



TOWN OF PARADISE

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P L A N N I N G C O M M I S S I O N M I N U T E S

February 18, 2014

6:00 PM

CALLED TO ORDER AT 6:02 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

COMMISSIONERS PRESENT: James Clarkson, Stephanie Neumann, Michael Zuccolillo and Daniel Wentland, Chair.

COMMISSIONERS ABSENT: None. Jody Jones was appointed to fill a vacancy on the Paradise Town Council on January 16, 2014.

STAFF PRESENT: Community Development Director Craig Baker, Assistant Planner Susan Hartman, Town Clerk Joanna Gutierrez

1. APPROVAL OF MINUTES - RESOLUTION OF APPRECIATION

- 1a. **MOTION by Zuccolillo, seconded by Neumann**, approved the Regular Meeting Minutes of November 19, 2013 and Special Meeting Minutes of December 3, 2013. Roll call vote was unanimous.
- 1b. **MOTION by Zuccolillo, seconded by Clarkson**, adopted Resolution No. 14-01, A Resolution of Appreciation for Outgoing Planning Commissioner Jones. Roll call vote was unanimous.
- 1c. Chair Wentland turned the meeting over to Town Clerk Joanna Gutierrez for the selection of a Presiding Chairperson for the remainder of Fiscal Year 2013/2014.

Town Clerk Gutierrez opened the nominations for the position of Presiding Chair term.

Commissioner Wentland nominated Michael Zuccolillo to serve as Presiding Chair of the Planning Commission.

MOTION by Wentland, seconded by Neumann, closed the nominations by unanimous roll call vote.

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Roll call vote on Michael Zuccolillo was unanimous. Commissioner Zuccolillo was selected to serve as Presiding Chairperson of the Planning Commission through the end of the 2013/2014 fiscal year, June 30, 2014.

Chair Zuccolillo opened nominations for the position of Vice Chair.

Commissioner Clarkson nominated Stephanie Neumann to serve as Vice Chair of the Planning Commission.

MOTION by Wentland, seconded by Clarkson, closed the nominations by unanimous roll call vote.

Roll call vote on Stephanie Neumann was unanimous. Commission Neumann was selected to serve as Vice Chairperson of the Planning Commission through the end of the 2013/2014 fiscal year, June 30, 2013.

2. COMMUNICATION

Community Development Department Director Baker informed the Planning Commissioners of certain actions taken by Council that included adoption of Ordinance No 534 approving zoning code text amendments for minor and major utility services, awarded a contract to PMC for the Housing Element update, adopted Ordinance 535 approving the Mica Gilkey General Plan Amendment and Rezone, appointed former Planning Commissioner Jody Jones to fill a vacancy on the Paradise Town Council and announced the Planning Commission vacancy and established an appointment process and scheduled appointment for the March 11, 2014 Town Council meeting.

3. PUBLIC COMMUNICATION – None.

4. CONTINUED PUBLIC HEARING – None.

5. PUBLIC HEARING

- 5a. Planning Commission consideration of a recommendation for Town Council adoption of proposed text amendments to the Town's zoning regulations contained in Paradise Municipal Code Title 17 (Zoning Ordinance). If adopted by the Town Council, the amendments would add a new Paradise Municipal Code (PMC) section to regulate the outdoor display of merchandise in commercial zoning districts and amend PMC section 17.32.100 G related to outdoor special sales, parking lot sales, swap meets and other similar sales activities.

Following a report from Community Development Director Baker, Chair Zuccolillo opened the public hearing at 6:15 p.m.

1. Kelly Pieper, Paradise Surplus and Trading post, stated that their outdoor merchandise displays draw customers into their store, that the 5' and 50% restriction is not enough for their business display and suggested workshops be held on how to display merchandise in an attractive manner.
2. Carol Stark, Jeannie's Consignment, is opposed to an across-the-board regulation and suggested that the display of merchandise outdoors attracts customers.

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Commissioner Wentland asked Ms. Stark if she had contemplated other solutions or suggestions and that the ordinance is being proposed to address certain ongoing issues occurring in the Town.

Ms. Stark suggested that the Town directly address the businesses that are receiving complaints.

Commissioner Clarkson stated that it is not the intent to infringe upon any business but to find a way to give the Town the ability to address businesses that are not being compliant and are not aesthetically pleasing but retain a business friendly environment.

3. Sally Holland, Second Hand Sally's, stated that there are a few businesses who have too much merchandise out on the street and would like the Town to speak to the few offenders rather than approving an ordinance that might affect their ability to attract customers. Ms. Holland suggested a town beautification project.

Commissioner Wentland stated that the commission would like to have input from the businesses on the proposed ordinance and indicated his belief that the Town needs to have law in place in order to clean up businesses.

4. John Ropp, Paradise Surplus and Trading Post, suggested that the businesses form a volunteer commission that could come up with ideas and solutions to resolve the problem and benefit the businesses.
5. Carol Stark suggested that the regulations be predicated upon the size of the parcel, a flexible rather than a fixed formula.

Commissioner Clarkson stated that laws with a wide scope can't account for all situations that might come up, and he would like a consensus to develop as a result of this discussion.

6. Jeff Gould, 2nd Time Around, stated that the staff report did alleviate many of his concerns but he is concerned about the effect of blanket restrictions on all businesses, and the effect on employees – hours being cut from those /who are responsible for setting up displays, and would like the Town to promote businesses and receipt of sales tax rather than continue to rely on property tax.
7. Tammy Deutscher speaking for her daughter who recently purchased a business on Elliott Road, stated that outdoor displays of merchandise is how they advertise, that there are a few businesses that give them all a bad name, and that there must be a way to target the businesses that are an eyesore without impacting all of the other businesses. Ms. Deutscher asked if there was any kind of a complaint system.

Chair Zuccolillo stated that he was on the committee that developed the proposed ordinance and it was difficult to create a definition for items that are unattractively displayed.

CDD Director Baker stated that the Town has a formal complaint system, and that the Town has approached the businesses that are perceived to be bringing the matter to the forefront.

Commissioner Wentland stated that he liked the suggestion that the business owners get together to discuss and perhaps teach what makes an attractive display.

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Commissioner Clarkson stated that he sees the sense in having legislation that would deal with the problem, as history has shown a lack of voluntary compliance.

8. Jeff Gould stated that he would like the business owners to have an opportunity to get together to define or determine what it is that defines junk to attempt to make everybody happy with the legislation and volunteered himself and his wife to be on the committee.
9. Loren Harvey stated that is a matter of opinion as to what is junk and to consider putting a time limit on how long an item can sit out in front of a store.

Chair Zuccolillo closed the public hearing at 6:45 p.m.

Commissioner Neumann asked if this ordinance would be retroactive. Attorney Moore stated that the ordinance would regulate the activities currently taking place at these types of stores. Commissioner Neumann also expressed concern that the Town relied on the Chamber of Commerce to notify the businesses of this public hearing.

Community Development Director Baker stated that the Town views business notification as one function of the Chamber and added that there is no business licensing by the Town as a means to ensure proper notification of all businesses.

Commissioner Clarkson stated the intent is not to alarm businesses that require a frontal display to bring business to their door, and he would like to spell out what is to be achieved. Commissioner Clarkson proposed a change that would include language relating to decorative types of displays, and displays that well represent the types of business, such as Jeannie's Consignment.

Chair Zuccolillo stated again that he was part of the committee that worked on the ordinance, and that the objective was to create an ordinance that is easy to understand, that would allow current businesses with tasteful displays to be unaffected, to create a definition that would easily define what is junk or blight in a manner that is not arbitrary.

Town Attorney Moore informed the Commission that the Town has been working on this ordinance over the last three months, that blight is not uniform for everyone, and that legislation cannot regulate a certain type of thing based on personal preferences, must not be arbitrary, and must deal with subject matter, such as merchandise, but not attempt to address what is used or new. The proposed ordinance enumerates sixteen categories of merchandise that would be exempt. Attorney Moore informed the Planning Commission that the City of Chico requires a use permit to have any outdoor merchandise and the City of Oroville requires a use permit and screening so the merchandise cannot be seen from a public right-of-way and that this proposed approach is far more lenient.

Commissioner Clarkson stated that he thinks any display of products that invoke complaints is a problem and his concern is if what the Town is trying to accomplish is not clearly defined, then people will be unhappy and we will lose businesses. Commissioner Clarkson stated he would like to find a way to define that, even if it takes longer.

Commissioner Wentland stated that he would like to see a committee of business leaders form and let them come back to the Planning Commission with suggested language and ideas within 60-90 days.

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Carol Stark volunteered to take the lead in forming a committee of business people and to meet and discuss the proposed ordinance and come up with suggestions for the Planning Commission.

MOTION by Wentland, seconded by Clarkson, continued the public hearing to March 18, 2014, the regular meeting date of the Planning Commission. Roll call vote was unanimous.

6. OTHER BUSINESS

- 6a. Discuss and provide direction concerning acceptance and referral of the 1994 General Plan Housing Element Annual Progress Report for calendar year 2013 to the Town Council. (Staff Recommendation: Approval to send to the Town Council)

Assistant Planner Susan Hartman reported to the Planning Commission that Government Code section 65400 requires local jurisdictions to prepare an annual report on the status and progress in implementing its General Plan Housing Elements and that the report must be at an annual public meeting before the legislative body. Staff would like the Town Council to consider the report at the March 11, 2014 meeting to facilitate submittal to the appropriate State agencies during the first week of April, 2014.

MOTION by Wentland, seconded by Neumann, accepted and forwarded to the Town Council the 1994 General Plan Housing Element Annual Progress Report for calendar year 2013. Roll call vote was unanimous.

- 6b. Consideration of a Request for Planning Commission Interpretation of Town Zoning Regulations to Determine if a Proposed Locked Gate Across a Private Road Access Easement Would Constitute a Violation of Town Zoning Ordinance Regulations Prohibiting the Establishment of Fences in Access Easements.

Community Development Department Director Baker informed the Planning Commission that on February 10, 2014, Jon Remalia submitted a written request for a Planning Commission interpretation of Town zoning regulations as they apply to his proposed establishment of a gate across an existing road easement. Community Development Director Baker stated that the issue is within Paradise Municipal Code Section 17.06.600 which states that no fences are allowed in public rights of way or access easements and that the Planning Commission is being asked to publicly discuss whether the gate is functionally equivalent to a fence and to make a finding.

Commissioner Clarkson stated that he would like to know how a Planning Commission finding might affect existing gates and is concerned that if this gate is determined to be a fence, then will all other such gates become fences and have to come down. Director Baker stated that the Town generally does not involve itself with private road matters. In this case, Mr. Remalia is asking for a determination or permission from the Town to establish a gate or fence, and the fundamental difference herein is that the proposed gate is intended to be established upon the property of another who opposes the placement of the gate. Assistant Planner Hartman stated that the gate or fence is proposed to be electrical and, as such, the Town would be asked to issue an electrical permit.

Town Attorney Dwight Moore stated that the Town deals with issues case-by-case, and that he doesn't believe a decision on this matter will have far reaching impacts as the Commission is dealing with a specific set of facts, the Town has no authority over the easement itself, or to determine if there is an easement, and the Planning Commission scope is limited to determining if this gate is a fence. Mr. Moore stated that the issue is not what it is called, it is about what it will do, and that titles don't have

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meaning in law; it is about what a thing actually does. This gate looked like a fence because it was not accepted by other owners and they would not have access based on the fact that it would be locked.

Chair Zuccolillo stated for the record that he is a real estate broker, was involved in the sale of the property to Ailamer in 2011 and received commission in an amount less than \$500, that he consulted with the Town Attorney and because the transaction took place more than one year ago, he has no conflict of interest relating to this matter.

Chair Zuccolillo opened the matter to public comment.

1. Jon Remalia asked if he could give his presentation first and then allow the other people to comment. He stated the presentation would outline what was there and what is proposed. Planning Commission agreed to allow Mr. Remalia to provide his presentation first.

Mr. Remalia stated that when he purchased the property there was a gate and there was never any intent to lock anybody out that has the legal right to use the road, stated that there has been misrepresentation of that fact and that he would like everyone who is going to give testimony to be sworn.

After brief discussion, the Planning Commissioners concurred that sworn testimony was not necessary.

1. Jon Remalia displayed a power point presentation of the property and easement. He stated that he does not think that the proposed freestanding gate on pillars is a fence. The gate is proposed to restrict unauthorized vehicular access and that persons who live along the road would be provided access.

Chair Zuccolillo reminded Mr. Remalia that the easement dispute is not the issue before the commission. Chair Zuccolillo called for the comment from citizens who turned in speaker cards.

2. William Apger stated that he represents Mr. Remalia in the civil litigation relating to this matter and would like to reserve his comments to the end, as rebuttal, to which the commission concurred.
3. Claudia Benike, stated that she is one of the parties having interest in the easement and the fence/gate, that her concern is also one of aesthetics and she is opposed to letting Mr. Remalia build something like this in their backyard, doesn't think their property should provide security for Remalia's property and that it would be an inconvenience for them to have to use a gate.
4. Dana Bettis stated that he doesn't want a gate on his property and stated his position that Mr. Remalia has no right to put a gate on his property.
5. Denise Bettis stated that she agrees with the statements made by her husband.
6. Lea Roy Johnson stated that he doesn't want any gate or anything built on his property. Jon hasn't asked any other property owner for compensation and thinks Jon needs to put the gate on his own property and put a sign at the end of Gregory Lane. He uses the easement to access their backyard and basement. Doesn't want a gate on the property.
7. Gene Mapa stated that he would like to discuss the Fillerup-Butler easement information as he thinks what Mr. Remalia stated was incorrect.

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Chair Zuccolillo stated that the Planning Commission is not addressing the easement issue.

8. David Murray stated that he representing the Bettises, that Ailamer is a real-estate investment company which he thinks is requesting this determination to gain an advantage in a pending civil litigation. Mr. Murray stated that the court has granted a restraining order on the construction of the gate, that he thinks the investment company wants to change building code to maximize his profit and the CA Fire Code requires that a turn-around be provided, and that his clients will lose free access to their easement.

Commission Clarkson asked Mr. Murray to stay focused on the issue, that the Planning Commission must take the facts as they are, and the question is, is this a fence or is this a gate, and would appreciate information that supports that this is a fence.

- 8a. Mr. Murray stated that the gate makes a non-exclusive easement. It becomes an exclusive easement if the power goes out, then it becomes a fence.

9. Alan White asked that the agenda item be read. Commissioner Zuccolillo read the agenda item again.

Mr. White stated that is not the discussion he is hearing, that the only item for discussion is whether a gate is a fence, and according to the Merriam Webster dictionary a gate is an opening in a wall or fence. He mentioned specific private gated easements, including Puddle Duck Court, Paradise Community Village access off of Paloma, the end of Valley View, but the discussion tonight is only to help determine whether or not a gate is a fence.

10. Susan Butler Mapa suggested that the commissioners look the state code to see what it says about an easement across someone's property, there is a right to go in and to go out, and that there is no right to do anything else to someone's property.

Chair Zuccolillo stated that the commissioners are not here to litigate that, but are being asked to decide what is the definition of a gate.

11. Jerod Holiday stated that he contracted to work for Jon Remalia and that there is indication that there was a cable across the road at one time and as that is a component of this discussion, asked if the existing, non-compliance rule would apply.

Community Development Director Baker stated that there is no gate there; and, that non-conforming uses are lost when abandoned.

12. William Apger stated that the discussion is whether a gate is a fence, that a gate is a closure for a hole in a fence, there are many reasons to have a gate on an easement, security and liability are issues, a non-exclusive easement is not a passage to private property, security gates must be approved by the Fire Chief, and to state that all gates are fences would be in conflict with the Town code. There are many reasons why a gate would be reasonable, there is no statute that prohibits gates on easements, and discussed the provision in the Paradise Municipal Code that allows for fire access gates. Mr. Apger stated that he has been to the Remalia property before it was purchased by Mr. Remalia and that he remembers a previous gate on the road easement.

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Chair Zuccolillo closed the public comment. Mr. Zuccolillo stated that the Planning Commission is not discussing the merits of whether or not a gate is allowed on an easement but to strictly define what they believe is a gate and a fence.

Commissioner Clarkson questioned how our code addresses or defines the requirements for gates and for fences. Community Development Director Baker explained the code mentioned herein is the only section in the zoning code that addresses fences in easements. There are other sections in the site development chapter that discuss fence height and location in setbacks.

Commissioner Clarkson stated, for example, when building a house, you have a wall and you have a door that you go through, and there are different code requirements for each, the requirements are separate, and asked if we are dealing with the similar type of thing. Mr. Clarkson stated he has a hard time understanding how somebody could say that you can't put a wall up to prevent somebody having access – they have to have access to go outside – and isn't that what a door is for. And if the door does not have a lock on it, is it therefore able to comply with the heart of what code requires.

Community Development Director stated that our zoning code does not independently define what is a gate and refers to current dictionaries for terms not defined.

The Town Attorney stated that when interpreting law, one looks at intent of the law – why is there a prohibition of fences across an easement. Mr. Baker has a statement in the staff report that deals with the primary reason that fences are not permitted in an access easement is to keep the easement unobstructed and protect the access rights of all parties having legal interest in such easements. The intent is to allow unobstructed access through that area and a closed gate obstructs an easement as a fence does.

Commissioner Clarkson asked if, using that argument, if the gate is locked there is a fence – because there is no access - and if the gate is unlocked there is no fence. Attorney Moore stated that anything across the road can constitute a fence if it prevents free access, and the subject of this agenda item is a proposed locked gate.

Commissioner Clarkson stated that he would like to make a motion to determine that if it is deemed that if this a gate is to be locked, then it is a fence, and if the gate is unlocked it is not a fence, and that he would like input from the commissioners.

Commissioner Neumann stated that she is having a very difficult time with this because if the Planning Commission renders a decision on this, then she believes the Town will have to go back to other properties with gated easements, that she is very clear about what she believes to be a fence and what is a gate, she doesn't want to make a decision about defining or revising code for the sake of litigation or settling a neighborhood dispute, and since the whole property is not fenced, does the term gate even apply.

Commissioner Wentland stated that he thinks this matter is a private property issue that cannot be resolved by the commission and that a gate is a gate and fence is a fence.

Chair Zuccolillo stated that the Planning Commission is not here to resolve a neighborhood dispute, that he thinks there are different definitions for a gate and for a fence and that our code is not clear relating to

this matter, that fences and a gates each have a different purpose, and that there are many gates in Town across easements that seem to be ok.

The **MOTION by Clarkson** to make a determination that a gate is not a fence as long as the gate is unlocked and has free access, that it could be considered a fence if it is locked and therefore does not offer free access, died for lack of a second.

Commissioner Neumann asked if the Town has a count on the number of properties in Town where upon a gate was established on an easement on an easement not owned by the individual, but who had legal right to use. Mr. Baker stated that the Town does not have such records and that he believes the vast majority of easements to be unobstructed.

Mr. Baker stated that his determination was made based on: (a) The fact that the fence is not located on the property that it's protecting, (b) The property owner of the property upon which the gate would be located opposes the installation of the gate, and (c) the manner in which it opens makes it subject to being inaccessible to other property owners having an interest in the easement. So that's why the Town said, for the benefit of the doubt, if everyone agreed in writing that they could open the fence for each other and it would always be unobstructed, then the Town would not be concerned.

There was a **MOTION by Clarkson**, to accept the definition that a gate is a gate, a different function than a fence, and a fence is a fence, died for lack of a second.

There was a **MOTION by Clarkson, seconded by Wentland**, that a gate is a gate and a fence is a fence and the two are not the same.

Attorney Moore stated that the subject matter of the action item on the agenda only deals with a request for a Planning Commission interpretation as to whether or not a proposed locked gate across a private road access easement would constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements, and not try to define what a gate is.

Commissioner Clarkson stated that his concern is if they make the recommended finding, then that could be used to determine that any gate could be a fence.

Community Development Director Baker stated that the commission could adopt a motion to not make the finding.

The motion and second were withdrawn.

The **MOTION by Clarkson** to make a finding that a locked gate constitutes a violation of the code and that an unlocked gate is not, died for lack of a second.

The Planning Commission concurred to take comment.

1. Mr. Remalia stated that the gate would only be locked to the public, not to those who have a legal right to access.

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2. Loren Harvey stated that he used to hold nine building code certificates and if there is a term not defined in the code, then the dictionary definition must be used.

Chair Zuccolillo stated that the commission is being asked to make the determination based on their belief as to what is a fence and what is a gate and suggested that a motion be made to either make a finding or to not make a finding.

Community Development Director Baker suggested that staff's recommended finding could simply be amended to indicate that the gate would *not* constitute a code violation.

MOTION by Wentland, seconded by Clarkson, after considering the request for a Planning Commission interpretation of Town zoning regulations, made the determination that a proposed locked gate across a private road access easement would not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements. Roll call vote was unanimous.

7. **COMMITTEE ACTIVITIES** Potentially a new Planning Commissioner may be seated by the next meeting.

8. **COMMISSION MEMBERS** – Commissioner Neumann stated that she attended the workshop held for the public on the Housing Element update

9. **ADJOURNMENT**

Chair Zuccolillo adjourned the Planning Commission meeting at 8:55 p.m.

Date Approved: March 18, 2014

By: /s/
Michael Zuccolillo, Chair

 /s/
Joanna Gutierrez, CMC, Town Clerk