

**PLANNING COMMISSION
SPECIAL MEETING
DRAFT MINUTES**

**TOWN OF ATHERTON
JANUARY 19, 2023**

6:00 pm

This meeting was held virtually and in-person.

1. ROLL CALL

PRESENT: Nancy Lerner
Perry Narancic
Eric Lane

ABSENT: Randy Lamb
Gabia Konce

City Manager George Rodericks, City Attorney Mona Ebrahimi, Deputy City Attorney Andreas Booher, Office Specialist Francesca Reyes, Consultant Lisa Costa Sanders, Legal Counsel Barbara Kautz, Planning Consultant Diana Elrod, and Town Planner Sung H. Kwon were present.

2. PUBLIC COMMENTS

None

3. PUBLIC HEARING

a. Review Draft Housing Element Update – Review the Draft Housing Element update and provide comments to staff. No action at this time.

Chair Lane provided an overview of the Housing Element cycle and obligations Town faces to fit the State framework, be accepted by the State and maintain the character of the Town. Also overviewed timeline for completing the Housing Element.

Planning Consultant Lisa Costa Sanders presented the staff report.

Planning Consultant Lisa Costa Sanders introduced Legal Counsel Barbara Kautz.

Legal Counsel Barbara Kautz discussed the legal background for the draft.

Chair Lane asked for clarification of the ADU regulations proposed and asked if the ADU regulations about above garage ADUs was required by the state.

Legal Counsel Barbara Kautz responded that the regulations were discussed by the Town before the State passed the requirement but explained that the regulations are required by the State.

Chair Lane asked if the SB 9 splits requirements required that the current landowner live on the property split for 2 years.

Legal Counsel Barbara Kautz corrected Chair Lane and stated that the requirement is to live on one of the properties for 3 years.

Chair Lane asked if staff looked at providing a similar opportunity for 2 acre lots or more without the requirement.

Planning Consultant Lisa Costa Sanders responded that Staff did not look at the opportunity described.

Chair Lane stated that the requirement is one of the biggest drawbacks to SB 9 and stated that the Planning Commission and Staff should discuss the matter after public comment.

Chair Lane asked if there were any other questions for Staff.

Commissioners had no questions for staff.

Chair Lane stated that none of the Planning Commissioners initiated specific requirements in the Draft Housing Element and that the changes were driven by State directive. Chair Lane also expressed concerns about what builders might do if the Town did not adopt the Housing Element. Chair Lane explained the housing element needs to be accepted by the State.

Chair Lane expressed a desire to ensure all comments were provided for the record. Chair Lane also requested that speakers be courteous and be within the 3 minute time limit. Chair Lane explained the process of how to comment for participants online.

Chair Lane opened the public hearing.

Pam Silveroli at 99 Gresham Lane had a signed petition from her neighbors on her street who agreed that they were not selling their properties. She said that she does not believe that lower income housing could feasibly be built on non-vacant lots in the Town.

Commissioner Narancic asked if a copy of the statement was put into the record.

Stan Shu at 73 Gresham Lane noted concerned about the economic impact of upzoning in the RM 20 zone. He stated that he and his neighbors were not in favor of the proposed upzoning. He asked the Commission that they take the perspectives of homeowners before deciding which lots to upzone. He reaffirmed that none of the neighborhoods want to sell their property.

Chair Lane explained that the Planning Commission just found out about the proposed rezoning, as it was not in part of the previous submission.

Joseph Larea at 2 Selby Lane disagreed with the multifamily zoning in the RM 20 designation. He stated that he is not planning on selling his property. He is concerned that the zoning disproportionately places the burden of development on smaller lots. He expressed concern about the heritage trees on the properties in the zone. He proposed a larger overlay of increased density and a possibly a bond issue to support multifamily development.

Chair Lane introduced online speakers.

Mickey King agreed with the previous speakers and expressed concern with the proposed rezoning.

Loren Gruner (lived in Atherton for 25 years) supported the ADU changes and proposed allowing separate utilities for ADUs. She proposed the Town count extended family living in guest houses and ADUs as low-income tenants to meet requirements. She was concerned with the inclusionary fee on single family homes and proposed that the Town provide incentives for landowners to rent out their single family homes. She expressed concern with the zoning changes along El Camino Real and proposed a Town-wide overlay.

Chair Lane explained the public comment process to participants who just entered the meeting.

Chair Lane introduced more in person speakers.

Jennifer Ryan at Gresham Lane expressed concern that the Draft Housing Element was not taking into account the prices of lots in the areas with zoning changes. She agreed with previous speakers who proposed a larger overlay zone.

Tom Georgie of 425 East Oakwood Boulevard stated that he believed that the density zoned at 23 Oakwood should not be recommended and was out of place. He added that he believed that the zoning changes do not meet the needs required. 23 Oakwood has 26 heritage trees. He was concerned about increased traffic in the Oakwood neighborhood.

Olge Pavlovich 8 Selby Lane noted concern that zoning changes were not equally distributed around the town. He noted that owners don't want to sell, the size of lots are important, the price of land may not allow housing units to be affordable. He noted that the Draft Housing Element is unfeasible.

Kathy Castillo at 350 East Oakwood Boulevard was concerned about the traffic associated with the 23 Oakwood Boulevard proposed zoning changes. She asked if carbon offsets are possible for the project.

Chair Lane responded that it was not possible.

Kathy Castillo asked again where the traffic for the zoning change is supposed to go.

Chair Lane responded that the traffic flow will be a part of the future plan.

Jean Yee at 37 Gretchen Lane noted that her lot is barely 1/3 of an acre and the proposed plan is not practical due to price of the property. She has no intention of selling her home. She also expressed concern with increased traffic. She stated that she supports increases of low income housing but not in the manner proposed by the Draft Housing Element.

Chair Lane introduced more online speakers.

Stephanie King Fisher expressed concern about the acreage estimates for the Menlo School and Menlo College properties. She also stated that the plan would not be sufficiently policed and would not have sufficient parking.

Anne Paulson asked for clarification on whether the proposed zoning code included a minimum density requirement.

Chair Lane responded that the proposed zoning code outlined maximum density amounts.

Carol Collins at 78 Deodora Drive stated that she objects to the proposed Housing Element and expressed concern about the location and scope of the zoning changes. Supports housing in the park.

Remy Thomas at 48 Gresham Lane expressed concern that his neighborhood was not a good choice for zoning density increases due to traffic and distance to transit. He suggests housing at Valparaiso, Atherton Avenue, Alameda and Bay Road. He noted that he would not sell his home. He stated that his past ADU proposal was denied by the Town.

Francine Melton Burger at 351 West Oakwood Boulevard expressed concern about proposed zoning densities and traffic. Would like to reduce densities due to traffic, flooding and quality of life.

Office Specialist Francesca Reyes read a comment left by an online participant (Courtney Sue) Courtney Sue's written comment noted her residence at 73 Gresham Lane. She expressed disapproval of the proposed zoning changes and proposed an overlay over El Camino Real.

Avi Sokol at 78 Cebelo Lane expressed concern that the proposed zoning changes will change the culture of his neighborhood. He suggested expanding SB9 capabilities by reducing requirements.

Yi Ding agreed with previous comments to encourage homeowners to use SB 9.

Chair Lane closed the Public Hearing

Commissioner Narancic asked Barbara about the good faith submissions and the consequences of the Town submitting a Housing Element identifying lots for possible housing that are not likely to be used as proposed by the element.

Special Counsel Barbara Kautz responded that the Town should not submit Housing Elements with propositions that are not supported by evidence. She added that when the Town includes non-vacant sites in the element, it must provide evidence that they are likely to be developed in the next 8 years as well as have a lot consolidation program as added to the Draft Housing Element.

Commissioner Narancic asked if substantial evidence that identified lots will be developed within 8 years is a statutory requirement.

Legal Counsel Barbara Kautz responded that it is a statutory requirement that the Town provide evidence that identified non-vacant sites will have existing uses discontinued within 8 years.

Commissioner Narancic reiterated the question and asked if there is a specific provision that the identified lots are likely to be used within the next 8 years.

Legal Counsel Barbara Kautz responded that there is a general provision in the Town statute that the Town must designate sites suitable for development within the next 8 years.

Chair Lane asked if Commissioner Lerner had any questions.

Commissioner Lerner did not have any questions.

Chair Lane stated that he did not have any questions but had comments on the matter.

Chair Lane commented that the proposed Draft Housing Element does not seem feasible but is required by the State. He added that he was disappointed with the HCD requirements, but recognized that it must be accepted to continue.

Chair Lane expressed concern about SB 9 requirements and stated that he does not believe that the requirements would work in a community like Atherton with large lot homes. He proposed that the Town could incentivize SB9 lot splits. He added that he believes that the multifamily zoning along El Camino Real is a good idea, but the rezoning was not a good idea. He argued that a more comprehensive strategy must be developed to incentivize lot splits on larger lots. He noted concern with the traffic issues about the proposed zoning changes on Oakwood

Boulevard. He reiterated that not approving a plan, as well as approving a plan that is not viable was not acceptable. Chair Lane continued that the proposed plan would be better than no plan as rezoning does not force property owners to sell their properties.

Chair Lane asked staff what the best recommendation to make would be.

Planning Consultant Lisa Costa Sanders responded that staff would like the Commission to make a recommendation with suggestions/modifications to the Town Council.

Deputy City Attorney Andres Booher added that since only 3 commissioners were present, only 2 would be needed to make a decision.

City Manager George Rodericks added that if the Town Council makes substantive changes to the Draft Housing Element on January 31st, the Town would not meet the deadline because they could not adopt the changed document without a seven day noticing period.

Legal Counsel Barbara Kautz noted that the seven day posting period applies before sending a housing element to HCD, not for Town adoption.

City Manager George Rodericks asked to clarify that there is a requirement to adopt and self-certify by January 31st otherwise would be open to a builder's remedy.

Legal Counsel Barbara Kautz responded in agreement and added that the builder's remedy solution only applies to projects that propose 20% low income housing.

City Manager George Rodericks asked if a single family home with an affordable ADU and no minimum number of units would be considered under builder's remedy.

Legal Counsel Barbara Kautz responded in agreement and reiterated that if the Town does not adopt a housing element by January 31st that is consistent with State law, the Town would be forced to allow builder's remedy projects. She noted that January 31 would be the adoption date.

Chair Lane asked that if the 7 day required posting period to the State would impact the January 31st adoption date.

Legal Counsel Barbara Kautz responded that the 7 day posting period to the State would not impact the January 31st adoption date.

City Manager George Rodericks expressed concern that a changed zoning proposal would not allow impacted property owners to be sufficiently notified.

Commissioner Narancic asked if the Town Council has to follow the recommendation of the Planning Commission.

Planning Consultant Lisa Costa Sanders responded that the Town Council does not have to follow the recommendation.

Chair Lane agreed.

Chair Lane asked Planning Consultant Lisa Costa Sanders how easy it would be to make an easier SB 9 option work.

Planning Consultant Lisa Costa Sanders responded that residency requirement could be removed. She noted that SB 9 developments would be appropriate for the Town due to the large size of the lots.

Chair Lane elaborated the ways that SB 9 developments could be implemented in the Town.

City Manager George Rodericks responded that SB 9 and ADUs developments do not solve for multifamily requirements. He added that ADUs are not inclusive.

Chair Lane recommended an SB 9 waiver suggestion to the Town Council and expressed concern about the State requirements. He noted that an overlay may not work either.

Commissioner Narancic asked the public speaker for the petition they discussed in their comments.

Chair Lane and Commissioner Narancic looked at the addresses on the petition provided.

Chair Lane explained that he and Commissioner Narancic looked at addresses to see if the petition could be included in the plan.

Commissioner Narancic stated that he would not support the proposal because he believed that the Town did not fully investigate that the proposed properties for rezoning would be viable candidates for development.

Planning Consultant Lisa Costa Sanders explained the staff concern about overlay zones due to difficulties in justifying which properties would be included.

Chair Lane asked Planning Consultant Lisa Costa Sanders to clarify the meaning of the overlay label.

Planning Consultant Lisa Costa Sanders responded that an overlay zone would mean that two zoning designations would apply to the same area and recommended that the overlay be applied to a larger area than the properties proposed in the plan. The overlay zone would need to be at 20 dwelling units per acre.

Chair Lane expressed concern about the time required to notify impacted property owners of an overlay zone proposal.

Planning Consultant Lisa Costa Sanders responded that the impacted property owners would receive notification of the meeting and could speak at the January 31st Town Council meeting.

Chair Lane asked if the Town Council had heard recommendations about what overlay zones would include.

Planning Consultant Lisa Costa Sanders responded that overlay zones were included in past Draft Housing Elements, but was removed after public comment before submission to HCD. She noted that an overlay zone would need to cover a larger area to be realistic.

Chair Lane asked about what the State accepted density designations would be.

Planning Consultant Lisa Costa Sanders responded that the State would not likely accept a density of 10 units an acre as affordable housing, but would accept it as multifamily housing.

Chair Lane stated that there is no affordable housing in Atherton unless the housing is subsidized. He expressed concern about traffic for proposed increased density zoning.

Planning Consultant Lisa Costa Sanders clarified that the 20 units an acre density designation is a maximum requirement within the range of densities.

Chair Lane asked Commissioner Lerner if she had any questions.

Commissioner Lerner had no questions.

Chair Lane stated that he had an idea to make a motion.

Planning Consultant Lisa Costa Sanders asked if the Commission is interested in an overlay in an expanded area.

Chair Lane responded that he believed that an overlay zone would create new problems and that the Housing Element would not be able to be adopted by January 31st. He noted that any recommendation the Commission makes must be able to be adopted by January 31st. He asked City Manager George Rodericks about the possibility of an overlay recommendation getting adopted by the deadline.

City Manager George Rodericks responded that the Town Council would need to be provided with clear ramifications of adoption of an overlay zone but would consider a broad overlay but would need to adopt before the deadline so as to not incur penalties or enter builder's remedy.

Planning Consultant Lisa Costa Sanders added that the Planning Commission could recommend a draft amendment to the housing element provided in the Staff report to the Town Council. She added that with a recommendation, Staff could notify property owners but would need a recommendation to do so.

Chair Lane asked Staff if they can had a list of the properties impacted by the overlay zone in the original draft of the Housing Element.

Planning Consultant Lisa Costa Sanders responded the previous overlay was limited. She noted if the overlay was broader, the City Council could narrow it down.

Chair Lane asked generally where the past proposed overlay zone was.

Planning Consultant Lisa Costa Sanders responded that several properties were on the past list and added that the Commission could identify possible locations for the zone.

Chair Lane did not have any possible locations in mind and wanted to look at the past overlay zone property list.

Planning Consultant Lisa Costa Sanders responded that the past overlay zone property list was limited in sites identified.

City Manager George Rodericks added that in February of 2022, a broad recommendation for an overlay extent was identified based off of a map.

Chair Lane stated that he is was trying to consider a balance between a recommendation that the Town Council could viably adopt and would not be overly general.

Chair Lane recommended a short break to allow Staff to find the past proposed overlay zone map.

Chair Lane recommended an RM-10 overlay over properties on Valparaiso Avenue as well as along RM-20 El Camino Real. He added the recommendation for making SB 9 characteristics available to all properties within the Town.

Planning Consultant Lisa Costa Sanders responded that the SB 9 characteristics already apply town-wide and corrected that Chair Lane wanted to remove the residency requirement.

Chair Lane stated that he wanted to remove the residency requirement on properties over a certain size, not on all properties. He proposed a minimum lot size of 1 or 2 acres.

Planning Consultant Lisa Costa Sanders responded that if a property owner splits a 2 acre lot into two 1 acre lots, they would be able to do so under the Town subdivision ordinances rather than SB 9.

Town Planner Sung Kwon clarified that Chair Lane referred to allowing a property owner of a lot of an acre or more to split it under SB 9 without the residency requirement.

Chair Lane stated the recommendation of eliminating the residency requirement to split lots of 1 acre or larger under SB 9 and to designate a RM-20 unit per acre overlay zone to both sides of El Camino Real and along Valparaiso Avenue for RM-10. He added that he would let the

Town Council decide on whether to include Oakwood Boulevard because he believed that the density was too high and was concerned about the traffic associated with the proposal on Oakwood Boulevard.

Chair Lane asked Staff how he would make the motion for the recommendation.

Planning Consultant Lisa Costa Sanders responded that Staff would appreciate a motion to make the recommendation, to allow Staff to provide additional analysis as requested by HCD for the recommended multifamily sites, special needs populations, extremely low income housing, emergency shelters, housing conditions, and access to transit.

Chair Lane stated that he would add the topics discussed by Lisa Costa Sanders to the motion.

Chair Lane asked Commissioners Narancic and Lerner if they understood the recommendations.

None of the Commissioners had questions.

MOTION to recommend eliminating the residency requirement to split lots of 1 acre or larger under SB 9 and to designate an overlay of RM-20 on both side El Camino Real and along RM-10 on Valparaiso Avenue.

M/S Lane/Narancic Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent

Chair Lane stated that he would be willing to discuss with the Council what the recommendations were so that the proposal could be adopted before the deadline.

Chair Lane stated that the next regular Planning Commission meeting is on Wednesday, January 25th.

4. STAFF REPORTS

None

5. COMMISSIONERS' REPORTS

Chair Lane opened up public comment for clarification.

Olga Pavlovich asked if the proposed overlay would be replace the upzoning.

Chair Lane responded that the overlay zoning would replace the previous proposed zoning changes and that the overlay would allow property owners to develop their property without being required to change the density on the lot.

Another commenter asked for clarification regarding Oakwood site.

Chair Lane reiterated that the Commission did not recommend the overlay zone over Oakwood Boulevard.

Planning Commission Lisa Costa Sanders added that the removal of the zoning changes over Oakwood Boulevard was not a part of the motion made.

The commenter asked if the Oakwood site could be included in the motion.

Chair Lane responded that the Commission did not have enough votes to include the Oakwood property in the motion.

City Manager George Rodericks asked on behalf of City Attorney for clarification about the motion made.

Chair Lane clarified the motion made and explained the additional recommended note he added concerning the proposed zoning changes on Oakwood Boulevard.

City Attorney Mona Ebrahimi stated that she recommends that the Planning Commission clearly explain what changes they would like to make so that Staff can make the appropriate changes and send out a notice of the changes to give to impacted property owners. She requested clarification on the motion made by the Planning Commission.

City Attorney Mona Ebrahimi expressed her understanding of the motion to include removal of upzoning on El Camino Real, add RM-20 overlay along the length of El Camino and RM-10 overlay along the length of Valpariso, and keep 23 Oakwood.

City Attorney Mona Ebrahimi expressed clarification that the Commission authorize staff to make clarifying changes that are not substantive in nature and help the readability of the housing element.

The Commission agreed.

City Attorney Mona Ebrahimi continued and recommended that the Planning Commission could provide clarity on some programs concerning lot consolidation and incentives.

Chair Lane asked for clarification what incentives are possible.

City Attorney Mona Ebrahimi gave examples of altering set back requirements, streamlining the process, reduction of application fees, and other programs.

Chair Lane responded that he did not want to reduce setbacks but he was supportive of streamlining the approval process and the reduction of application fees. He expressed concern

that the approach taken by the State which pushes for a mix of housing types does not fit with the character of every community.

Planning Consultant Lisa Costa Sanders added that the lot consolidation program was included in the Draft Housing Element.

City Attorney Mona Ebrahimi responded that she wanted to clarify recommended changes to the program to make lot consolidation feasible to appeal to HCD standards, particularly for lots under ½ acre. She added that she could add language that identifies incentives that streamline and facilitate lot consolidation without impacting neighboring properties.

Chair Lane added that the wording should be “minimizing” impacts as development would impact neighboring properties anyways.

City Attorney Mona Ebrahimi noted that Chair Lane’s comment was a great point. She also requested that the Commission authorize Staff to notify property owners of the overlay zone.

Deputy City Attorney Andres Booher stated that the request to notify impacted property owners is included in the motion.

Chair Lane noted that the notification must have a clear diagram of the overlay and note that an overlay provides property owners with flexibility and is not a mandated change of property.

City Manager George Rodericks clarified that the notification should state that the recommendations were made by the Planning Commission to the Town Council to incorporate in the adoption of the Housing Element on January 31st.

Chair Lane asked if anyone had any additional questions or requests.

None were voiced.

Commissioner Narancic made a motion to adjourn.

Chair Lane seconded the motion.

Planning Consultant Lisa Costa Sanders noted that Chair Lane did not include the lot consolidation incentive program in the motion.

Chair Lane requested to amend the motion.

Commissioners Narancic and Lerner were in agreement.

MOTION to adjourn and amend previous motion.

M/S Narancic/Lane Ayes: 3 Noes: 0 Absent: 2
Commissioners Lamb and Konce absent

6. ADJOURN

The meeting was adjourned 8:22 PM

Respectfully Submitted:

/s/Sung H. Kwon
Sung H. Kwon, Town Planner