



Minutes
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
November 19, 2003
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Janz called the meeting to order at 7:02 p.m.

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**

PRESENT: Kathy McKeithen
Charles E. Marsala
Alan B. Carlson
William R. Conwell
James R. Janz

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

3. PRESENTATIONS

A. Recognition of Red Ribbon Week

Mayor Janz, Lt. Glenn Nielsen and D.A.R.E. Officer Bruce Potts presented prizes to the Red Ribbon Week poster winners from local elementary schools.

B. Menlo Park Fire Protection District – Community Emergency Response Team (CERT) Neighborhood Program

The Menlo Park Fire District presented information on the Community Emergency Response Team (CERT) Neighborhood Program, and the need for volunteers from the community.

4. COUNCIL REPORTS

- Councilmember Conwell reported that at the San Francisco Airport Roundtable it was noted that traffic counts are up but noise complaints are down to 200 a month. C/CAG**

has formed a new conflict of interest/ethics committee and Mr. Conwell is the Chair of the committee. At the Criminal Justice Council meeting the value of police ridealongs was discussed. Councilmember Conwell asked the Police Department to do more to educate the residents that police ridealongs are available in Atherton.

- Mayor Janz stated that he attended a Caltrain meeting and that subject will be discussed later on the agenda. He reported on the Peninsula Gateway Corridor Study Committee, which is looking to link Highway 101 with the Dumbarton Bridge. He also attended an interesting forum, put on by a housing alliance, where a group of community leaders looked at the process of creating much needed housing in San Mateo County. The group conducted some large scale efforts with county citizens, and there was a consensus that there was a housing crisis. While the group couldn't come to a consensus on lower income housing, they supported regional approaches, and agreed that some new taxes would be necessary along with reliable watchdog mechanisms.
- Council Member Carlson stated that the Joint Finance/Building and Facilities Committee met and reviewed the issue of a property transfer tax, and asked the City Attorney to obtain an opinion from an expert specializing in this area. The committee also reviewed the intermediate range financial plan, and looked at how to deal with looming deficits on the Town's horizon. Also reviewed was false alarm revenue, which is down, and the committee decided not to recommend any changes to the Council at this time.
- Council Member Marsala announced that the Governor rescinded the vehicle license fee (VLF), and the Town will be paying attention to this as it is an important source of revenue. The Library JPA will be presenting a new agreement in December, and he reported that they are trying to settle a conflict with the Library director position so he/she knows whom to report to. The General Plan Committee met and reviewed tree preservation guidelines, discussed the legality of construction parking (Vehicle Code 22507) and establishing resident-only parking districts. City Attorney Marc Hynes explained ramifications of implementing this code. The Waste Reduction Committee met and there will be no resident fee increases this year. Recycling of organic matter and demolition sales were discussed. Council Member Marsala will meet with the Chair of the Park and Recreation Commission to discuss the parameters of a possible Joint City Council/Park and Recreation Commission meeting.
- Vice Mayor McKeithen announced that the Town has a \$200,000 credit in our account with Browning Ferris Industries (BFI), the Town's franchise waste hauler. The General Plan Committee met and came up with four issues that a construction parking subcommittee needs to address: (1) applicants have to file a parking plan; (2) parking must be on-site; (3) look at case by case exceptions; and (4) signs will need to be posted. The subcommittee is still looking into whether this is enforceable. The committee also reviewed tree preservation guidelines and specifications. The Town's consultants BKF and H.T. Harvey met on the Atherton Channel issue regarding the red legged frog and a report was drafted on how to enhance the environment for the red legged frog. The Public

Works Department reviewed the draft, and the next step is a Section 7 consultation with the Army Corp of Engineers.

5. PUBLIC COMMENTS

- John Fiber, owns a home in Atherton built in the 1870s and completed a renovation.
- Jim Dobbie, regarding construction parking.

6. STAFF REPORTS

City Manager Jim Robinson reported that the poles for the Valparaiso signal are due to arrive soon, and should be up and operational by the end of this calendar year. He attended a meeting of city managers to discuss the Measure A reauthorization which is up in 2008, and a report will be coming back to each city council in January. The measure would include 47% transit projects and 53% street projects. The effort is to look at those projects with most benefit in San Mateo County. The strategy is to have the measure on the ballot in November 2004. A report will come back to council with more specifics.

City Attorney Marc Hynes reported out of the Closed Session held at 6:00 p.m. as follows:

- A. CONFERENCE WITH LABOR NEGOTIATOR – Labor Negotiations pursuant to Government Code Section 54957.6**
Agency Negotiator: James H. Robinson, City Manager
Employee Organization: Local Union 856
Non-management miscellaneous employees

No action.

- B. CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation pursuant to Government Code Section 54956.9(c): One potential case.**

Direction was given to the City Attorney to initiate litigation re: cutting of a heritage tree without a permit.

- C. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Government Code Section 54956.9(a): Two cases.**

a. Richard T. LemMon et al. v. Town of Atherton et al.
No action.

b. Priceless LLP v. Teamsters Local 856 et al.
No action.

- D. LIABILITY CLAIM – pursuant to Government Code Section 54956.95**

**Claimant: Helen L. Imperiale
Agency Claimed Against: Town of Atherton**

The Council voted unanimously to deny the claim.

- 7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT
No report.**

CONSENT CALENDAR

Mayor Janz requested to remove Item No. 12 and move it to the end of the agenda, and to pull Item No. 13 as well, which will come back to the Council at a later date.

Council Member Carlson requested to pull Item No. 20, and Vice Mayor McKeithen requested to pull Item No. 18.

MOTION – to approve the Consent Agenda with the exception of Items 12, 18, and 20 which were placed on the Regular Agenda. Item No. 13 was not acted upon and will come back to the Council at a future meeting.

M/S Conwell/McKeithen Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

- 8. APPROVED MINUTES OF REGULAR AND SPECIAL MEETING OF SEPTEMBER 17, 2003 AND SPECIAL MEETING OF OCTOBER 6, 2003**
- 9. APPROVED BILLS AND CLAIMS FOR OCTOBER 2003 IN THE AMOUNT OF \$1,110,402**
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR OCTOBER 2003**
- 11. ACCEPTED QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2003**
- 12. Removed from Consent Agenda - APPROVAL OF AGREEMENT BETWEEN FELTON GABLES HOMEOWNERS ASSOCIATION AND TOWN OF ATHERTON TO PROVIDE FOR ACCESS TO HOLBROOK-PALMER PARK**
- 13. This item was postponed until a future meeting date – SECOND READING AND ADOPTION OF ORDINANCE RATIFYING AN ORDINANCE OF THE MENLO PARK FIRE PROTECTION DISTRICT PERTAINING TO FIRE SPRINKLER SYSTEM REQUIREMENTS**

Recommendation: Staff recommends continuation of this item. The Menlo Park Fire District has requested that this item be continued following consideration by the Cities of East Palo Alto and Menlo Park.

14. APPROVED TOW COMPANY CONTRACT

Approved the contract with Able Towing Co. for addition to the Atherton Police Department Tow Rotation List.

15. APPROVED PLANS AND AUTHORIZATION TO ADVERTISE FOR BIDS FOR HOLBROOK-PALMER PARK RESTROOMS

Approved the plans and specifications and authorized advertisement for bids for the Holbrook-Palmer Park Restroom Expansion Project, Project No. 03-008.

16. ADOPTED RESOLUTION NO. 03-22 RESCINDING RESOLUTION NO. 03-20 (CORRECTION TO EXHIBIT "A") AND AUTHORIZING HOURLY SALARY RANGES FOR PART TIME AND TEMPORARY EMPLOYEES FOR FISCAL YEAR 2003-04

Adopted Resolution No. 03-22 rescinding Resolution No. 03-20 (correction to Exhibit "A") and Authorizing Hourly Salary Ranges for Part Time and Temporary Employees for Fiscal Year 2003-04, to correct an error in a calculation for an hourly salary range.

17. ADOPTED RESOLUTION NO. 03-23 AUTHORIZING APPLICATION FOR A BICYCLE TRANSPORTATION ACCOUNT GRANT; and ADOPTED RESOLUTION NO. 03-24 ADOPTING A BICYCLE TRANSPORTATION PLAN TO INCORPORATE THE SAN MATEO COUNTY COMPREHENSIVE BICYCLE ROUTE PLAN

(A) Adopted Resolution No. 03-23 Authorizing Application for a Bicycle Transportation Account Grant and Committing the Required Local Match;

(B) Adopted Resolution No. 03-24 Adopting a Bicycle Transportation Plan to Incorporate the San Mateo County Comprehensive Bicycle Route Plan and to Comply with Section 891.2 of the California Streets and Highways Code.

19. APPROVED OF PARTICIPATION IN HOUSING ENDOWMENT AND TRUST OF SAN MATEO COUNTY

Adopted the recommendation of the Council Finance Committee that the City Council authorize the Mayor to execute the attached Joint Exercise of Powers Agreement for the Housing Endowment and Trust of San Mateo County which would provide for participation in the San Mateo County Housing Foundation.

21. APPROVED ISSUANCE OF A REQUEST FOR PROPOSALS FOR PARK GROUNDS MAINTENANCE SERVICES FOR HOLBROOK PALMER PARK

Authorized advertisement for bids for the Holbrook-Palmer Park Grounds Maintenance contract per the recommendation of the Park and Recreation Commission.

REGULAR AGENDA

The following item was removed from the Consent Agenda.

18. APPROPRIATIONS FOR CONTRACT PLAN CHECK SERVICES FOR THE BUILDING DEPARTMENT

Finance Director John Johns presented the staff report and responded to Council questions. He stated that the department would like to augment its resources when necessary to expedite the building permit process.

MOTION – to increase appropriations for contract plan check services by \$50,000 and reduce reserves for future building inspections by an equivalent amount as recommended by the Finance Committee.

M/S Carlson/Marsala Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

22. APPOINTMENT OF COUNCIL MEMBERS AND RESIDENT MEMBERS TO CALTRAIN CORRIDOR AD HOC COMMITTEE

Council Member Marsala stated that he and Council Member Conwell met as the Screening Committee this morning and they approve of those they interviewed, and would like to speak with the remaining two applicants who were not available for interviews.

MOTION – Appoint the following individuals to the Caltrain Corridor Ad-hoc Subcommittee, as recommended by the Screening Committee: Christopher Cobey, Fred Wolin, Mike McPherson, Philip Lively, Jerry Carlson, Doris Kellett, and Phil Mitchell.

M/S Marsala/Conwell Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Janz is the only Council Member on the committee now. The Council will consider adding other Council Members to the committee when committee appointments are looked at in January 2004.

24. DISCUSSION OF PROPOSED CALTRAIN SERVICE REDUCTIONS

City Manager Jim Robinson reported that the Town was informed several weeks ago that as a result of the implementation of the “Baby Bullet” train service, there would be a number of schedule changes to Atherton train service. The current proposal is to eliminate weekend service and reduce weekday stops from 30 to 19. No public hearings were held by

Caltrain regarding the service reduction, just public comments meetings, where both the Mayor and City Manager expressed concerns about the process and the need for more opportunity to comment. A public hearing is now to be held January 8, 2004, and the deadline for public comments is now November 28, 2003, as it was extended. The purpose of item on this agenda is to provide an opportunity for public comment and any direction to staff. The change in schedule will impact students coming to schools in Atherton.

Mayor Janz stated that the Town was taken by surprise, as we did not know that weekend service was going to be eliminated and weekday service reduced. He stated that any public comments received this evening would be forwarded to Caltrain.

Discussion was held regarding how the elimination of weekend service will affect the Town during baseball season and festivals. Concerns with the lack of any public hearings were discussed. Vice Mayor McKeithen stated that Caltrain formerly stated that they would be happy to meet in Atherton and that the Council should insist that a public hearing be held here in Town.

Jim Dobbie, Atherton resident, stated that Caltrain does not seem very interested in comments from residents at the moment and that if there is a public hearing, we should arrange a very large turnout.

Jack Ringham, Atherton resident, presented the historical background of train service in Atherton. He stated that the train was originally geared toward commuters to San Francisco. He recommended that Caltrain and BART schedules should be coordinated, and that a joint ticketing system be developed between Caltrain and BART.

(There is one other public comment regarding this item which was taken during Agenda Item No. 23, from Robert Corona, Menlo Park.)

At 9:17 p.m., Mayor Janz called for a recess, and reconvened the meeting at 9:26 p.m.

23. REPORT ON TOWN PROCESSES RELATED TO BUILDING PERMIT FOR 85 ORCHARD HILLS DRIVE, LANDSCAPE SCREENING PLAN FOR RETAINING WALL, AND RELATED SITE IMPROVEMENTS AND DEVELOPMENTS

At the September 17, 2003 City Council meeting, at the request of Vice Mayor McKeithen, Council directed staff and City Attorney Marc Hynes to respond to questions in regard to building permits, landscape screening plans, and related site improvements for 85 Orchard Hills Drive. City Attorney Hynes stated that his responses to Vice Mayor McKeithen's questions were contained in his staff report. A written report in response to a written submission from Vice Mayor McKeithen was prepared by staff and accompanied the staff report.

Mayor Janz noted that the motion in the minutes from the September meeting reflected a total of 6 specific items in question, but that 2 of the items were not covered in the staff

report – 4) staff to make recommendations to cover any loopholes in Town code or procedures, and 5) are the planted oleanders the ones described in the landscape screening plan? Town Arborist Kathy Hughes Anderson stated in response to No. 5 that she is in agreement with what was planted.

The City Attorney stated that he did not see any loopholes, but that the issue of a road impact fee based on landscape improvements can be addressed by the Council if they desire. Approximately 40 projects per year would involve only landscaping.

Council Member Carlson stated that Vice Mayor McKeithen had asked for this item to be addressed at the September Council meeting for the purpose of examining perceived irregularities in the Building Department. He noted the seriousness of this agenda item, and gave an overview of the actions taken during and subsequent to the July 17, 2002 public hearing at which the appeal regarding the construction of the retaining wall at 85 Orchard Hills Drive was heard by the Council.

Council Member Carlson then made extensive inquiries of Building Official Mike Hood related to the processes used by the Building Department in the issuance of the Orchard Hills building permits and landscape screening plans.

Vice Mayor McKeithen stated that the issues she raised are not legal issues but process issues. One of her concerns was why work on the wall was started without a landscape screening agreement.

Mayor Janz called for public comments at this time.

Robert Corona, Menlo Park, stated that he wanted to comment on Agenda Item 24 but had missed the item. Pertaining to Caltrain service reductions, he commented that there are seven stations that are slated for reduction in service on weekdays. He stated that little savings will be made by the reduction and that instead of attracting new riders, it is bound to lose customers. He uses the Menlo Park train station and the number of trains he can use to go to certain stops are limited. He stated that he hopes Atherton will join with other cities and make the Town's opinion known to the Caltrain board.

Scott Mitchell, Atherton, an architect who has been working with the Town since 1976, spoke regarding the Atherton Building Department. He stated that the Atherton Building Department is the most professional group he has ever worked with.

Mayor Janz called for a break at 11:57 p.m. The Council reconvened at 12:07 a.m.

Vice Mayor McKeithen continued the discussion of the regulations for accessory structures, and voiced her concerns with the process used for issuing the permits for 85 Orchard Hills. She requested Building Official Hood to provide her with the code section that refers to the regulation of accessory structures. Mr. Hood responded to additional questions.

Mayor Janz stated that the main questions regarding the 85 Orchard Hills project have been addressed by staff and that there have been no actionable improprieties, such as false representations by the owner, upon which the Council can act. The six questions in the motion from the September meeting have been addressed and the questions left relate to policy. The policy questions remaining are: 1) Should there be a road impact fee for landscaping, 2) Should landscaping be allowed to go in anytime in the five year period as long as it is completed by the end of the five years, 3) Should the landscape screening plan be required as part of the agreement, sometime later, or before, 4) Should Code Sections 17.50.050 and 17.50.060 concerning landscape screening agreements be revised, and 5) Should every landscape screening plan be treated separately and charged separately. Mayor Janz stated that it would be appropriate to bring these items back to Council at a later time and decide if they should be addressed by the General Plan Committee.

Council Member Carlson concurred with Mayor Janz that the Building Department had dealt in an even-handed manner with the permitting process related to 85 Orchard Hills Drive. He stated that if the Council wishes to change policies and procedures, and it is deemed appropriate by a majority vote, so be it. He stated that there are two issues, one is the issue of the irregularities, and the other is the issue of process. He stated that he would like for an item to be placed on the next agenda to address the method in which matters are placed on the agenda.

Council Member Marsala reflected on the Town Mission statement and expressed his concerns with the amount of time spent on this issue and the process for items being placed on the agenda.

Vice Mayor McKeithen stated that several items came up as a result of the Council looking at the issues including a possible road impact fee for landscape screening plans, taking a closer look at valuation and the owner/builder designation, and whether there shouldn't be agreements allowed between parties with regard to landscape on an adjacent landowner's property.

Council Member Conwell suggested that the manner in which these issues were handled could have been done better, but that some good has resulted from the discussion.

Lou Paponis spoke from the audience.

MOTION - (1) the report of the City Attorney and its attachments be accepted by the Council, (2) the City Attorney's report and attachments be made part of the minutes of tonight's meeting, (3) that with the exception of those items where the city attorney found minor errors in the process, that the Council affirmatively find that the Building Department and the Building Official engaged in no irregularities in the permitting process for 85 Orchard Hills.

M/S Carlson/Marsala Ayes: 4 Noes: 1 (McKeithen) Absent: 0 Abstain: 0

Mayor Janz called for a break at 1:18 a.m. The meeting reconvened at 1:23 a.m.

25. CONSIDER CABLE CO-OP GRANT APPLICATION TO EQUIP THE COUNCIL CHAMBERS FOR CABLE BROADCAST OF TOWN MEETINGS

Assistant to the City Manager Linda Kelly presented the staff report.

Lou Paponis spoke from the audience in favor of cablecasting.

MOTION – to apply for the grant, and submit an accompanying letter from the Mayor that we would like to have our meetings broadcast.

M/S McKeithen/Marsala Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

MOTION - to defer Items 12 and 20 on agenda to the next meeting due to the lateness of the hour.

M/S Carlson/Janz Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

12. APPROVAL OF AGREEMENT BETWEEN FELTON GABLES HOMEOWNERS ASSOCIATION AND TOWN OF ATHERTON TO PROVIDE FOR ACCESS TO HOLBROOK-PALMER PARK

Recommendation: Approve an agreement with Felton Gables Homeowners Association to provide access to Holbrook-Palmer Park. (Continued from October 15, 2003 Regular Council Meeting.)

20. REFER REVIEW OF SPECIAL EVENTS ORDINANCE TO GENERAL PLAN COMMITTEE

Recommendation: Refer to the General Plan Committee the Special Events Ordinance for review and recommendation. Specifically, it is requested that the General Plan Committee review the maximum time permitted for the life of the Special Events Permit issued and determine what specific time constraints, if any, should be imposed on permitted events within the Town.

26. PUBLIC COMMENTS

Lou Paponis spoke from the audience.

27. ADJOURNMENT

The meeting adjourned at 1:58 a.m

Respectfully submitted,

Linda Kelly, Acting City Clerk