

**TOWN OF FOUNTAIN HILLS  
MINUTES OF THE REGULAR SESSION OF THE  
PLANNING & ZONING COMMISSION  
October 13, 2016**

Vice-Chairman Mikolajczyk opened the meeting at 6:30 p.m.

**ROLL CALL:**

The following Commissioners were present: Chairman Michael Archambault, Vice-Chairman Eugene Mikolajczyk. Commissioners: Amberleigh Dabrowski, Susan Dempster, Erik Hansen, and Howie Jones. Also in attendance were Bob Rodgers, Development Services Director and Paula Woodward, Executive Assistant and Recorder of the minutes. Commissioner Roger Owners was absent.

Chairman Michael Archambault requested participation in the Pledge of Allegiance and a moment of silent reflection.

**CALL TO THE PUBLIC**

No one wished to speak.

Chairman Archambault turned the meeting over to Bob Rodgers.

**AGENDA ITEM #1 ELECTION OF A CHAIRMAN AND VICE-CHAIRMAN FOR A ONE-YEAR TERM BEGINNING OCTOBER 13, 2016 THROUGH SEPTMBER 30, 2017.**

Mr. Rodgers asked for Chairman Nominations.

Commissioner Jones **NOMINATED** Mike Archambault for the Planning and Zoning Commission Chairman. Vice-Chairman Mikolajczyk **SECONDED** and a voice vote was taken. Mike Archambault was **UNANIMOUSLY** approved and Mike Archambault was reappointed to the position of Chairman. Chairman Archambault's term began October 13, 2016 and expires on September 30, 2017.

Chairman Archambault asked for Vice-Chairman nominations.

Commissioner Jones **NOMINATED** Gene Mikolajczyk for the Planning and Zoning Commission Vice-Chairman. Commissioner Dempster **SECONDED** and a voice vote was taken. Gene Mikolajczyk was **UNANIMOUSLY** approved and Gene Mikolajczyk was appointed to the position of Vice-Chairman. Vice-Chairman Mikolajczyk's term began October 13, 2016 and expires on September 30, 2017.

**AGENDA ITEM #2 - CONSIDERATION OF APPROVING THE PLANNING AND ZONING COMMISSION MEETING MINUTES DATED SEPTEMBER 8, 2016.**

Vice-Chairman Mikolajczyk **MOVED** to **APPROVE** the meeting minutes dated Thursday, September 8, 2016 as written. Commissioner Jones **SECONDED** and the **MOTION CARRIED UNANIMOUSLY.**

**AGENDA ITEM #3 - PUBLIC HEARING REGARDING ORDINANCE #16-11, TEXT AMENDMENTS TO THE FOUNTAIN HILLS ZONING ORDINANCE, SECTIONS 2.02.C.1, 2.04, 2.05, 2.06, 12.02.D.7, 13.05, 13.06, 17.06.B.1.A, 18.11.B, 18.14, 19.02.A, 19.07.A, 23.04.B, 23.05.A, 23.06.C, AND 23.07, RELATING TO ADMINISTRATIVE SITE PLAN APPROVAL. CASE #Z2016-07**

Commissioner Jones opened the Public Hearing at 6:33 p.m.

Bob Rodgers addressed the Commission and explained Ordinance#16-11 is a series of amendments to sixteen separate sections from seven different chapters of the Zoning Ordinance.

All the amended sections relate to new commercial, industrial, multi-family and/or mixed use project proposals.

Mr. Rodgers said this ordinance will re-organize, consolidate and or eliminate sections related to the Application Submittal and Approval requirements for Concept Plans, Site Plans, Special Use Permits, PUD's PAD's and Re-Zonings. Each of these Sections have similar submittal requirements, but each is also slightly different from the others. Ordinance #16-11 consolidates these into ONE list of submittal requirements, and puts it in ONE location in the ordinance. Applicants will no longer have to look through multiple ordinance sections in order to figure out what they have to submit when they want to propose a new project.

Mr. Rodgers highlighted an outline of changes:

**Chapter 2 – Procedures** will be amended by eliminating the Concept Plan section, the Plan Review Regulations section and the PUD section and replacing them with the new Site Plan Review Regulations section. This is the “meat” of the proposed ordinance amendments. This new section outlines the submittal requirements and also the requirements for administrative review and approval. And it fixes a number of minor housekeeping items such as updating the department's name, fixing typos, etc.

**Chapter 12 – Commercial Districts** is being amended to refer the relevant applications to the new Chapter 2 rules for Site Plan Review.

**Chapter 13 - Industrial Districts** is being amended by eliminating two sections that are no longer relevant. (13.05 allows districts to be created – 13.06 requires A Plan of Development)

**Chapter 17 – Wireless Towers & Antennas** is amended with minor changes that reference Site Plans rather than Plans of Development.

**Chapter 18 – The TCCD District** is amended to change the references from Concept Plan approval to Site Plan approval.

**Chapter 19 - Architectural Review** is also amended to change the references from Concept Plan approval to Site Plan approval.

**Chapter 23 - PAD's** is also amended to change the references from Concept Plan, and Development Plan to Site Plan approval. The submittal requirement section is being eliminated and applicants are pointed to the new consolidated Site Plan submittal requirements back in Chapter 2.

The Site Plan Review and Approval procedures are also being amended and consolidated:

Ordinance # 16-11 amends the process of approval of these proposals so that “IF” the submittal meets all the requirements of the ordinance, and no Special Use Permits, Variances, Re-zonings or Waivers are necessary, there will be no need to go through the public hearing process for Concept Plans that's currently in place. Staff will now be authorized to approve the Site Plan proposal administratively and the applicant may move straight to applying for building permits.

- If a SUP, Variance, Re- zoning or Waiver is requested as part of the application then the public hearing process with Planning & Zoning Commission and Council that's currently in effect for those types of applications will still be necessary for approval.
- Also note that should any applicant be denied administrative approval of their Site Plan, or even if they disagree with one or more stipulations of their approval, there will not be a two-step appeal process included that allows the first appeal to go to P & Z, and if they're not satisfied there, they can appeal Planning & Zoning Commission's decision to Council for a final answer.

In Conclusion, Mr. Rodgers said Ordinance #16-11, Administrative Site Plan approval, will consolidate multiple ordinance sections and streamline the Site Plan review and approval process. It will allow for administrative staff approval when all ordinance provisions are being met. It will not change the public

hearing process for applications requiring Special Use Permits, Variances, Re-zoning, or Waivers. It creates a two-part appeal process should an applicant be dissatisfied with a denial or the stipulations of an approval. It also performs a much-needed clean up of a number of ordinance sections. Making at least those portions of the ordinance a bit more easily understood.

Mr. Rodgers stated that staff recommends that the Planning & Zoning Commission forward a recommendation to Town Council to approve Ordinance #16-11 as presented.

Commissioner Jones closed the Public Hearing at 6:37 p.m.

**AGENDA ITEM #4 - CONSIDERATION OF ORDINANCE #16-11, TEXT AMENDMENTS TO THE FOUNTAIN HILLS ZONING ORDINANCE, SECTIONS 2.02.C.1, 2.04, 2.05, 2.06, 12.02.D.7, 13.05, 13.06, 17.06.B.1.A, 18.11.B, 18.14, 19.02.A, 19.07.A, 23.04.B, 23.05.A, 23.06.C, AND 23.07, RELATING TO ADMINISTRATIVE SITE PLAN APPROVAL. CASE #Z2016-07**

Commissioner Hansen asked why is “Planning & Zoning” shown omitted from page two.

Mr. Rodgers said it would go to the department first not the Commission.

In response to Chairman Archambault, Mr. Rodgers explained the PAD is a hard zone, that was created by rezoning and the PUD takes the underlying zoning and allow for minor changes, i.e., set backs, etc.

Commissioner Dabrowski asked doesn't the public lose the right to be heard if the public-hearing process is eliminated.

Mr. Rodgers said if the applicant is meeting the ordinances the public really does not have input. This is not changing the process for items that require public hearings.

Vice-Chairman Mikolajczyk **MOVED** to forward a recommendation to the Town Council to approve Ordinance #16-11, a series of text amendments to the Fountain Hills Zoning Ordinance that will allow the consolidation and reorganization of multiple ordinance sections and to authorize the administrative review and approval of commercial, industrial, mixed-use and multi-family site plans as presented. Commissioner Dabrowski **SECONDED** and the **MOTION CARRIED UNANIMOUSLY 6/0.**

**AGENDA ITEM #5 - PUBLIC HEARING OF ORDINANCE #16-03, A TEXT AMENDMENT TO THE FOUNTAIN HILLS ZONING ORDINANCE, SECTION 1.12, SECTION 6.08.CC, AND CHAPTER 8, RELATING TO OUTDOOR LIGHTING CONTROLS. CASE #Z2016-01**

Chairman Archambault opened the Public Hearings at 6:43 p.m.

Mr. Rodgers stated this was originally proposed by staff in order to update the town's outdoor lighting ordinance (Chapter 8 of the Zoning Ordinance) to bring it up to today's standards. Ordinance #16-03 quickly ballooned into a full re-write of Chapter 8 along with amendments to Chapter 1( Definitions) and Chapter 6 (Signs) as well.

Mr. Rodgers said in order to take into account the CFL and LED light equivalents to the Standard incandescent bulbs that are called out in the current ordinance we needed to revise the whole ordinance and change the methodology of testing, and of the enforcement of outdoor lighting in a uniform manner regardless of the type of light fixtures being looked at.

Staff received a lot of information and support from the Dark Sky Committee during the process. The committee has been very influential regarding some sections of the revised ordinance you have before you tonight.

Mr. Rodgers reviewed some highlights:

References to watts were changed to their equivalents in “lumens”.

Definitions have been updated.

Shielding requirements have been modified.

The correlated color temperature of lights has been set at a maximum of 3,000 kelvin

Prohibits light trespass onto adjoining properties

Modifies the sign code as it relates to electronic and LED illuminated signage

Provides for some exemptions for municipal uses, emergencies, holiday lighting, and Special Events

The ordinance proposal you have before you provides all these things and this is the proposal that staff recommends. However the Dark Sky committee has requested that two provisions be reinserted and the committee’s proposal has been included in your packets.

The two provisions are:

1. Dark Sky Committee: The non-residential lumen density cap which limits the amount of lumens per net acre.

Staff: Staff has not included this in the ordinance proposal for four reasons:

1. Staff is concerned that such a cap only impacts the business community, especially new businesses in the downtown area and larger commercial plazas. Staff does not believe that this is consistent with the stated goals of the Downtown Area Specific Plan (Swaback Plan) as adopted into the General Plan by a majority vote of the town residents.

2. Staff believes that such a cap is redundant and unnecessary given that limits on individual lighting fixtures, their shielding, and their brightness, effectively accomplish the same results. Laying an additional level of regulation onto commercial properties is not necessary.

3. Staff can see no way of actually enforcing such a cap with any ongoing consistency once businesses are in operation.

4. Staff believes that any per-acre lumen density cap regulations should only be applied to new development proposals that are already required to provide photometric plans in their application submittals in order to demonstrate compliance with the Town’s lighting ordinance. So, in effect this is already in place for new construction.

Requiring any kind of on-going verification would be very problematic. However, if deemed to be a good idea, a provision like this can be added later after a more thorough evaluation.

2. Dark Sky Committee: town lighting should be required to comply with the requirements of the outdoor lighting ordinance.

Staff: Current legal advice is that the Town facilities and activities are exempt from ordinances adopted by the town. Therefore, staff prefers not to officially adopt an ordinance provision that is known to be unenforceable.

Mr. Rodgers concluded that Staff recommends that the Commission forward a recommendation to the Town Council to approve the Outdoor Lighting Ordinance (#16-03) as proposed by staff.

Chairman Archambault asked if there was any one from the public who wished to speak.

Joe Bill, a Fountain Hills resident and a member of the Dark Sky Committee, said there are two issues to be resolved with the proposed ordinance. They are a provision for lumen density caps and a provision for municipally owned lighting. These need to be resolved in order to pursue the goal of a dark sky designation for Fountain Hills. Mr. Bill stated there are loop holes in the ordinance. He explained in

detail why the loop holes should be corrected. Mr. Bill said if Fountain Hills was to receive the prestigious dark sky designation they would be nationally recognized. Mr. Bill thanked the Commission.

Nancy Bill, a Fountain Hills resident and Chairman of the Dark Sky Committee addressed the commission stating the two goals of the committee are to update the current lighting ordinance and to help Fountain Hills obtain the dark sky designation. Since last July the Committee has focused on the ordinance updates since this is a prerequisite for applying for the dark sky designation. Almost all the criteria set forth by the Dark Sky Association has been included in the updated ordinance and supported by Town staff. However two items need resolution. Ms. Bill focused and explained the need for inclusion for municipally owned lighting. Ms. Bill thanked the Commission.

Chairman Archambault closed the public hearing at 6:55 p.m.

Commissioner Hansen asked why the definitions are omitted.

Mr. Rodgers replied, the definitions are removed from that chapter and are added to chapter one.

Vice-Chairman Mikolajczyk asked for clarification on section 6.08 referring to electronic message signs.

Mr. Rodgers said there is another section that requires all signs to be on site other than sign spinners.

Commissioner Dabrowski asked about enforcement, if the provisions were added to the ordinance.

Mr. Rodgers said it would be hard to tell if non compliant lights were used or changed out. If a complaint was received the code enforcement officer would investigate but it would be hard to enforce with his schedule. He would have to go out during the day to investigate. MCSO would not be asked to enforce. The Town reviews the photometric plan required by the Development Services Department for new builds. This would be enforced at plan review. Enforcement against the Town would not happen.

Chairman Archambault asked if the provisions would be reviewed in the future and if Sedona & Flagstaff have this in their ordinances.

Mr. Rodgers said he would like to review the density cap request further in order to determine how it would affect businesses. Mr. Rodgers confirmed Sedona and Flagstaff have these provisions.

Chairman Archambault asked if the new assisted living facility, (The Hemmingway) complies with the new ordinance.

Mr. Rodgers said that project already has an approved development agreement and has been pre approved.

In response to Chairman Archambault Mr. Rodgers confirmed the Town is exempt from its own ordinance enforcement.

Vice-Chairman Mikolajczyk stated that the lumens cap in the ordinance is less than what the Dark Sky Committee is requesting. Why couldn't the Dark Sky Committee's request be put in the ordinance?

Mr. Rodgers said he is not convinced there is a need for a second layer of regulation. The purpose of revising ordinances is to clean them up and remove un-enforceable regulations and redundancies.

Vice-Chairman Mikolajczyk stated he had a question but it may apply more to the Town Manager & Council Policy. What direction does the Town want to go regarding wanting a dark sky but also wanting a more vibrant downtown with brighter lights & entertainment? Flagstaff and Sedona use the cap when they do the initial review but did not confirm it was used after.

Mr. Rodgers said the downtown overlay was recently approved to allow for flexibility with noise created by entertainment and events. It can also allow for more or brighter lights in the future if desired.

Commissioner Dempster asked are there any loopholes that have not been mentioned.

Mr. Rodgers replied he could not think of any but they can always come up in the future.

Commissioner Jones asked if the section on municipal lighting was adopted, would the Town incur any cost? Did the towns you consulted with mention anything regarding the state statute that excludes them from their own ordinances.

Mr. Rodgers stated it would not cost the Town any money and he did not ask them about Sedona's or Flagstaff's exclusion from their own ordinances.

Commissioner Hansen asked if the Town has any recognition in regards to the Town's lighting or lack of lighting.

Mr. Rodgers replied he was unaware of any but Fountain Hills is darker than most communities. We call this a "dark sky" ordinance but it is not officially a dark sky community.

Chairman Archambault asked how do you relate what is being done here with the strategic planning poll taken by residents. What would be the harm of adopting the lumens cap.

Mr. Rodgers stated this is headed in the right direction. Most of the ordinance is dark sky compliant. There are a few items left to negotiate to include or leave out. This is a very tricky thing because some people like the dark sky and looking at the stars while some businesses may not want to dim lights. Mr. Rodgers asked why have a layer of regulation if it is not used.

Mr. Rodgers said the Town either gets the certification or don't. There are not different levels or tiers.

Chairman Archambault said he would not be opposed to creating an ad hoc committee to review this further in the future.

Commissioner Dabrowski asked Mr. & Mrs. Bill if there are any monetary benefits by becoming a certified dark sky community.

Mr. Bill said there are none. It is a prestigious designation and the town would receive national attention. This also ties in with the idea of having an observatory in town. Mr. Bill emphasized there is a major loop hole in the ordinance that does not discuss shielded or partially shielded lighting. No other community in Maricopa County is designated as dark sky. Tucson is working toward becoming a dark sky community.

Commissioner Dabrowski asked if the observatory would be prohibited if the dark sky designation was delayed.

Mr. Bill said it would not prohibit or delay establishing the observatory.

Vice-Chairman Mikolajczyk asked about taking the word unshielded out of the ordinance. He suggested changing it to apply to all outdoor illumination.

Mr. Rodgers questioned if changing it would work with parking lot lights.

Commissioner Jones asked if the lumen density cap applies only to new construction.

Mr. Bill said it does apply to new construction but the problem is existing businesses that change out lighting would not have a lumens cap unless it's mentioned in the ordinance. Lighting that is already in place is grandfathered in.

Commissioner Jones stated the observatory location seems counter intuitive to locate it near a vibrant downtown.

Mr. Bill said the location is not definite. The idea is for families to visit the observatory and take advantage of the surrounding businesses and downtown such as restaurants, coffee shops and ice cream parlors.

Vice-Chairman Mikolajczyk asked why not remove the word unshielded.

Mr. Bill said it would be too restrictive and may cause a concern amongst businesses.

**AGENDA ITEM #6 - CONSIDERATION OF ORDINANCE #16-03, A TEXT AMENDMENT TO THE FOUNTAIN HILLS ZONING ORDINANCE, SECTION 1.12, SECTION 6.08.CC, AND CHAPTER 8, RELATING TO OUTDOOR LIGHTING CONTROLS. CASE #Z2016-01**

Vice-Chairman Mikolajczyk **MOVED** to forward a recommendation to the Town Council to approve Ordinance #16-03, the proposed text amendments to the Fountain Hills Zoning Ordinance, Section 1.12, Section 6.08.CC, and Chapter 8, relating to Outdoor Lighting controls as presented and recommended by Staff. Chairman Archambault **SECONDED** and the **MOTION CARRIED UNANIMOUSLY 6/0.**

Commissioner Hansen	Aye
Commissioner Dempster	Aye
Commissioner Jones	Aye
Commissioner Dabrowski	Aye
Vice-chairman Mikolajczyk	Aye
Chairman Archambault	Aye

**AGENDA ITEM #7 - COMMISSION DISCUSSION/REQUEST FOR RESEARCH TO STAFF.**  
*Items listed below are related only to the propriety of (i) placing items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Commission.*

Chairman Archambault stated he would like to see an ad hoc Committee created to review the two sections of the lighting ordinance that were left out.

Mr. Rodgers said the committee would be created provided the council does not add the two items.

Chairman Archambault said the Committee would not be created till after the ordinance was on the Council agenda.

**AGENDA ITEM #8 - SUMMARY OF COMMISSION REQUESTS FROM SENIOR PLANNER.**

None

**AGENDA ITEM #8 - REPORT FROM SENIOR PLANNER AND ZONING ADMINISTRATOR, PLANNING AND ZONING DIVISION OF DEVELOPMENT SERVICES.**

None

**AGENDA ITEM #8 CHAIRMAN'S DISCUSSION AND EXPECTATIONS.**

The Chairman would like to have a discussion regarding dress code, motions and amendments, research, seating, possible rotation on handling agenda items for the benefit of commissioners experience and other items deemed important to the Commission.

Chairman Archambault discussed in detail his expectations of Commissioners. He reviewed procedural protocol and encouraged the Commission to ask any questions.

**AGENDA ITEM #10 - ADJOURNMENT.**

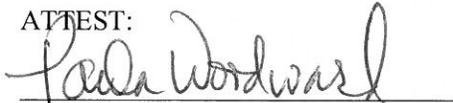
Vice-Chairman Mikolajczyk **MOVED** to adjourn the meeting at 7:50 p.m. and Commissioner Jones **SECONDED** and the **MOTION CARRIED UNANIMOUSLY.**

FOUNTAIN HILLS PLANNING & ZONING COMMISSION

BY:

  
Chairman Mike Archambault

ATTEST:

  
Paula Woodward, Executive Assistant

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Fountain Hills Planning and Zoning Commission held on the 13th day of October 2016, in the Town Council Chambers, 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268. I further certify that the meeting was duly called and that a quorum was present.

Dated this 20<sup>th</sup> of October 2016

  
Paula Woodward, Executive Assistant