



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

**May 20, 2014
6:00 PM**

The Regular Meeting of the Planning Commission was called to order by Chair Zuccolillo at 6:00 p.m. who led the Pledge of Allegiance to the Flag of the United States of America

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

1. APPROVAL OF MINUTES

MOTION by Clarkson, seconded by Neumann, approved Regular Meeting Minutes of March 18, 2014 and Special Meeting Minutes of March 31, 2014 and May 5, 2014. Roll call vote was unanimous.

2. COMMUNICATION

Recent Council Actions: Director Baker reported on April 8, 2014 the acceptance of a report by the Town Manager relating to an urgency ordinance adopted to address establishment of gates and other barriers in private road easements. Council chose an example ordinance and directed the Planning Commission consider a resolution recommending eventual adoption of that example ordinance On April 22, 2014, the Town Council met to extend the urgency Ordinance No. 539 which extended the moratorium on gates and other barriers for a period of 10 months and 14 days. On May 13, 2014, the Council extended application for PC Vacancy to allow pre-appointment meetings with the applicants with appointment scheduled for June 10th. The appeal of the Planning Commission interpretation regarding gates and fences was continued to August 12, 2014.

3. PUBLIC COMMUNICATION

Comments are limited to a maximum of five minutes duration. If more time is needed, please request staff to place the subject on an agenda for a future Commission meeting.

***** PUBLIC HEARING PROCEDURE *****

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| A. Staff comments | C. Close hearing to the public |
| B. Open the hearing to the public | D. Commission discussion |
| 1. Project applicant | E. Motion |
| 2. Parties for the project | F. Vote |
| 3. Parties against the project | |
| 4. Rebuttals | |

NOTE: Pursuant to Planning Commission Resolution No. 96-001, any person may speak before the Commission regarding the matter under consideration for **a maximum of five minutes** unless granted additional time by the Chair. "In accordance with the Americans with Disabilities Act, if you need a special accommodation to participate, please contact the Community Development Dept., at 872-6291 at least 48 hours in advance of the meeting."

4. CONTINUED PUBLIC HEARING

5. PUBLIC HEARING

- 5a. PARADISE MUNICIPAL CODE: Planning Commission consideration of a resolution that, if adopted would recommend Town Council adoption of proposed text amendments to the Town’s zoning regulations contained in Paradise Municipal Code (PMC) Title 17 (Zoning Ordinance). If adopted by the Town Council, the text amendments would include a) adding a new definition for “fence” to PMC section 17.04.500, b) amending PMC subsection 17.06.600(E)(4) by eliminating a reference to private access easements and c) adding a new subsection to PMC section 17.06.600 to regulate the establishment of fences and other barriers within private access easements.

Community Development Director reviewed the background of the moratorium on the establishment of fences, gates or barriers within or across private access easements. The moratorium was established by urgency Ordinance No. 539, extended by Ordinance No. 541. The required report of the Town Manager concerning placements of gates within provide access easements and emergency services and whether it is necessary to regulate the installation of gates within private access easements was accepted by the Town Council. Subsequently, the Town Council directed the Planning Commission to consider the amendments to the Paradise Municipal Code as recommended by staff. The recommendations are set forth in the proposed Planning Commission Resolution No. 14-03. Mr. Baker noted the additional agenda material that was submitted by local attorney Max Barteau for Planning Commission review.

Chair Zuccolillo opened the public hearing at 6:10 p.m.

1. Max Barteau, stated that he does not think the proposed text amendments achieve the objective, that an urgency ordinance requires language that states the ordinance is for health and safety reasons, that the amendments do not address health and safety, but seek to define all gates as fences and add a layer of consent to an easement, and that he believes staff’s proposal will not clarify the issue.
2. Jon Remalia stated that there are many court cases throughout the State that consider these types of situations based on reasonableness, that what is reasonable for one situation might not be reasonable for another, and that this ordinance, by requiring consent of all property owners, takes away the reasonable aspect, if one property owner disagrees with what is reasonable. He stated that he thinks this ordinance would take away the rights of property owners to go to court, that he believes the road has been historically gated, that the ordinance is going way too far and the courts should be allowed to decide the matter.
3. Dana Bettis stated easement rights are not broad based, are specific rights, and give no title to a property but a right to use property for ingress and egress. He also stated that he has a problem with the Planning Commission chairman hearing this matter, as the chairman has volunteered to be a witness in the court matter.

Chair Zuccolillo stated that he clarified with the Town Attorney, before this matter was ever heard, that he has no conflict of interest.

Dwight Moore, Town Attorney, stated that the Planning Commission is dealing with zoning, and not with easements. The commission has no control over private easements; there is only control to the extent given of advising the Council relating to zoning matters. The intent is to clarify what a fence is, that a fence is normally a barrier, that a gate included in a fence, when closed, is a barrier, and serves the same purpose as a fence. It is reasonable to clarify what a definition is within the scope of the zoning ordinance to eliminate arguments and problems about what a person can or can’t do with

a fence in a private access road. As a general rule when there is a conflict between a zoning ordinance and a private right, a zoning ordinance will prevail in court.

Commissioner Wentland asked the attorney about a fence in Town that had to be removed and, if the fence had a gate, would it have to have been removed. Attorney Moore stated that one must look at what a thing does, not what it is called.

Chair Zuccolillo closed the hearing at 6:38 p.m.

Commissioner Clarkson stated that a fence has a different function than a gate and asked why there was no definition included for a gate, that two different objects with two different functions are being included in one definition, that the purpose behind a gate is to allow access and that there is no language about how that would be controlled.

Mr. Baker stated that the intent is to treat all as barriers, whether there are rocks, tree stumps or any barrier that anyone who has interest in the easement has opposition to, including a gate. A gate may have a different function than a fence, except when it is locked. He discussed code enforcement issues, that these disagreements are not uncommon, that the proposed language would clarify disagreements.

Commissioner Wentland stated that he thinks the result will be the opposite, that it will muddy the issue for every gate and fence in town.

Mr. Baker stated that he believes the opposite and explained that he believes the ordinance will provide a tool for code enforcement when there is a complaint of this type relating to fences and gates in or along easements.

Commissioner Clarkson asked about anyone who has legal access, if there is access to a code that opens a gate, how would that apply, and Mr. Baker stated that is a fire code issue that the commission is not approaching.

Commissioner Neumann stated that she believes the task for the Planning Commission is to give a definition to a term that is not currently defined in the municipal code so that it makes staff's job easier, it is not to debate the issue or act as a court of law, but to define a term that unless otherwise defined refers to a dictionary definition.

Commissioner Clarkson stated that he does not think they haven't addressed the issue, that in function, a fence and a gate are two different items, and that has not been handled as such in the ordinance. He stated that the commission could move forward, but he does not believe it will solve the initial problem that got everybody here in the first place.

Commissioner Neumann stated that she thinks the commission cannot solve the issue that got them here and that the best thing they can do is to provide direction to the Town Council.

Commissioner Wentland discussed requesting staff to create a definition that would separate the two items. Director Baker asked what purpose would there be in defining gate separately, and Commissioner Wentland stated that it would clarify if a person wanted to build a fence or a gate – that one is not the other.

Mr. Baker stated the basic premise is that the term gate would be included within the definition of fence.

Commissioner Clarkson stated that by virtue easements are created for ingress and egress, for limited access, and that gates seem to be a reasonable utility to provide that limited access. He would like the ordinance to address a gate as a means to address creation of limited access for those that have a right to that access.

Director Baker stated that the ordinance would allow a gate or a fence or a rock wall, whatever would prevent access, if other interested parties have consented to that. The ordinance provides clarity by putting all barriers under one definition.

Chair Zuccolillo reopened the public hearing at 6:58 pm.

1. Town Manager Lauren Gill stated that the term gate was included in the definition of fence so that if a person comes to the Town and wants to build a fence, or a gate, or a fence with a gate, it would be understood to be the same thing, and that consent of other interested parties would be required.

Chair Zuccolillo asked what bearing the new definition would have on the previous definition by the Planning Commission that is currently under appeal to the Town Council.

Director Baker stated that would be up to the appellants, and hypothetically, if this language is developed, several things could happen: the appeal could be withdrawn, if the appellant thinks this solves the problem, Council could act on the appeal and the appeal could be continued.

Chair Zuccolillo asked if there was any harm in continuing this, and Director Baker stated that it should work the other way around. The item was put before the commission to be forwarded to the Council and if approved would become effective on August 8, 2014, after which the appeal could be acted upon on by the Town Council on August 12, 2014.

2. Jon Remalia stated that if the road is left open for to the public for a period of five years, then the driveway could become a public road, and if one neighbor holds out and there is no chance to go to court, then a private road could become open to the public by law. Other owners are subject to having a driveway become a public road which the owners are required to maintain and if it becomes public then the Town should be required to maintain the road.

Commissioner Neumann stated that easements need to be perfected, that the commission is only debating the issue of a defining a fence for the municipal code, and to add a section that requires that all persons agree so if a person installs a barrier of any sort, and if a tenant, whether dominant or subservient, comes to the town to dispute the barrier, then the staff can determine whether or not written permission was received from all interested parties.

Commissioner Wentland asked what happens to subsequent owners and Town Attorney Moore stated that one purchases a property 'as is' with any existing agreements.

3. Max Barteau asked what level of consent would be required and that he thinks a unanimous consent would be overly burdensome, that other contracts provide allowances such as 'such consent shall not be unreasonably withheld', and asked if the Town Council was prepared to use the power of an ordinance to require unanimous consent.

Town Attorney Moore stated that this issue has never been raised in the past because as a general rule people usually ask their neighbors for consent, this situation is an anomaly and the Town can define what a fence is, a gate can be the same as a fence if it is locked, what the Town is trying to do is clarify the issue so this does not come up in the future.

Commissioner Clarkson asked if someone has a dominant easement, the burden to maintain a road and the right to improve the road, and if a person chooses to make improvements to make the road more serviceable, would this language hamper that.

Attorney Moore stated that a structure across an easement is not an improvement, such as that of improving pavement or removing vegetation to improve access.

Director Baker stated that the commission is not making a decision but making a recommendation.

There was further discussion relating to what is easement law and what is zoning law, that although this is the first time this type of issue has come before the commission, this is not the first time it has been an issue for code enforcement. Attorney Moore stated that zoning law would be upheld in court and that what is being asked is to provide clarity as to what people can and cannot do.

Chairman Zuccolillo closed the public hearing at 6:58 p.m.

The **MOTION** by Neumann to adopt Planning Commission Resolution No. 14-03 to adopt a town ordinance amending the text of current PMC zoning ordinance regulations died for the lack of a second.

6. OTHER BUSINESS

- 6a. **MOTION by Wentland, seconded by Clarkson**, accepted and referred the Planning Commission Annual Report for calendar year 2013 to the Town Council regarding the present implementation status of the 1994 Paradise General Plan. Roll call vote was unanimous.

7. COMMITTEE ACTIVITIES –None.

8. COMMISSION MEMBERS – None.

9. ADJOURNMENT – Chair Zuccolillo adjourned the Planning Commission meeting at 7:08 p.m.

Date Approved: June 17, 2014

By:

_____/s/_____
Michael Zuccolillo, Chair

_____/s/_____
Joanna Gutierrez, CMC, Town Clerk