

# Plan Commission Report #3

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## PLANNING & BUILDING DEPARTMENT

Town of Avon, Indiana  
6570 East U.S. Highway 36  
Avon, IN 46123

Case Number: ZA 09-12  
Case Name: Chapter 5 – Planned Unit Development  
Report Date: February 22, 2010

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### GENERAL INFORMATION AND CASE DESCRIPTION

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Case Type:	Text Amendment	
Applicant:	Town of Avon	Owner: N/A

### EXHIBITS

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1) "Redline" Second Text Revision, Chapter 5 – Planned Unit Developments, 2/22/10
2) Second Text Revision, Chapter 5 – Planned Unit Developments, 2/22/10
3) "Redline" Second Revision, Appendix A-8, 2/22/10
4) Second Revision, Appendix A-8, 2/22/10
5) Revised Comprehensive Plan Recommendation comparison table, 2/22/10
6) Comparison, Appendix A-8 submittal requirements, 2/22/10

### PETITION HISTORY

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The February 22, 2010 hearing represents the second consideration of the proposed text amendment.

This proposed revision was first considered at the January 25, 2010 meeting of the Avon Plan Commission. Members of the Plan Commission offered comment and requested revision to the proposed text, and this petition was continued by the Plan Commission to allow time for modifications.

This petition was scheduled to be heard at the November 23, 2009, but was continued to December 21, 2009 at the request of staff to allow additional time to generate the revised text. The December 21, 2009 hearing was cancelled due to a lack of new business, continuing this item to January of 2010.

### PROCEDURAL

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- The required public hearing for the proposed amendment was conducted at the January 25, 2010 Plan Commission. Any further public hearing is not required, and is discretionary on the part of the Plan Commission.
- Notice of the November 23, 2009 public hearing was published in the Hendricks County Flyer in accordance with the Rules of Procedure. At this petition was continued at subsequent Public Hearings or noted as continued on meeting cancelation notices, the public notice remained valid.
- The Plan Commission may send forward the zoning amendment to the Town Council with a favorable recommendation, unfavorable recommendation or no recommendation. The Plan Commission may also continue the zoning amendment.

SECOND REVISION SUMMARY – CHAPTER 5, PUD DISTRICTS ORDINANCE TEXT

At the January 25, 2010 Plan Commission meeting, the proposed revisions to Chapter 5, PUD Districts, were introduced by staff. Comment was provided by members of the Plan Commission, and revisions were requested. Further, full review by the Town Attorney had not been completed at the time of the January 25, 2010 meeting, and comments had not been provided to staff. This section of the staff report will identify the major concerns of both the Plan Commission and Town Attorney, and briefly describe the revisions to the proposed Chapter 5, PUD Districts text in response to the concerns.

1. Neighborhood Meeting issues.

The Plan Commission expressed concerns that information from the required Neighborhood Meeting would not be relayed to the Plan Commission until the required Public Hearing. The Plan Commission members feared working at cross-purposes with impacted abutting property owners when attempting to elicit modifications to a proposed PUD, and expressed a desire to be in attendance at the required Neighborhood Meeting. The Town Attorney expressed concerns about Plan Commission members attending the required Neighborhood Meeting, stating that the presence of Plan Commission members could trigger issues with Open Door laws and create quorum problems.

To resolve these concerns, the proposed Chapter 5 text would 1) require the Neighborhood Meeting to occur *before* the Informational Meeting; 2) require the petitioner to provide a written report of the events of the Neighborhood Meeting for inclusion in the Plan Commission packet for the Informational Meeting; 3) allow neighbors to provide a similar written report for inclusion in the Plan Commission packet for the Informational Meeting; and 4) eliminate any specific notice of the Neighborhood Meeting for Plan Commission members to avoid Open Door issues.

2. Approval of External Agencies.

Both the Plan Commission members and the Town Attorney expressed concerns that a petition could be trapped in “limbo” while waiting to receive approval from an external agency.

Staff notes that the language proposed in the first revision of Chapter 5 was not entirely clear as to the role of any external agency in the process of reviewing and approving a proposed PUD zoning district request. The text of the applicable section has been revised to reflect that, during the Preliminary (PUD-P) phase of developing a PUD zoning district, the role of an external agency is only to consider and allow modified *standards* under the jurisdiction of the agency in question – not to review and approve the entire PUD zoning district as a whole, nor to review and approve development plans for the proposed PUD zoning district.

3. Exhibits as Standards

Members of the Plan Commission expressed a desire to see graphic exhibits, such as elevations, renderings, and landscaping plans hold more influence than text standards. Instances where images submitted as exhibits or presented at hearings presented one image, but construction resulted in a different appearance were cited as examples of prior undesirable results.

The proposed text of Chapter 5, PUD Districts has been amended to emphasize graphic exhibits in the event of conflict between a text standard and a visual depiction. Additional language has been added to the proposed text establishing the Zoning Administrator as the determining party responsible for resolving any conflict and establishing the standard appeal procedure for Administrative Determinations as the means of contesting any determination the petitioner disagrees with.

4. Miscellaneous Text Revisions

Members of the Plan Commission expressed concerns that the presence of “hard” standards in the PUD District text (ex.: minimum project acreage, minimum open space percentages) were likely to limit the flexibility and creativity in submitted PUD requests. These standards have been removed in response to the concerns of the Plan Commission.

Comments received from the Town Attorney requested additional clarification to sections establishing time frames for action by the Town Council, halting permitting when established phasing schedules are not adhered to, timely requesting and approval of extensions of time, and criteria for adopting amendments. The proposed amended text addresses these requests, and the attached “redline” revision identifies the locations in the proposed text where the requested revisions have occurred.

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#### SECOND REVISION SUMMARY – APPENDIX A-8, SUBMITTAL REQUIREMENTS

In addition to revisions to the proposed text of Chapter 5, PUD Districts itself, members of the Plan Commission identified issues with the revisions to the required submittal documentation identified in Appendix A-8. This section of the staff report will identify the major concerns of the Plan Commission, and briefly describe the revisions to the proposed Appendix A-8 text in response to the concerns.

##### 1. Tree Inventory

Members of the Plan Commission expressed concern that the requirement of a Tree Inventory as a component of the PUD-P submittal added unnecessary cost to the process for the petitioner, and expressed a desire to see this standard reduced or eliminated.

The proposed revisions to Appendix A-8 would require the petitioner to generally identify any area proposed for tree preservation, but would not require an actual tree inventory unless the petition proposed using preserved trees for some form of credit towards site landscaping standards.

##### 2. Cash Flow Analysis

Members of the Plan Commission expressed concerns that submitted cash flow analysis documents would not provide useful information, or would provide misleading information.

The proposed revisions to Appendix A-8 would eliminate the requirement for the submittal of a cash flow analysis.

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#### FIRST REVISION SUMMARY

The proposed revision to Chapter 5: Planned Unit Development represents a response to concerns identified by the Avon community during the development of the Town of Avon 2005-2025 Comprehensive Plan. Issues identified in the “Implementation” section of the Comprehensive Plan recommend modifications to the terms of the Planned Unit Development ordinance to better justify PUD requests, better delineate zoning standards created by a PUD district, prevent misuse of the PUD as a means to decrease standards without related increases in quality, and reduce public hearing time devoted to PUD requests. In addition to these issues, review by staff identified confusing and conflicting ordinance language in the current text of the Avon Zoning Ordinance, as well as redundant provisions, confusing procedural steps, and instances where arbitrary decision-making could introduce potential liability for the Town.

The proposed revised ordinance attempts to deal with these issues.

## ANALYSIS

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The proposed revision would be considered a “clean sheet” attempt, with the new ordinance retaining very little of the content of the existing ordinance. For this reason, a side-by-side comparison of the two documents is not provided. Instead, this report will attempt to describe the proposed revisions by identifying main revision categories: statutory compliance, procedural changes, submittal requirements, and ordinance clarity & general revisions.

### Statutory compliance:

The Indiana enabling legislation for Planned Unit Development is found in IC 36-7-4-1500, known as “the 1500 series.” The terms of the 1500 series establish fundamental elements of the PUD process, such as requiring that the adoption of a PUD district be treated as an ordinance amendment, and thus requiring a legislative act by a municipality’s elected body. The 1500 series further establishes that a PUD district may amend standards contained within a municipality’s zoning ordinance, allows for localities to establish submittal requirements and approval procedures, and allows for the local legislative body to delegate final approvals as necessary.

The proposed revision to the Planned Unit Development district ordinance is undergoing review by the Town Attorney, and is believed by Staff to be generally consistent with the State enabling legislation. Minor procedural issues identified in the current Town PUD ordinance, such as the arbitrary ability of the Zoning Administrator to remove a request from the hearing process (thereby denying due process) have not be carried forward to the proposed revised text.

### Procedural Changes:

The current Town of Avon Planned Unit Development review and approval procedures are established by Section 11 of Chapter 5 of the Avon Zoning Ordinance. This Chapter establishes four main procedural steps : Preliminary Plan Review by the Zoning Administrator; Preliminary Plan Review by the Plan Commission, Preliminary Plan Review by the Town Council and Adoption, and Secondary Review of the Final Plan by the Plan Commission. The current language is non-linear and lacks transparency, with many procedural steps appearing to be of a discretionary nature on the part either the petitioner or the Zoning Administrator.

The proposed revised Planned Unit Development ordinance would clarify the Preliminary process for seeking approval for a proposed PUD district, and would consist of the following:

- 1) A mandatory pre-filing conference;
- 2) Submittal in accordance with Town standards;
- 3) A neighborhood informational meeting;
- 4) Review by a Technical Advisory Committee;
- 5) An informational appearance before the Plan Commission;
- 6) A public hearing before the Plan Commission; and
- 7) Action by the Town Council.

The proposed revision would further remove a PUD-specific Secondary Review process, and would instead allow existing review processes (Development Plan Review or Primary Plat) to serve as the required secondary review process. This proposed change is intended to increase consistency in Plan Commission reviews by utilizing established, detailed review processes.

Additional changes within the procedural language regarding amending approved PUD districts would work in concert with the changes to the PUD Secondary Review process to emphasize the establishment of PUD specifics in the Preliminary Review. While a PUD District is acknowledged as a tool to provide a developer additional flexibility and allow creativity in the development of a site, members of the Plan Commission have expressed concern that PUD ordinances and supporting documentation have been lacking in information at the Preliminary stage, and that this

lack of information has impaired informed decision-making. The emphasis of the Preliminary stage is intended to reduce occurrences of this concern.

Submittal Requirements:

The current text of the Planned Unit Development district ordinance incorporates submittal requirements into multiple locations within Chapter 5. Many of these requirements conflict with adopted Town forms and standards found elsewhere within the Town of Avon Zoning Ordinance. In addition, Appendix A-8 establishes a series of additional supporting documents that may be required as a component of a PUD district request.

The proposed revision attempts to consolidate the submittal standards to Appendix A-8 through explicit reference in the revised text. Wherever possible, the revised text references submittal through existing forms and documents found within the Zoning Ordinance, such as the approved Commitment Form. Further, proposed revisions to Appendix A-8 attempt to address many of the issues identified in the Implementation Items of the Comprehensive Plan.

Ordinance Clarity & General Revisions

The proposed revision emphasizes paring the Ordinance language down to the items necessary to remain in compliance with State statute, those items necessary to clearly identify the Town's adopted approval process, those items required for compliant submittal, and those items necessary to effectively and clearly administer an adopted Planned Unit Development district. In many instances, the text of the current ordinance diverges from the stated title of any given section by including procedural steps in a submittal requirements section, or some similar mixing of purpose.

The proposed revision attempts to limit language that would cloud or confuse the petition process. Proposed revisions to Appendix A-8 would attempt to clearly define the items required for submittal.

SECOND REVISION RECOMMENDATION

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Forward a **positive** recommendation to the Avon Town Council.

Submitted By:

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Director of Planning & Building  
Town of Avon, Indiana