

**PLANNING COMMISSION
APPROVED MINUTES**

**TOWN OF ATHERTON
September 23, 2009
6:00 P.M.
TOWN COUNCIL CHAMBERS
91 ASHFIELD ROAD**

REGULAR MEETING

1. ROLL CALL:

**PRESENT: Kristi Waldron
Herman Christensen Jr.
Philip Lively
William Grindley
Paul Quinlan**

City Manager Jerry Gruber, Assistant City Attorney Ben Winig, Town Planner Neal Martin and Deputy Town Planner Lisa Costa Sanders were also present.

2. APPROVAL OF MINUTES

**MOTION to approve the minutes of the August 26, 2009 meeting as corrected.
M/S Grindley/Christensen Ayes: 4 Noes: 0 Abstain: 1 (Lively)**

3. PUBLIC COMMENTS - none

4. COMMISSIONERS REPORTS

Commissioner Grindley and Commissioner Lively indicated that all the interviews have been conducted with the major parties involved with the Special Events Ordinance and they are working on a draft. Commissioner Lively noted that they need some assistance from the City Attorney regarding the grand jury report.

Commissioner Grindley reported that the Blue Ribbon Task Force met on September 8, 2009 and is currently working on the final draft.

5. GENERAL PLAN COMMITTEE REPORTS

Commissioner Christensen reported that the General Plan met and discussed how the Town could promote energy and water conservation. He indicated that although point systems are used in other towns and seem to be successful, because of the size and value of Atherton homes, a point system would likely not work. The Committee requested a public workshop for residents and buildings to provide more input.

6. STAFF REPORTS - none

REGULAR AGENDA

7. Review of the draft 2007-2014 Housing Element Update

Town Planner, Neal Martin presented the Housing Element update; addressed the Commissioners concerns from their last meeting and explained the next steps in the process.

Mr. Martin indicated that he concurred with all of Commissioner Lively's suggestions.

Commissioner Christensen noted that on page 54, construction costs should be changed from \$500 to \$225 based on contractor's statements.

Commissioner Grindley asked for clarification on page 13. Mr. Martin indicated that they could not count those units that already exist.

Chair Waldron questioned if once it is converted could it be counted.

Commissioner Grindley questioned why the Town would encourage Atherton residents to convert when the Town does not receive credit according to the State. Mr. Martin noted he understood his point. Commissioner Grindley stated he'd like to see the statement removed.

Chair Waldron suggested removing the word "existing" from page 13. There was Commission consensus.

OPEN PUBLIC HEARING

Elizabeth Lewis, Atherton resident, expressed her concern with the proposed draft housing element. She suggested that on page 8, they should consider modifying the number of net new housing units as she believes that the current number of 5 units will not satisfy the State. Ms. Lewis also indicated that the word "existing" also needs to be struck on page 9.

Chair Waldron stated that City Council provided direction to the Planning Commission consistent with the draft document before the Commission tonight.

CLOSE PUBLIC HEARING

Commissioner Quinlan asked Commissioner Christensen who reviewed the Town of Los Altos Hills regulations, if it differed from the proposed changes to Atherton's second unit regulations. Commissioner Christensen indicated in Los Altos Hills residents receive an incentive within the main building area for second units.

Chair Waldron stated that it is hard to compare the two Towns with relation to the setbacks for second units.

Mr. Martin asked for consensus from the Commissioners as to whether they would require no minimum lot size for second units.

Commissioner Christensen expressed his support to keep the minimum lot size, but he did not feel that was the consensus of the Commission. Commissioners expressed their interest in no minimum lot size requirement.

MOTION to Recommend the City Council authorize staff to transmit the Housing Element to the State Department of Housing and Community Development (HCD) for review.

M/S Lively/Grindley Ayes: 5 Noes: 0

8. **Proposed Amendment to Zoning Code: City Council referral to the Planning Commission to add a provision for light well and bay window standards for smaller lots in the R1-A district and consideration of the 20' setback requirement for entry gates.**

Deputy Town Planner, Lisa Costa Sanders reported that the City Council requested these provisions be added to the zoning code. Any new provision that was not previously considered by the Planning Commission requires its review prior to formal adoption by the Council. Ms. Costa Sanders also noted that the Council requested the Commission review the 20' entry gate setback requirement, especially as it relates to smaller lots.

Commissioner Quinlan questioned where the entry gate setback requirement came from. Ms. Costa Sanders indicated it was a recommendation from the consultant that prepared the zoning code. Commissioner Quinlan questioned their reasoning for adding this requirement. Ms. Costa Sanders indicated for public safety.

Commissioner Christensen noted that he'd like to see two versions; one for less than 40,000 square foot lots and one for larger lots. He further noted that he believes it is a valid argument if a property line is 10 feet from the roadway.

Commissioner Quinlan stated that he spent some time measuring entry gates on the streets of Maple, Walnut, Watkins, Ashfield, Lloydon, Southgate and Parker Avenue and stated that he believes it is a lot size issue and does not see an issue with changing the entry gate setback to 12 feet. He noted the following from his field investigations; Maple/ Walnut: average 22 feet from the street, Watkins: average 18-19 feet, Ashfield: average 13-15 feet, Lloydon: average 9-12 feet, and Southgate: average 9-10 feet

Commissioner Christensen clarified that the setback proposed is 12 feet from the roadway.

Commissioner Quinlan confirmed the setback would be 12 feet from the edge of the pavement.

Ms. Costa Sanders noted that the public right of way generally extends an additional 10 feet beyond the paved roadway, but that it does vary.

Chair Waldron questioned if the gates Commissioner Quinlan measured were all vehicle gates. Commissioner Quinlan indicated that all the gates were vehicle gates.

Commissioner Quinlan expressed his concern with the need to add this setback requirement if there hasn't been any issues or complaints. He noted that we are essentially fixing something that isn't broken.

Commissioner Grindley questioned if the town would have any liability if there were not a setback requirement in place. Assistant City Attorney, Ben Winig stated the Town would not have any additional liability.

Chair Waldron questioned if an owner could put up a gate abutting to the street. Ms. Costa Sanders indicated that the gate would have to be at the property line.

Commissioner Christensen stated that he believes the 20 foot setback should be required for larger lots.

Chair Waldron noted that considering there are more houses in the R1-B area, there should be more traffic.

OPEN PUBLIC HEARING

Jeff Wise, Atherton resident, noted that there are a couple of different gates and for the R1-A lots, in many cases there are more than two entrances. He pointed out that in many cases it has to do with the aesthetics. Mr. Wise noted that he just finished a gate where the public gate is setback further and the family gate is along the property line.

Commissioner Grindley questioned if the family gate is remote controlled. Mr. Wise indicated yes. He further noted that if you require a 20 foot setback, then you inherently need to address columns and agrees that crafting an ordinance when a problem does not exist doesn't make sense.

CLOSE PUBLIC HEARING

Commissioner Lively indicated that the Council could move forward without this provision in the ordinance as he believes this needs to be discussed and researched further.

Commissioner Christensen noted his support for a 20-foot setback requirement for entry gates on lots over 40,000 square feet in area.

Commissioner Grindley also expressed his support for the 20 foot setback requirement on lots larger than 40,000 square feet, as long as Council says there is limited or no liability to the Town.

Commissioner Quinlan stated he does not feel this is a problem that needs to be fixed and therefore would not support the requirement for a 20 foot setback for entry gates.

Chair Waldron stated that she believes the issue is with the keypad and we already have a requirement for setbacks for keypads. She further noted that she does not agree that it should be kept to lots over 40,000 square feet, if it is a safety issue it is a safety issue regardless of size of lot.

Ms. Costa Sanders noted that the keypad setback requirement is 6 feet from the edge of the paved roadway.

MOTION to recommend the first vehicle gate on the property with a land area of 40,000 square feet or greater be setback 20' from the edge of the paved roadway.

M/S Christensen/Grindley Ayes: 2 Noes: 3 (Lively, Waldron, Quinlan)

MOTION to remove the setback requirement for entry gates.

M/S Quinlan/Waldron Ayes: 2 Noes: 3 (Lively, Christensen, Grindley)

MOTION to defer the item for further study and discussion by the Planning Commission and request the City Council consider the Zoning Code without the entry gate setback requirement.

M/S Lively/Grindley Ayes: 4 Noes: 1 (Christensen)

Light Wells/ Bay Windows

Commissioner Quinlan questioned if there were any R1-A lots smaller than 10,000 square feet in size. Ms. Costa Sanders responded in the affirmative.

OPEN PUBLIC HEARING

Jeff Wise, Atherton resident, commented that in his opinion light well are unobtrusive.

Elizabeth Lewis, Atherton resident, stated that lots with less than 10,000 square feet should have some consideration with encroachment into side setbacks. She indicated that these smaller properties in the R1-A zone have been overlooked in the code. Ms. Lewis noted that she personally has a light well and would have liked to bump it out a little bit more. She concluded by urging the Commissioners to adopt these two items.

CLOSE PUBLIC HEARING

Commissioner Quinlan expressed his support for the two new provisions.

Commissioner Grindley agreed with his fellow Commissioner.

Commissioner Christensen also agreed and expressed his support.

Commissioner Lively concurred with his fellow Commissioners.

Chair Waldron also expressed her support for the two new provisions.

MOTION to support the two new provisions the City Council added to the code for light well and bay window encroachment into setbacks for lots with an area less than 10,000 square feet in the R1-A zoning district.

M/S Quinlan/Christensen Ayes: 5 Noes: 0

- 9. Request from Commissioner Christensen that Planning Commission consider requesting the City Council reconsider its decision to remove the provision for 8' tall fences and lighting restrictions on main buildings over 10' and on entry gates and columns**

Deputy Town Planner, Lisa Costa Sanders presented the Staff Report.

Commissioner Christensen suggested separating lighting and fencing.

Commissioner Lively noted that there are provisions for the 8 foot tall fence, including neighbor agreement and that this should remain in the code.

Commissioner Grindley noted he agreed and liked the concept of neighbors agreeing.

Commissioner Quinlan indicated he voted against this item.

OPEN PUBLIC HEARING

Elizabeth Lewis, Atherton resident, asked Assistant City Attorney what the protocol is for this, if the Planning Commission sends an item back to the City Council.

Assistant City Attorney, Ben Winig stated that it is more atypical than typical. But the Planning Commission has the right as a body to re-address recommendations.

Commissioner Quinlan stated that although the Commission is the recommending body, ultimately the City Council decides.

Jeff Wise, Atherton resident, noted he has mixed feelings as the whole reasoning for updating the zoning code is to make it a more workable. He indicated that Mike Wasmann, Building Official spoke strongly against this 8' fences and based on his strong recommendation he'd defer to Mr. Wasmann's judgment.

CLOSE PUBLIC HEARING

Chair Waldron agreed with Mr. Wise's comments and would rather not see 8' fences allowed.

MOTION to request the City Council reconsider its decision to remove the provision for 8' tall fences.

M/S Christensen/Grindley Ayes: 3 Noes: 2 (Waldron, Quinlan)

Commissioner Christensen indicated since he requested this item on the agenda he felt like the lighting restriction on main buildings over 10 feet was a compromise and there is a growing concern for light and the provision eliminates the glare and would therefore ask the Council to reconsider their action.

Commissioner Lively noted that goal of the Atherton General Plan is to keep the Town scenic and rural and stated that Woodside has a much more stringent lighting code.

Commissioner Grindley indicated that he still supports the same recommendation.

Commissioner Quinlan indicated that he does not feel that the Commission should be revisiting this and would agree with City Council's recommendation.

OPEN PUBLIC HEARING

Jeff Wise, Atherton resident, stated that he too agrees that there are lighting fixtures that are opaque and on a horizontal plane and a spot light type fixture can be intrusive. He noted that Woodside is very dark and with the Title 24 guidelines it is less intrusive and therefore recommend that the Commissioners not send back lighting restrictions to the Council.

CLOSE PUBLIC HEARING

Chair Waldron stated that she agrees in principal with Commissioner Lively and Commissioner Grindley regarding light pollution but does not agree with an ordinance that limits type of fixture.

MOTION to request the City Council reconsider its decision to remove the lighting requirement on main buildings over 10' and entry gates and columns

M/S Christensen/Lively Ayes: 3 Noes: 2 (Waldron, Quinlan)

- 10. Discussion on Staff and Commissioner protocol when not in agreement with the recommendation of the Planning Commission.**

Deputy Town Planner, Lisa Costa Sanders presented the Staff report.

Commissioner Christensen asked that this matter be considered as a result of past situations. He stated that he believes it is important that the Planning Commission be aware of when the staff is in disagreement with the Planning Commission on items before the City Council.

Commissioner Grindley stated staff is staff and reports to the Commission. He was not aware that staff was in disagreement with the Commission relating to the zoning code items.

Ms. Costa Sanders stated she disagreed with Commissioner Grindley's comments and believes this was addressed in multiple Staff reports and verbally at the Commission meetings.

Commissioner Grindley indicated he misunderstood the process.

Chair Waldron noted that the Planning Commission provides a recommendation. Staff is required to do their due diligence and if that means objecting to recommendations then so be it. She further noted that Staff disagreement with the Planning Commission's recommendation was not unexpected.

Commissioner Grindley stated that the Commission had no voice at the City Council meeting.

Commissioner Lively stated that with all due respect it was not clear that the Staff would be disagreeing with the Commissioners' recommendation and it is Staff's responsibility to go forward and present to the City Council the Commission's recommendation.

OPEN PUBLIC HEARING

Jeff Wise, Atherton resident, stated that as an observer, Commissioner Grindley's point the Staff serves the body, yes that is true but the body is the City Council, not the Planning Commission. Mr. Wise further stated Staff has been hired by the Town, and although he understands the Commissions' concerns, it is important that the expectations are clear; Staff's fiduciary duty is to the Council. He concluded that Staff does the best job they can to represent both sides, the Commission has aired their frustration now it is time to move forward.

Commissioner Christensen stated that this matter is more of an internal matter than a public matter, but agreed that they do need to move forward. He further stated that Staff will carry the recommendation of the Planning Commission to the City Council, and if Staff disagrees then the Commissioners will be notified. Staff agreed with Commissioner Christensen's request.

Commissioner Quinlan stated that if Staff doesn't agree then isn't it assumed that they carry that disagreement.

Commissioner Christensen replied that it is a simple matter. If Staff disagrees, then the Commission should be informed; it is fair play and is a matter of courtesy as well as protocol.

Commissioner Quinlan asked for clarification as to what the Commissioners are expecting in terms of notification if a Commissioner plans to speak at a City Council meeting.

Commissioner Lively stated it is a matter of courtesy.

Commissioner Grindley questioned how they would handle an absent Commissioner.

Mr. Winig stated that it appears as though the Commission is concerned when something is going to be overturned. As a courtesy, when we can let each other know, someone should opt to do that.

Commissioner Christensen asked that the established body be notified if one of the Commissioners is going to be attending a City Council meeting and is going to voice disagreement with the recommendation of the Commission.

City Manager, Jerry Gruber stated that Staff is in a difficult position, and if the Planning Commission recommends one thing and Staff recommendations deviates from Planning Commission it is a consistent format with what they will do before the City Council.

11. ADOURN

MOTION to adjourn the Planning Commission meeting at 8:05 p.m.
M/S Quinlan/Lively Ayes: 5 Noes: 0

Respectfully submitted,

Lisa Costa Sanders, Deputy Town Planner