

**PLANNING COMMISSION
APPROVED MINUTES**

**TOWN OF ATHERTON
December 28, 2020
6:00pm**

This meeting was held virtually.

1. ROLL CALL

**PRESENT: Eric Lane
Nancy Lerner
Perry Narancic
Paul Tonelli
Randy Lamb**

Town Planner Lisa Costa Sanders, Associate Planner Jake Garcia, and Town Attorney Mona Ebrahimi were present.

2.

PUBLIC COMMENTS

No public comment made.

3.

DISCLOSURE OF EXPARTE COMMUNICATIONS

City Attorney Ebrahimi requested that the Planning Commission disclose any conversations they may have had regarding the items on the agenda for purposes of due process to inform any applicants and public of any relevant conversations that have taken place.

Commissioners Narancic, Tonelli, Lamb and Lerner disclosed that they have had no previous conversations regarding the items on the agenda.

Chair Lane disclosed that he had prior conversations with Planning Staff for background on the agenda items.

City Attorney Ebrahimi requested that the Planning Commission disclose any conflicts of interest that may impact the commissioner's decision making and therefore preclude their participation in the agenda items.

All commissioners confirmed that they do not have any conflicts of interest.

4.

PUBLIC HEARING

a. Conditional Use Permit– Menlo School, 50 Valparaiso Avenue, Atherton (APN 070-360-080) – Request for a Conditional Use Permit to allow temporary use of athletic fields for

outdoor recreational activities with temporary lighting at Cartan Field. Atherton Municipal Code Chapter 17.12 and 17.36.

Town Planner Costa Sanders presented the staff report.

Open Public Hearing.

Head of School, Than Healy presented on behalf of Menlo School additional information regarding the request for the Conditional Use Permit to the Planning Commission. He described the impacts that the pandemic has had on the school and more specifically the School's Athletics Programs. Mr. Healy highlighted that the School has greatly restricted the use of the field since the beginning of the pandemic. Mr. Healy indicated that any day the school is not in session, fields and lighting would not be used. Mr. Healy further explained the logistics and reasoning for the request for lighting. He also indicated there was a chance that the conditional use permit would not be used if COVID-19 restrictions were heightened, and the athletic season were to be further delayed.

Commissioner Tonelli confirmed that the lights would only be used for football practice.

Earl Koberlain, Menlo School Athletic Director confirmed that it would only be for football and since the normal fall season has been postponed and that the need for lighting is unique, as typically the fall season has enough daylight for the football season to not need the additional lighting.

Commissioner Tonelli asked who would decide when the lights would be turned on and for how long the lights be turned on.

Mr. Koberlain indicated that himself and the Football Coach would make the determination of when to use the lights and further confirmed they anticipated using the lights for an hour and fifteen minutes.

Chair Lane asked how many students are in the program and asked if there was any way to adjust the schedule, so the lights were not needed.

Mr. Koberlain indicated that there were 80 students in the football athletics program.

Mr. Healy explained that the logistical decisions made for how students are using fields to mitigate infection potential. He further highlighted priority given to keep families together and the school schedules of students. The school has made two separate groups and schedules to mitigate risk. Mr. Healy further highlighted the request for lighting is to ensure safety on the field during practice. And highlighted that if there is a game, then it occurs off site, or during daylight on the weekend.

Chair lane clarified that the request is for a broad timeline, but that practice is not anticipated to be used for every day.

Mr. Healy agreed and specified that no practice is to be held during holidays and school breaks and indicated a more formal athletic schedule is yet to be shared with the school.

Chair Lane, highlighted that there are three important components to the decision; health, impacts to neighbors and that it works for the students.

Chair Lane asked why the specific time of day was being requested.

Mr. Healy indicated that the practice time was cut back to allow time for students to finish school and arrive on campus.

Commissioner Lamb clarified that in the Fall the use of the field is not restricted by lighting but that this request is for the lights to allow for the normal use of the field.

Commissioner Tonelli asked how many light units are necessary to light the field.

Mr. Healy specified six units are needed, three on each side.

Chair Lane asked how each light unit was powered.

Mr., Healy specified that each light is powered by its own mechanical equipment.

Commissioner Lerner noted that the use of lights until 6:15 pm is not an unreasonable request.

Commissioner Narancic asked the City Attorney if there is a legal authority to modify any original conditions on the lighting that is currently allowed or restricted for the athletic fields.

City Attorney Ebrahimi responded yes there is authority to modify prior conditional use permits however they are not itemized on the agenda for this meeting. She further described purpose of a Conditional Use Permit as to allow the Town to discretionally allow uses that may not otherwise be allowed. She explained that there are findings necessary for granting any Conditional Use Permit. She highlighted while the Planning Commission may make modifications to prior Conditional Use Permits but a request for modification is not on the agenda but instead two separate and apart Conditional Use Permits are on the agenda for Planning Commission consideration.

Commissioner Narancic asked the City Attorney if she has formed an opinion of whether the proposed applications are exempt for CEQA.

City Attorney Ebrahimi responded that she has considered whether the applications are exempt from CEQA and that it is her professional, legal opinion that the requests are exempt from CEQA because the requests fall under the statutory exemptions set forth in the CEQA guidelines, that the use is existing, not new, and the only new impact for the request is associated with temporary light and noise. She further explained that the noise has been tested by the Atherton Police Department and the light is anticipated to have little to no impact on adjacent properties.

Town Planner Costa Sanders announced the comments received for the project. All commissioners shared that they have had time to review each of the comments received.

Atherton Resident Stephanie Discher thanked the Planning commission for the discussion so far. Ms. Discher expressed concerns that the neighbors feared the possible precedent this decision may set for allowing lights to be used on the fields at Menlo School or that the schools may request permanent lighting moving forward. Ms. Discher expressed that the Conditional Use Permit is for a legal use and believes that the use of the lights is for an illegal use since the lighting is not currently allowed. She asked how the schools practiced in previous years in November and December without the lights. She also expressed disagreement with the findings for the CEQA exemptions, she mentioned that the private school should not be considered a public facility and should not be considered exempt under that finding, she also expressed that she did not believe the request to be an existing use that had a negligible expansion of uses. She supported her concerns with an example of the possible impacts of the diesel outputs generated from the lights. Ms. Discher expressed that when CEQA is questionably required it should be applied in order to verify that the impacts of the project are negligible or not. Ms. Discher expressed that the lights are required to be downlit, and that this law should apply to everyone including the schools and that it is unfair that the burden is put on the residents to report the school if the law is being broken. She also indicated that the Town does not have the staff to uphold and ensure the requirements are being implemented.

Commissioner Narancic asked how the use of the lights would impact Ms. Discher personally.

Ms. Discher expressed that the lights would shine into her house while she has dinner, and the noise would also impact her what she does in her house at specific times of the day. She also said the lighting is not relaxing and changes to the schools and fields is not the same as what it use to be.

Atherton Resident Paul Getty expressed that the initial testing was not adequate, that it was done on the impacts of one light when there are six lights being proposed. Mr. Getty further requested his written comment be read into the record.

Chair Lane read the comment into the record.

Atherton Resident Mickey King expressed that he did not approve of the artificial lighting being requested as it has always been restricted and he further expressed that he agreed with the comments of the other Atherton residents. Mr. King also expressed his dissatisfaction with the public meeting being held so close to the holidays.

Atherton resident David Discher expressed that the facts do not substantiate granting the lighting use. He expressed concerns that there is not enough empirical data presented to verify that the impacts of noise and light spillover of all six generators at once have been adequately tested. He expressed that an approval cannot be fairly granted by the planning commission because the decision would be arbitrary and capricious.

Close Public Hearing.

Commissioner Narancic asked the Town Planner how the lighting equipment was tested prior to the meeting.

Town Planner Costa Sanders informed the Commission that the Town does not require there to be proof of compliance prior to submission of the application. But it would be verified upon operation. The School decided to, on their own, test one light, and Town Staff requested the Police Department to do an independent sound testing for additional information to be provided as context to the Planning Commission. If approved a follow up inspection would be done to verify compliance. If non-compliant it would no longer be allowed to operate as it would not comply with the Town's requirements.

Chair Lane asked if the Town would be looking at the light at the time of approval.

Town Planner Costa Sanders specified that the Town would be assessing the noise as the Town does not have standards for lighting in the PFS zoning district.

Commissioner Tonelli asked City Attorney once again to cover the explanation of how the Conditional Use Permits differ from or affect the past Conditional Use Permits and to explain applicability of the CEQA once again.

Town Attorney Ebrahimi responded that the Conditional Use Permits are temporary and would allow for the temporary use of lights for the purpose of practicing football and that the Conditional Use permits being considered are distinct from the prior conditional use permits that currently restrict the lighting on site.

Town Attorney Ebrahimi indicated that the public comments expressed earlier in the meeting claiming that adequate facts were not presented in determining the CEQA exemption and were not suitable for a Planning Commission approval, were erroneous and that an analysis was conducted. Town Attorney Ebrahimi stated that such an analysis concluded that no new trips were generated with the application. She also explained that the noise would not exceed the regulations allowed by the municipal code, and that CEQA exemption is allowed since these uses would temporary and negligible. And that the decision is at the discretion of the Planning Commission to make.

Open Public Hearing.

Commissioner Tonelli asked the applicant if the lighting was going to be downlit LED lights and if they could be reduced to achieve the desired goal.

Mr. Koberlain indicated that the specific lights being used are shorter than the standard lights used for games and would not allow for adequate lighting if reduced less than 6 lights.

Commissioner Lerner indicated that she has no further questions.

Close public hearing.

Commissioner Lamb expressed that he understands it is hard to live next to a school and that his time working with the Town it has always been challenging to address outreach to neighbors of the schools and that he always supports good neighbor communication. He expressed that the applicant and Town has done their part in ensuring that the impacts have been considered and that this decision should not set a precedent. He also conveyed the amount time being requested

is not overly burdensome and unique given the pandemic. He expressed his support for granting the approval.

Commissioner Tonelli agreed with Commissioner Lamb and the unique circumstances that the world is facing. He further expressed that he the impacts of the 20-foot lights and the short time the lights are being requested for will not overly impact neighboring sites. Commissioner Tonelli conveyed his support for the request as it will allow students to be able to get outside and practice sports during the pandemic.

Commissioner Lerner expressed her support for approval. She highlighted that Menlo School works to be a good neighbor and that this should not be surprising for neighbors when moving next to a school.

Commissioner Narancic assured the neighbors that he carefully considered the neighbors letters and comments but ultimately agreed with the other Planning Commissioners reasoning for supporting the requests.

Chair Lane expressed his trust in school leadership to responsibly implement the Conditional Use Permit. He further expressed that the season is still contingent on pandemic circumstances and that there is a unique two-week window where the impacts can be assessed. He also conveyed that he would be willing to support this project but could see the possibility to further consider the impacts after the two-week window.

Commissioner Lamb asked Chair Lane to clarify whether he was suggesting to continue the item to another meeting or to make a decision and reconsider at another meeting and recommended the Planning Commission not set that precedent.

Chair Lane expressed that he would be willing to proceed either way as to assure the noise impacts, football schedule are adequately addressed.

Town Attorney Ebrahimi clarified that the proposed conditional use permit does clarify a specific request that includes times and dates of when the lights can be used for outdoor recreational activities at Menlo School. She also highlighted that the Planning Commission, should they choose, may further refine the request, but that the record should reflect that the request does have specific proposed dates and times. She further highlighted that the conditional use permit conditions of approval specify that the lights be pointed toward the field and that the noise is limited to what is allowed by the Town's noise ordinance. If the Planning Commission were to approve this and the conditions were not met, then the Menlo School would not be allowed to operate unless they complied with all of the conditions.

Motion to approve resolution 2020-1 which grants the Conditional Use Permit to allow the temporary use of athletic fields for outdoor recreational activities with temporary lights from January 19, 2021 through March 12, 2021 from 3:45 until 6:15 pm on weekdays at Cartan Field and finds this CUP is exempt from CEQA, with an amendment to condition one of the Conditional Use Permit that states and only on dates in which school is actually in session.

M/S Lamb/ Lerner Ayes: 5 Noes: 0

b. Conditional Use Permit– Sacred Heart Schools, 150 Valparaiso Avenue, Atherton (APN 070-390-010) – Request for a Conditional Use Permit to allow temporary use of athletic fields for outdoor recreational activities with temporary lighting at Palatella Football Field and Dollinger Soccer Field. Atherton Municipal Code Chapter 17.12 and 17.36.

City Attorney Ebrahimi requested that the Planning Commission disclose any conflicts of interest that may impact the commissioner’s decision making and therefore preclude their participation in the agenda items.

Commissioners Lane, Tonelli, Narancic and Lerner confirmed that they do not have any conflicts of interest.

Commissioner Lamb recused himself from the item and exited the meeting.

Town Planner Costa Sanders presented the staff report.

Chair Lane asked staff why the applicant asked for a later time than Menlo School.

Town Planner Costa Sanders deferred response to applicant.

Open Public Hearing

Director of Schools, Richard Dioli presented on behalf of Sacred Hearts Schools. He highlighted the importance and goal of being able to allow students to recreate outside and outlined the request.

Director of Operations, Mike Dwyer specified that their request will be the same as Menlo schools in that it will not use the field when school is not in session or on game days. He further clarified that the fields will be used for an array of extracurricular activities not limited to one sport and the later time will better allow for the students to recreate outside which the school finds to be important during the pandemic.

Chair Lane asked how many students will use the fields and lights.

Mr. Dwyer indicated as many as 600 students could use the field depending on interest.

Chair Lane asked what the school normally does during his time of year.

Mr. Dioli indicated that the boys and girls soccer would be using the field.

Chair lane asked how many programs would be conducted.

Mr. Dwyer said between five and ten.

Commissioner Tonelli asked how the contingency of the football season would impact the request.

Mr. Dwyer indicated the request is necessary for other activities beyond football and would therefore not change.

Commissioner Tonelli asked the height of the lights.

Mr. Dwyer indicated they would be 50 feet to be most safe for all the activities being proposed, and that there will be a total of 9 lights between the two fields. He further indicated that the lights have not impacted the neighbors in the past.

Commissioner Lerner and Narancic have no further questions for the applicant.

Close Public Hearing.

Commissioner Tonelli posed the questions to other commissioners asking if they would like to consider amendments to the time of day being requested by the applicant.

Chair Lane expressed concerns of the amount of light and noise being created from use of the field and agreed that the length of time should be reduced.

Commissioner Lerner agreed with the Commissioner Tonelli and Lane.

Chair Lane asked the Town Attorney any additional concerns in making changes to the proposed times.

Town Attorney recommended that the Planning Commission confer with the applicant that they would still like to proceed with the Conditional Use Permit should the requested times be amended.

Mr. Dwyer specified that they would like the additional time to cycle through cohorts of students, and that schools are typically allowed to utilize the facilities until 7 PM.

Chair Lane expressed that the impacts of the lights should be mitigated by shortening the amount of time of which they are allowed to be on to 6:15 pm, consistent to the time approved for the Menlo School's Conditional Use Permit.

Mr. Dioli requested that 6:30 would be preferred.

Mr. Dwyer highlighted that he reached out to neighbors personally communicating the request. He shared there were no concerns of the requested 7:00 pm time request. He further requested that if the time is to be cut short that the alternative 6:30 pm request be considered as 6:15 would be too limiting to their programs.

Commissioner Lerner expressed she would be okay with a change to 6:30 pm.

Commissioner Tonelli asked if there were any concerns that the Planning Commission should consider if they approved a time that differed from the time approved in the previous conditional use permit granted to Menlo School.

City Attorney Ebrahimi indicated that the two conditional use permits requested different times and that one would not impact the other.

Commissioner Tonelli confirmed he would be okay to approve the application with amendments to the time.

Commissioner Narancic showed support for the approval for the same reasons stated earlier.

Motion to approve resolution 2020-2 which grants the Conditional Use Permit to allow the temporary use of athletic fields for outdoor recreational activities with temporary lights from January 19, 2021 through March 12, 2021 from 3:45 until 6:30 pm on weekdays at Palatella and Dollinger Fields and finds this CUP is exempt from CEQA, with an amendment to condition one of the Conditional Use Permit that states and only on dates in which school is actually in session.

M/S Tonelli/ Lane Ayes: 4 Noes: 0 Absent: 1

5. **STAFF REPORTS**

6. **COMMISONERS' REPORTS**

7. **ADJOURN**

The meeting was adjourned 8:15 PM

Respectfully Submitted:

/s/ Lisa Costa Sanders

Lisa Costa Sanders, Town Planner