyed his agreement that it doesnôt offer the same screening that might otherwise be available via a heavily planted man-made berm. However, the existing buffer area will offer some mitigation to the view the neighbors on Pioneer Drive will have to the new homes. He pointed out that there are some views to the golf course from some of the backyards of the homes on Pioneer Drive and all the homeowners have fences along their property lines. He added that he doesnôt believe there are any fences high enough to block the view of the golf course, as that adds some aesthetic appeal.

He commented that you may be able to see through the trees, like you can now, and see the new homes but the buffer area will offer some mitigation.

Mr. Starr pointed out that the buffer area keeps activity back 40 feet from the property line.

Mr. Cappello commented that abutting property owners might also have a 10 to 20-foot buffer on their own property, so the 40 foot buffer could become 60 feet

Mrs. Griffin commented that there is nothing to prevent the homeowners from planting trees on their back property line.

Mr. Cappello commented that the entire Fairway Ridge Subdivision site was clear cut and asked what could be done to prevent that from happening with this project. He asked if the lots could be developed as they were sold. He added that the Fairway Ridge project is not looking good.

Mrs. Griffin noted that she feels that any requests about clear cutting for the subject site should have been brought up during the original application; she added that she feels things are past that stage now and the Commission cannot backtrack all the way.

Mr. Starr conveyed his feeling that with any type of development until the houses are occupied and landscaping is in the area takes a while to mature, unfortunately.

Mr. Zizka indicated that the language contained in the DRAFT conservation easement that has been used by the Town is somewhat weak and explained that the language he drafted is much stronger in several respects. The new easement language gives the Commission specific rights to enforce it, which the existing language does not provide. Any requested changes to the easement would have to come before the Commission. If the subdivision is approved, the conservation easement goes into effect at the time the subdivision map is filed; the easement becomes part of the subdivision approval. No development can occur in the conservation easement area.

Ms. Keith noted that she would like the public to realize that the members of the Commission are also residents of Avon and many have been subjected to subdivisions and road changes in their own neighborhoods over the years. She explained that the process for the subject application has been heart rending and difficult for some of us; itôs taken a lot of thought and time and the Commission has leaned on the Town Attorney for advice. She concluded by noting that for all the reasons just mentioned, the Commission decided that this process needed to occur in an open forum at an open public hearing.

Mr. Starr motioned to approve the proposed settlement stipulation, subject to approval of the Superior Court with the following conditions:

1. The effective date of the zone change shall be the later of either February 15, 2013; or one day after the Superior Court approves the settlement stipulation.

2. The effective date of the subdivision approval shall be one day after the effective date of the zone change.

3. The plans to be referenced in paragraph no. 3a of the stipulation shall be the plans having a revision date closest to, but not later than, the date of this approval by the Commission. Nothing in this approval shall be deemed to prevent the applicants from seeking, or the Commission from granting, approval of any future plan modifications. Any such proposed modifications shall be reviewed and decided by the Commission in accordance with the zoning and subdivision regulations then in effect.

The reasons for this approval include the following:

A. The Commissionôs denial of the original applications was based, in part, on the lack of supporting information provided to the Commission before the denial. The applicant has now supplied sufficient additional information to cause the Commission to conclude that the approval of the applications, as now modified, is appropriate.

B. The proposed R-40 zoning designation requires greater lot sizes than the adjoining R-30 zone, and the lots approved by this action are larger than even the R-40 zone would require. In addition, the subdivision application has been modified to provide a substantial open-space buffer to adjoining residences. The buffer exceeds what would normally be required for a residential subdivision application.

C. Although the current Plan of Conservation and Development contains language that may suggest that the entire golf course parcel was permanently designated for open space use, it was not the Commissionôs intention then, nor is it today, to establish a permanent designation, nor would it be appropriate to do so. The Commission recognizes that it must retain flexibility to modify its Plan of Conservation and Development and its zoning map and regulations as the needs of the town and its residents and property owners change.

D. The Commission recognizes that the final resolution of the issues raised in the pending litigation is uncertain. This approval avoids most of the costs of litigation and establishes a result that is consistent with the Commissionôs long-range goals

The motion, seconded by Mrs. Clark, received approval from Messrs. Starr and Cappello and Mesdames Clark, Keith, Griffin. Voting in opposition of approval were Messrs. Gackstatter and Mahoney.

Ms. Keith motioned to resume the public hearing. The motion, seconded by Mrs. Griffin, received unanimous approval.

PUBLIC HEARING

App. #4643 Sunlight Construction, Inc., owner/applicant, request for 5-lot subdivision, 7.23 acres, 45 Sunrise Drive, Parcel 4190045, in an R40 Zone

Present were Attorney Robert M. Meyers, representing Sunlight Construction; William Ferrigno, President, Sunlight Construction; and William Aston, PE, Buck & Buck LLC

Attorney Meyers stated that the site is 8.15 acres and noted that 53 Sunrise Drive (.92 acres) was created from this site via a ñfree cutò (no subdivision required). The proposed subdivision contains 7.23 acres; the intent is to retain and sell the existing/former Moran home located at 45 Sunrise Drive. The proposed subdivision proposes a new public road with a 546.35 foot-long cul-de-sac. He stated that the subject proposal conforms to the Regulations and there is no request for special exception or waivers.

Mr. Meyers addressed comments from the Fire Marshal relative to the length of the road and the need for public water. He noted that although the calculations in the Subdivision Regulations (Section 5.11) do not technically require the developer to provide public water in this instance, public water will be provided because it seems the wise choice for public safety, the Town, the neighbors, and the developer. He noted that Avon Water Company will provide a letter indicating their willingness to serve the proposed subdivision. Mr. Kushner confirmed receipt of a letter from Avon Water. Mr. Meyers also noted that approval has been granted by the Farmington Valley Health District (FVHD); the lots are suitable for onsite septic systems. Mr. Kushner confirmed receipt of an approval letter from FVHD.

Mr. Meyers addressed the proposed permanent cul-de-sac and noted that there is not a lot of guidance in the Regulations on how to count the homes and how to measure. He explained that, in this instance, there are 2 homes on the corner of Sunrise Drive and West Avon Road that could, in theory, be served by emergency vehicles from West Avon Road but the driveways are located on Sunrise Drive. He noted that the most conservative approach is being taken and all the homes are being counted. He explained that 15 Aspenwood is an oversized lot and may be sold as a double-sized lot but the developer also has the ability to come back to request a resubdivision. He noted that the total number of homes, counting very conservatively, would equate to a total of 16, if it were to happen in the future. The Regulations say that the length of roadway, from West Avon Road to the proposed cul-de-sac, cannot be more than 1,500 feet (due to the 16 homes). He explained that a measurement has been taken and there is 937 feet to the intersection from the edge of the pavement on West Avon Road; the aforementioned distance of the cul-de-sac measured to the center of cul-de-sac is approximately 16.65 feet short of the 1,500 foot limit. Mr. Meyers further explained that there is no indication in the Regulations as to where you measure (the measurement was done to the center of the cul-de-sac) but added that the driveway for Lot 28 abuts Lot 20 such that measuring to that point gets you beyond the point to which any emergency vehicle would have to go.

Mr. Meyers addressed comments from the Town Engineer noting that all the initial comments have been satisfied; additional comments were received pertaining to drainage and runoff. He noted that the Town Engineer has indicated that in the worst case scenario the runoff would be the same after development but in most cases there will be a modest improvement, meaning a reduction in runoff. An easement will be granted to the Town for the drainage system; it will be the Townôs responsibility to maintain the drainage system, as it will become part of the Townôs overall drainage system.

Mr. Meyers addressed open space and stated that the developer is asking that the Town accept the offer of a fee in lieu of open space dedication.

Mr. Starr asked whether there is a potential connection back to West Avon Road. Mr. Meyers explained that the developer has been in communication with several land owners on West Avon Road and has not had any luck to date but this topic will continue to be pursued. Mr. Starr questioned whether a right-of-way should be left at the end of the new road, called Aspenwood.

Mrs. Griffin commented that it seems like it would be more sensible to have something that could connect to the end of Sunrise Drive through Candels property (63 Sunrise Drive) or head in the other direction because everything else along West Avon Road is developed. Mr. Meyers conveyed his agreement and added that if the Commission asked for the cul-de-sac to be temporary the developer would probably not object. He explained that the project team did consider a temporary cul-de-sac.

Mr. Starr commented that if a permanent cul-de-sac is made it would preclude ever being able to make a connection from Aspenwood. Mr. Meyers agreed and confirmed Mr. Starrôs statement adding that one exception would allow the Town the option to condemn it, an option the Town is not likely to choose. Mr. Starr noted that a connection from Sunrise Drive to West Avon Road would be a better option. Mr. Meyers concurred.

Mr. Kushner asked whether the plans should be revised to show the cul-de-sac to the property line adding that although it might exceed the 1,500 limit slightly, it seems like a good reason to do so. Mr. Starr and Ms. Keith noted their agreement.

Mrs. Griffin inquired about a parcel in the vicinity of the subject parcel that appears to be landlocked. Bill Aston commented that the property in question is more than likely owned by the nearby farm; he added that in the past there have been wood lots associated with a farm but these lots never had access to a road; the lots donôt have frontage.

Mr. Starr indicated that if the cul-de-sac is extended to the property line the Commission could waive the limitation on the road length.

Mr. Meyers asked whether the Commission would be ok if/when the applicant comes back to request a 16th lot, noting that the road would be slightly longer than 1,500 feet. He explained that counting in the most conservative way, there are only 15 lots to date; therefore, in theory, a 2,000 foot long road could be built. However, the creation of another lot is anticipated in the future which would result in 16 lots which would limit the road to 1,500 feet. He further explained that if the road at this point in time were to be extended beyond 1,500 feet (which the applicant is willing to do), the applicant wants some assurances from the Commission that the applicant will not be precluded from resubdividing in the future due to the length of the road. Mr. Starr noted his understanding.

Mr. Ferrigno commented that the cul-de-sac would be temporary at that point, so there would be nothing to preclude anyway. Mr. Starr agreed.

Mr. Meyers commented that there is the possibility that someone could decide to make a temporary cul-de-sac permanent.

Mr. Kushner indicated that the applicantôs engineer, Bill Aston, would be asked to revise the drawing showing the cul-de-sac as temporary and showing the wings of the cul-de-sac essentially going away in the future (i.e., a temporary easement). He added that showing the cul-de-sac in this way would also make it clear to any future home buyers.

Mr. Meyers commented that it appears that the Commission prefers a temporary cul-de-sac. The Commission confirmed their preference for a temporary cul-de-sac.

Mr. Aston explained that a temporary cul-de-sac requires 26-foot pavement width; he noted that everything works with 26 feet but added that currently 22-foot pavement is proposed and the connection is with a 22-foot road.

Mr. Kushner noted that he feels that a 22 foot-wide road would be more than adequate; itôs not a certainty that the road will be extended and if it is it will likely be a short roadway length with low volume.

In response to Ms. Keithôs question, Mr. Kushner explained that there are standards in the Regulations on how long a limited-local road can be. Mr. Aston noted that he believes the regulation got changed at one point to permit 2,000 feet for a limited local road with 22-inch pavement. Mr. Kushner added that the maximum length of the proposed road is still relatively modest so the Commission might be comfortable with a 22-foot width.

In response to Mr. Cappelloôs question, Mr. Aston confirmed that curbing is proposed. Mr. Cappello commented that curbing is beneficial and provides less concern for runoff.

Mr. Kushner addressed runoff noting that there are a couple of property owners in the area that have existing wet conditions in the rear yards and, therefore, the design was created such that this wet condition would not be made worse.

Mr. Meyers noted that the wet conditions exist on the southerly end of 21 and 27 Sunrise Drive. Mr. Aston stated that the detention pond is located on 15 Aspenwood. In response to Mrs. Griffinôs question, Mr. Aston explained that the water from the Smith Farm travels under West Avon Road and ends up in a culvert on Sunrise Drive; he added that the water doesnôt really come on to the subject site at all.

Mr. Ferrigno asked for clarification regarding how to show the extension of the proposed road. He asked whether he should get the extra lot and then show the extension of the road as temporary.

Mr. Starr explained that the Commission is asking for the road to be extended on a temporary basis and confirmed that the longer road will not preclude Mr. Ferrignoôs ability to subdivide the land. Mr. Ferrigno noted his understanding.

Mr. Starr indicated that the public hearing will be continued to the next meeting to allow the applicant time to revise the plans.

Mr. Starr motioned to continue the public hearing for App. #4643. The motion, seconded by Mrs. Clark, received unanimous approval.

App. #4644 Timothy and Walter Parylak, owners/applicants, request for 2-lot subdivision, 3.725 acres, 655 and 661 Lovely Street, Parcels 3060655 and 3060661 in R30 and R40 Zones

Present were Attorney Paul Potanka, representing Timothy and Walter Parylak, owners; and Timothy and Walter Parylak, owners/applicants.

Attorney Potanka explained that the object of the proposal is to be able to house 2 horses (Buddy, age 23 and Murphy, age 24) that are owned by the applicants. A lot line revision is needed to add acreage to the northerly-most parcel, while diminishing acreage on the southerly-most parcel (both parcels are owned by Walter and Tim Parylak). He noted that Town Staff has identified non-conformities on the site; by realigning the property line the access way to the northerly most lot (Parcel #3060655) is now located within the perimeter of the lot boundaries. He commented that the current proposal is the best option with regard to square footage, building lines, and setback lines, noting that several alternatives have been explored; a deed, a boundary line revision map, and an agreement have been prepared. Mr. Potanka commented that each lot (as proposed via a boundary line change) would exceed the 80,000 SF required acreage under the Zoning Regulations to a permit one horse. He noted that if one horse was kept on one lot and one horse was kept on another lot, the owners would automatically qualify to keep those horses; however, neither lot, as proposed, meets the additional requirement for a second horse (requiring an additional 43,560 SF). He commented that the subject proposal would allow the horses to intermingle while also providing one structure on one lot rather than having 2 separate structures (stalls) to house the horses. He pointed out that the lot where the proposed structure is located is in a position where itôs the furthest point away from non-family properties. The subject proposal will also provide the need for only 1 fence line and also permits the manure storage (to be on the lot with the most existing buffering to Lovely Street) to be located far away from both the stall property and property to the north.

Mr. Potanka addressed the proposed ñagreementò noting that the language states that the agreement would render the proposed use invalid in the event that either of the subject lots was sold by the current owners or in the event of the death of one of the horses. No commercial purposes would be permitted, per the agreement.

Mr. Starr commented that the proposed boundary line change is not going to change the current view that is witnessed by anyone driving by this area; both horses and paddock and manure locations will remain as exists right now. If one owner decides to sell their parcel or if one of the horses passes away, no animal replacement is permitted. Mr. Potanka concurred.

Mr. Parylak offered clarification noting that the proposal is just for the 2 existing horses and added that after the demise of these horses the setup goes away.

Mr. Starr commented that in the event that both horses pass away, the property could legally have one horse.

In response to Mrs. Clarkôs question, Mr. Potanka clarified that both horses are currently being stabled elsewhere costing over $1,000 per month.

In response to Mrs. Griffinôs question, Mr. Potanka explained that the barn is proposed; there is no barn currently on the site.

In response to Mr. Starrôs comment, Mr. Potanka stated that the owners wanted to get permission before bringing the horses onto the site.

In response to Ms. Keithôs question, Mr. Kushner explained that the proposed property/boundary line change is permanent. Ms. Keith asked for confirmation that the requested boundary line change conforms to the Zoning Regulations such that if the current owners decide to sell these 2 lots to 2 different buyers the lots will still conform to the Regulations. Mr. Kushner confirmed that the lots would be conforming.

Mr. Starr clarified that the agreement to keep horses goes away if the lots are sold.

Mr. Parylak explained that the only reason for the boundary line change is to get the well and the driveway onto the correct lot.

In response to Mr. Gackstatterôs question, Mr. Parylak explained that the driveway for one house is currently on the wrong lot and this issue will be corrected by the proposed boundary line change.

In response to Mrs. Clarkôs, Mr. Potanka explained that the subject owners have a letter signed by the property owner to the north (brother and sister-in-law) noting their agreement with the proposed application and that they have no problem with the proposed manure location, which meets the 100-foot setback requirement.

In response to Mr. Kushnerôs question, Mr. Parylak explained that the manure will be removed once a month.

Mr. Potanka noted that comments have been received from the Town Engineer and revisions will be made to the map accordingly. He noted that should the proposal be approved, he would ensure that the deed agreement and map receive approval from Town Staff before they are recorded.

There being no further input, the public hearing for App. #4644 was closed.

App. #4645 Lothar and Elizabeth Candels, owners, John Noelke, applicant, request for Special Exception under Section VI.D.3.b. of Avon Zoning Regulations to permit outdoor sculpture display, 2 Mountain View Avenue, Parcel 3250002 in a CS Zone

No one was present for this application.

Mr. Starr stated that the site plan for this location was approved in November 2012. The subject special exception application has been submitted by the applicant to allow the Commission to place a two-year time limit on an approval for the outdoor display use. He noted that an

extensive presentation was given by the applicant last November and doesn't feel any additional information is needed.

There being no further input, the public hearing for App. #4645 was closed.

App. #4646 Sunset of Avon LLC, owner, Michele Pellegatto, applicant, request for Special Exception under Section VI.C.3.d of Avon Zoning Regulations to permit 24-hour access to existing health club, 260 West Main Street Parcel 4540260 in a CR Zone

Present to represent this application was Michele Welcome Pellegatto, applicant.

Ms. Pellegatto indicated that she is the new owner of Snap Fitness in Avon and noted that the first request from her members is 24-hour access. She noted that she has met with Mr. Kushner and is here to ask for permission to use her facility to its highest potential. She commented that her business is located in a zone that permits many different uses and added that she doesn't feel a request to be open for an additional 5 hours would have a high impact. She acknowledged that while she was surprised to learn that there are people around her that feel 24-hour access is a bad idea she noted her appreciation to the Town/Commission for looking out for the consumer. She noted that the last thing she would want to do is impact the neighbors but reminded everyone that the subject site is located in a commercial district on Route 44; there are two 24-hour banks located adjacent to the subject site that have far more traffic than Snap Fitness. She noted that any lighting at night coming from Snap Fitness is blocked by the building. There is a First Niagara Bank on the corner of Lawrence Avenue which has almost stadium lighting. She indicated that she doesn't feel the impact of 5 additional hours is going to make a huge impact on the neighbors; the average count (per Snap Fitness statistics) from midnight to 5am is 3 people.

Ms. Pellegatto addressed safety concerns noting that she is a professional athlete and added that you cannot stop people from using the facility from midnight to 5am because you want to stop them from training; they will be outside jogging in the streets of their neighborhood if they have to. She noted that there are emergency buttons on both ends of the building with 24-hour surveillance and lights. She noted that she has a competitor one mile down the road in Simsbury adding that her target membership is within a 3-mile radius; she noted she has members from Canton, Simsbury, and Avon, and members from Lawrence Avenue. She commented that there is a perceived value of having a 24/7 business. She addressed safety and noted that statistics show that 26% of the people visiting the facility from midnight to 5am are women; 1 in 4, not a large volume of people. She noted that the adjacent businesses are 24-hour businesses with more lights and activity and cars idle with their lights on. She added that 50% of her clientele are in their 50s and 60s and some members in their 70s; a lot of mature people looking for a safe environment. She noted that while she sympathizes with the effort to protect the neighbors she added that she doesn't feel that an additional 5 hours with a tiny amount of people is going to have a serious effect on somebody else. She reiterated that the site is located in a commercial district; no zone change is being requested.

Mr. Starr explained that the Commission, generally, puts a time limit on this type of special exception use request; basically approval for a 2-year trial basis and if there are no documented problems/issues the Commission reviews the proposal again.

Ms. Pellegatto indicated that she is open to that idea and added that she feels it is generous of the Commission to consider it. She added that Snap Fitness has been in this location for 2½ years

and have shown that they are great neighbors; thereôs never been a complaint. She added that the people who would be visiting the site from midnight to 5am are dedicated people with a goal.

In response to Mr. Gackstatterôs question, Ms. Pellegatto explained that currently the hours are from 9am to 6pm, Monday through Thursday; 9am to 4pm on Fridays; and 9am to 1pm are staffed. It is keycard access on the off hours and thatôs the point of the 24-hour surveillance. She noted that people would have more protection in this environment than jogging in a neighborhood.

In response to Mrs. Griffinôs questions, Ms. Pellegatto explained that she has a security system but no one is physically in the facility watching. Mrs. Griffin noted her concerns for the safety of the people in the gym between 1am and 5am when there is no one around. She added that the facility is tucked way back, far away from everything and added that she would not want to be a woman exiting the building at 2am to get into her car. Ms. Pellegatto commented that this scenario is not for everybody. Mrs. Griffin noted that sheôs concerned about the safety of anyone, not just herself. Ms. Pellegatto noted her understanding but added that this scenario is no different than someone jogging through a quiet, heavily treed neighborhood. She added that the Snap Fitness philosophy is 24/7 throughout the entire country and has been very successful with no issues.

In response to Mr. Cappelloôs questions, Ms. Pellegatto noted that she has approximately 400 members currently. She added that less than 20% of the members would show up between midnight and 5 am; maybe 3 people. Mr. Cappello asked if the visitations between midnight and 5am would occur mainly from Monday through Friday. She explained that she doesnôt know the work schedules of all her members and therefore cannot answer that question but reiterated the point that it would be only a few people. She added that a 24/7 business has a perceived value even by people who may never intend to use a facility at 2am. She noted that peak hours are early in the morning but added that there is a military boot camp in the evenings.

In response to Mr. Cappelloôs question, Mr. Kushner noted that he has not received any complaints/calls since the facility has been open but noted correspondence has been received from the neighbors, who are present tonight.

Scott Simmons, Chairman, Francis Lawrence Neighborhood Association, stated that the neighborhood strongly opposes the 24/7 proposal for the same reasons that the neighborhood opposed it in the past. He noted that lighting at the site, per TJ Maxx site plan approval, was to be reduced after business hours. He explained that things such as vehicle headlights coming and going and noise from car doors closing and car alarms going off are concerns the neighbors have. He noted that the safety of the clients would be compromised and could not be protected; the safety of the clients outweighs the benefits of the business. Mr. Simmons pointed out that when you drive up to an ATM you do not get out of your car; you donôt shut the car door or set the alarm off. He addressed safety and noted that he drove by the facility today and added that you can easily see into the building; it would be very simple for anyone to watch someone inside the building and wait for them to come out. He referenced the ñZooò health club in Simsbury noting that that facility is safer because it has better illumination and there is nowhere for people to hide. Mr. Simmons stated that he feels allowing 24/7 business hours would set a bad precedent for Avon. He explained that he has owned a business on Route 44 for the past 20 years and noted that he looked into these types of issues before he bought his business because he knew that there would be limitations in connection with planning and zoning. He added that while he

would like to have a billboard-size sign for his business he operates within the rules, as it is better for the Town.

Mr. Simmons addressed statistics from Snap Fitness presented earlier noting that there would be approximately 3.5 clients per night. He noted that that means 7 more car doors closing and alarms going off per day; 49 per week and 210 per month. He noted that Sunset of Avon and the former owner of Snap Fitness have not been good neighbors and have repeatedly violated planning and zoning rules. He indicated that he has been fighting with TJ Maxx for the past 10 years or so to have their garbage picked up after 8 am; he noted that while he submitted complaints for the first 8 years he is tired of policing the issue and wonôt do it anymore and will just have to live with it. He commented that just yesterday a dumpster was picked up at 5am.

Mr. Simmons addressed signage noting that the former Snap Fitness owner has had many sign violations. He asked whether Snap Fitness currently has permits for A-frame signs.
Mr. Kushner noted that he doesnôt know but could find out. Ms. Pellegatto noted that she just took over the business on Jan 4 and the signage issue has nothing to do with her. Mr. Simmons communicated to Ms. Pellegatto that she is the current owner and it does have something to do with her. He noted that, right now, in front of the Snap Fitness sign on Route 44 is another Snap Fitness sign offering their newest deal. He commented that thereôs a sign in front of a sign and added that he thinks they just donôt care and that Snap Fitness has pushed the rules in the past. He concluded by noting that he feels the safety of the clients far outweigh any benefit to the business and reiterated that he feels allowing 24/7 sets a bad precedent for the Town of Avon. He commented that maybe the business should be located somewhere else.

Brian Mirizzi, 28 Francis Street, asked whether there is an AED in the facility, noting that it was a condition of the original approval. Ms. Pellegatto confirmed that an AED exists. He noted that he has 2 young children and can hear car alarms that he knows are not coming from the adjacent banks or Town Fair Tire. He commented that he can hear car alarms coming from Snap Fitness at 7pm, 8pm, and 9pm and added that if there are 3 additional clients in the middle of the night there could be more alarms going off and his children will wake up. He indicated that every time he hears a car alarm at midnight he is going to make a police report.

Henrietta Donato, 56 Lawrence Avenue, asked whether Ms. Pellegatto bought the business without knowing it was 24/7. Ms. Pellegatto stated that she knew the business wasnôt 24/7 and that is why she is here. Mrs. Donato noted that the rules were set at the first approval.
Ms. Pellegatto indicated that her members have asked for 24/7 and the whole Snap Fitness concept was very new to Avon when it was approved. She commented that she doesnôt feel it is unreasonable to ask for reevaluation to consider 24/7 for an established business with good clientele.

Ms. Pellegatto addressed signage and commented that she cannot be blamed as she is a new owner and is not here to discuss signs. She noted that Lawrence Avenue is located next to a commercial district and the busiest road in Avon. The neighbors commented that the area is not open 24 hours. She noted that individuals cannot control every environment; no scenario is perfect.

Richard McCall, 65 Lawrence Avenue, commented that he has a police report from that address that notes a property check with medical problems, suspicious circumstances, and animal

complaints. Ms. Pellegatto noted that she has no knowledge of animal complaints. Mr. McCall noted that the property check was on April 19, 2011 at 20:46 hours; the medical issue was on May 26, 2011, at 10:47 pm; suspicious activity after midnight and animal complaint at 13:13 hours. In response to Mr. Starrôs question, Mr. McCall stated that the last 2 complaints were in 2012. Mr. McCall noted that he saw an advertisement for Snap Fitness noting that they are open 24 hours a day and added that he feels it is deceptive advertising. Ms. Pellegatto explained that 24 hours a day is the corporate philosophy and added that she has no control over the advertising. She referenced the meeting minutes from the original application noting that the original owner indicated at that time that the marketing would not be changed; it would still say 24/7.

Eileen Weiblen, 20 Francis Street, noted the hazards of living next to a busy road like Route 44 and added that a camera outside the building may show what happened but asked what value it provides when something is really happening. She noted that she has an alarm system for her home and expects to be protected. She explained that the alarm/motion sensor went off the other night but she never heard from the alarm company and they never knew anything happened. Alarms do not always help and something will happen sooner or later.

Joe Donato, 56 Lawrence Avenue, indicated that safety is the biggest problem and noted that there is a fear living close to a business like this. Itôs not the person working out in the facility thatôs the problem but, rather, is the weirdo thatôs outside who probably parks his car on Lawrence Avenue and walks down to the facility and waits. He noted that these concerns were discussed 2 years ago and asked if this is going to be discussed in the next 2 years when the current owner quits. He commented that the safety of the neighborhood is being compromised for 3 people a night.

There being no further input, the public hearing for App. #4646 was closed, as well as the entire public hearing.

PLANNING AND ZONING COMMISSION MEETING

Mrs. Griffin motioned to waive Administrative Procedure #6 and consider Apps. #4644, #4645, and #4646. Mrs. Clark seconded the motion that received unanimous approval.

App. #4644 Timothy and Walter Parylak, owners/applicants, request for 2-lot subdivision, 3.725 acres, 655 and 661 Lovely Street, Parcels 3060655 and 3060661 in R30 and R40 Zones

Mrs. Griffin motioned to approve App. #4644 subject to the following conditions:

1. The ñAgreementò concerning a lot line revision and the keeping of two (2) horses on the property shall be reviewed and approved by Town Staff prior to being recorded on the Land Records.
2. The ñAgreementò shall terminate upon the death of either horse. At that time, only a single horse shall be permitted.

The motion, seconded by Mrs. Clark, received unanimous approval.

App. #4645 Lothar and Elizabeth Candels, owners, John Noelke, applicant, request for Special Exception under Section VI.D.3.b. of Avon Zoning Regulations to permit outdoor sculpture display, 2 Mountain View Avenue, Parcel 3250002 in a CS Zone

Mrs. Clark motioned to approve App. #4645 subject to the following condition:

1. Approval is granted for a two-year time period.

The motion, seconded by Mr. Mahoney, received unanimous approval.

App. #4646 Sunset of Avon LLC, owner, Michele Pellegatto, applicant, request for Special Exception under Section VI.C.3.d of Avon Zoning Regulations to permit 24-hour access to existing health club, 260 West Main Street Parcel 4540260 in a CR Zone

Mrs. Griffin motioned to deny App. #4646. The motion, seconded by Mrs. Clark, received approval from Mesdames Griffin, Clark, and Keith and Messrs. Gackstatter and Mahoney. Voting in opposition of denial were Messrs. Starr and Cappello.

OTHER BUSINESS

Educational Playcare ï overall plan for outdoor playground/activities to satisfy approval conditions of App. #4627 ï approved Sept 2012

Present were David Whitney, PE, Consulting Engineers, LLC and Gerry Pastor and Jane Porterfield, Educational Playcare.

Mr. Kushner reported that in connection with the most recent approval for an outdoor playground, the Commission asked for an overall plan on how Educational Playcare utilizes several buildings and the parking lot in the Riverdale Farms plaza.

Mr. Whitney displayed a map of the site explaining that Educational Playcare occupies 4 buildings (7, 8, 10, and 19) in Riverdale Farms (Route 10, Simsbury Road). The playground located between Buildings 7 and 8 is shared by both buildings and is approximately 12,000 SF in size and entirely surrounded by fencing. Building 10 is located in the middle of the site and is the location where yellow plastic barricades are used in the parking lot for a playground during certain times of day; this playground area is approximately 3,000 SF in size with a hatched walkway across the road. Building 19 is the new, most-recently approved, playground in the middle of the parking lot; he noted that there are steel bollards inside the fencing to make it safe.

Mr. Starr commented that he has no issues with the playgrounds.

Ms. Keith noted that she doesnôt think anyone could miss the yellow plastic barricades or mistake them for something else. She added that sheôs not thrilled with kids playing in the parking lot but noted her appreciation for the pictures noting that it helps to see the whole layout.

Jane Porterfield offered clarification that the buildings are based on the age of the children; they are dropped off at one building, remain there, and are picked up at the end of the day. Children are not going from one building to another, ever.

Gerry Pastor explained that in 3 of the buildings the children exit directly onto the playground and do not ever enter the parking lot. He further explained that only the school-age children (1st through 6th grade) sometimes cross to another playground but noted that they are supervised.

Mrs. Griffin commented that while she is happy that Educational Playcare is successful she noted that the current setup is not what she envisioned for a commercial specialty plaza.

There being no further business, the meeting adjourned at 10:35pm.

Respectfully submitted,

Linda Sadlon, Clerk

LEGAL NOTICE
TOWN OF AVON

At a meeting held on January 15, 2013, the Planning and Zoning Commission of the Town of Avon voted as follows:

Proposed Settlement of Litigation: *Golf Club of Avon, Incorporated and JZMAR, LLC v. Town of Avon Planning & Zoning Commission,* Superior Court, Judicial District of Hartford, Docket No. HHD-CV-12-6034458-S. Property owned by Golf Club of Avon, Incorporated, located north of Country Club Road and south of Pioneer Drive in the Town of Avon. Subject matter of settlement involves proposed rezoning of approximately 6.25 acres of land from ROS to R-40 and resubdivision of the same land into five lots. **APPROVED WITH CONDITIONS**

App. #4644 Timothy and Walter Parylak, owners/applicants, request for 2-lot subdivision, 3.725 acres, 655 and 661 Lovely Street, Parcels 3060655 and 3060661 in R30 and R40 Zones **APPROVED WITH CONDITIONS**

App. #4645 Lothar and Elizabeth Candels, owners, John Noelke, applicant, request for Special Exception under Section VI.D.3.b. of Avon Zoning Regulations to permit outdoor sculpture display, 2 Mountain View Avenue, Parcel 3250002 in a CS Zone **APPROVED WITH CONDITION**

App. #4646 Sunset of Avon LLC, owner, Michele Pellegatto, applicant, request for Special Exception under Section VI.C.3.d of Avon Zoning Regulations to permit 24-hour access to existing health club, 260 West Main Street Parcel 4540260 in a CR Zone **DENIED**

Dated at Avon this 16th day of January, 2013. Copy of this notice is on file in the Office of the Town Clerk, Avon Town Hall.

PLANNING AND ZONING COMMISSION
Duane Starr, Chair
Linda Keith, Vice-Chair