



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**JULY 16, 2008**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Janz called the meeting to order at 7:06 p.m.

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

**PRESENT**    **Jim Dobbie**  
                 **Jerry Carlson**  
                 **Charles E. Marsala**  
                 **James R. Janz**  
                 **Kathy McKeithen**

City Manager Jerry Gruber and City Attorney Marc Hynes were also present.

Mayor Janz welcomed Council Member Jim Dobbie to the Council.

Council Member Dobbie said he took very seriously the commitments he made during his campaign. He would do his best, working with the rest of the Council, to make decisions in the best interests of all Athertonians. Even though growth was inevitable, growth needed to be controlled in such a way that the character of the Town was not destroyed. He won support in every precinct, which he believed proved his message of unity was well accepted. He gave a heartfelt and humble thank you to everyone.

3. **PRESENTATIONS**

**LAFCO REPORT – Municipal Services Review – Martha Poyatos**

City Manager Jerry Gruber introduced Martha Poyatos, Executive Director of LAFCO. Ms. Poyatos gave a PowerPoint presentation regarding the draft Municipal Service Review for the Town of Atherton. LAFCO was required by State law to complete a Municipal Service and Sphere of Influence Review for all cities and special districts in the County. Council was to provide comments, followed by a public hearing held at the Commission, and consideration of determinations would be adopted. She responded to Council questions regarding the various components. Ms.

**Poyatos recommended that Council engage in formal discussions with Redwood City regarding possible annexation of unincorporated areas into the Town. There was a method to amend the Sphere of Influence, as well as the time period could also be extended with a request to the Commission to consider the Municipal Services Review separately and continue the Sphere of Influence to a later date. Mayor Janz said the Council would like to have the discussion of the Sphere of Influence extended. He would discuss with staff whether the Municipal Services Review needed to be extended as well.**

#### **4. PUBLIC COMMENTS**

**Steve Nachtsheim, Atherton, spoke regarding an evacuation plan for Walsh Road and west Atherton. Meetings were held with Cal Water, the Circus Club, the Menlo Park Fire Protection District (MPFPD), and the Town of Atherton. The MPFPD Board passed two motions at its meeting the previous evening regarding the development of a rational emergency evacuation plan. He urged Council to give a high priority to solving the problem.**

**Berna Davis, Atherton, said a Crisis Preparedness Overall Committee for the Walsh Road area included an Evacuation Committee. She noted there was only one point of egress for west Atherton, i.e., Walsh Road. The MPFPD was asked to take the lead, and residents wanted a process immediately, i.e., a schedule/timeline to finalize an evacuation plan. She urged Council to pass a motion in support of the MPFPD motions. She distributed a preliminary evacuation plan; however, an MOU was needed with the various parties. She asked Council to schedule a special meeting to discuss the evacuation plan.**

**Caroline Bererstock, Atherton, recognized that Council supported disaster preparedness including appropriations for equipment. Residents were asking for support of the citizen's Disaster Preparedness Committee. The Area 16 neighborhood was different and had different needs, i.e., an evacuation plan.**

**Bob Jenkins, Atherton, summarized the status of the citizens' Disaster Preparedness Committee. Currently, the Town was divided into 16 neighborhoods, 7 were organized and functioning. The Committee was also working closely with 7 school groups, 175 persons were CERT qualified, 45 persons were licensed radio operators, 70 were medical professionals, and others were specialists working with pets. Over 500 families' profiles were in the database, secured to financial institution standards. A budget was approved for \$73,000; however, only \$6,000 had been expended. Neighborhoods 15 and 16 were seriously concerned with high fire potential.**

**Suzanne Beekley, Atherton, concurred with the previous speakers. Her personal concern was that few escape routes existed. She lived directly below the dam and was also concerned if there was a dam failure during a natural disaster. She requested any guidance or assistance the Town could provide.**

**Marylue Timpson, Atherton, was the chairperson for the Holbrook-Palmer Park and Atherton Dames' fundraiser scheduled for September 7. She asked Council for its support and help from 2 to 6:30 p.m. A silent auction and live auction would be held, and State Senator Joe Simitian was the auctioneer.**

**Virginia Levik, co-chair of the disaster preparation for the Walsh Road area, said motivation in the neighborhood had taken two years to get going; presently, there were eight districts, six captains, and a number of people involved who wanted to help. Neighbors have walked the properties, the woods, the meadows, the yards, etc. They needed support, training for volunteers, and Council's support for giving the MPFPD the lead.**

**Susan Finocchio spoke regarding being trapped on Walsh Road recently in a traffic jam. If there had been a fire, it would have been disastrous. An evacuation plan was urgent to the residents.**

**Mayor Janz was very appreciative of all the efforts taken by the Walsh Road area residents. He and the City Manager took a flight over the area. The City Manager met with MPFPD and the Police Chief. There was not a lack of support on behalf of staff and Council.**

**Council Member McKeithen was aware that Walsh Road was a unique area, not only environmentally but also with the restriction of the road. The Atherton Channel was undercutting the road, which was part of her impetus for forming the citizens group. She said a motion was not possible that evening because the item was not on the agenda. Further, she was told early on by the MPFPD that Council Members did not have a role. MPFPD would work with the citizens group and the Police Department, but it was clear MPFPD was the lead. The Council and staff had been involved in keeping the residents informed.**

**Council Member Marsala was familiar with the neighborhood. He thought more input from the residents was needed. He thought the Council's Emergency Preparedness Committee should be reinstated because there were other issues of concern for the Town such as the dam or mountain lions. Negotiations should be initiated with the Circus Club, Cal Water, and the Town of Woodside to learn what other options were available.**

**Vice Mayor Carlson was very concerned about the fire danger in the foothills. He was also concerned about canceling the August meeting if Council needed to take any action. He asked the status of the MOU with the MPFPD.**

**City Attorney Marc Hynes understood that counsel for the MPFPD was preparing an MOU; however, MPFPD counsel had changed recently. He was prepared to review whatever came forward. He had been presented with an MOU between the Town and the Circus Club, which was a small piece.**

**Council Member Dobbie said the MPFPD had resources and funds and should take the leadership role. Council would support whatever plans were brought forth.**

**City Manager Jerry Gruber clarified the original MOU between the Town and MPFPD regarded CERTs graduates and who was responsible for what; however, there had been little progress. The MOU related to an evacuation plan was in circulation and addressed the relationship between the Town and Cal Water and needed to be finalized. There were some liability issues. Police Chief Brennan's main responsibility was to focus on the issue. There was frustration because everyone was not working together. An operation meeting was scheduled with the Circus Club, MPFPD, the Town, and residents. The MOU between the Circus Club, the MPFPD, and the Town was for the Circus Club to be used for a staging area for multi-jurisdictional fire agencies. Lieutenant Glenn Nielsen would serve as the Interim Police Chief to ensure the process continued. The Police Department was responsible for directing traffic; however, the MPFPD had responsibility to coordinate and initiate to develop the evacuation plan.**

**Mayor Janz did not believe there was a contradiction, i.e., the MPFPD could take the lead in finalizing the evacuation plan as long as it incorporated input from the Police Department.**

**City Attorney Marc Hynes suggested Council could add a motion to the agenda by a 4/5 vote of the Council since the matter arose after the agenda was posted the previous Friday.**

**At the urging of residents who live in west Atherton, Vice Mayor Carlson made the following motion to add to the evening's agenda a motion in support of two motions made the previous evening by the Menlo Park Fire Protection District Board:**

**MOTION – to add to the agenda, after the Public Comment section, a motion in support of two motions made by the Menlo Park Fire Protection District regarding an evacuation plan for the area west of the Alameda de las Pulgas**

**M/S J. Carlson/McKeithen**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

**John Ruggeiro, Atherton, spoke regarding the possible annexation of unincorporated areas into the Town and was concerned residents had not been informed.**

**Bob Jenkins, Atherton, suggested the Town consider developing MOUs with some of the more advanced schools, such as Menlo School, Menlo College and Sacred Heart. They had complete systems, supplies, plans, highly trained people, and radio operators and were very well prepared.**

**Virginia Ruggeiro, Atherton, suggested Council Members should each have a cell phone, supplied by Town, so they could be reached at any time.**

**Mayor Janz took up the emergency motion to endorse actions taken by the MPFPD.**

**MOTION- to endorse Menlo Park Fire Protection District motions as follows:**

**1) The Fire District will provide assistance and leadership for disaster and evacuation planning and preparedness for the area of Atherton west of the Alameda (Walsh Road, Neighborhood 16; Fletcher/Ridgeview, Neighborhood 15); and 2) The fire District will**

offer to Atherton and to Menlo Park to become the lead agency (versus the police) for evacuation planning and implementation for the high threat zone between Alpine Road and Woodside road west of the Alameda; Further the MPFPD, as lead agency, is to take into account the Police Department's comments and assistance

M/S J.Carlson/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

**5. REPORT OUT OF CLOSED SESSION**

**A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

**John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834**

No reportable action was taken.

**Lamb vs. Town of Atherton, et al.**  
Superior Court of California, San Mateo County, CIV 461630

The case was settled, the court case was dismissed, and copies of the settlement would be available from the City Clerk's Office.

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

Title: City Manager

Title: City Attorney

No reportable action was taken.

City Attorney Marc Hynes noted the need to add an emergency item to the agenda regarding the delegation of authority to the City Manager to make determinations under Section 21152(C) of the Government Code.

**MOTION – to add, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DELEGATING AUTHORITY TO THE CITY MANAGER TO MAKE DETERMINATIONS UNDER SECTION 21152(C) OF THE GOVERNMENT CODE,” to be placed on the Regular Agenda for adoption.**

M/S Janz/.McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

**6. CITY MANAGER'S REPORT**

City Manager Jerry Gruber introduced David Huynh, new Assistant Engineer in the Public Works Department. City Manager Gruber reported on several meetings he attended during the month. Regarding recruitments, interviews for Finance Director were held the previous day, interviews for Police Chief would take place next week followed by Assistant City Manager interviews. He and the Interim Finance Officer

continued to evaluate alternative funding resources. The SBWMA was in the process of finalizing the Request for Proposals for the Town's refuse carrier. The director would make a presentation at Council's September meeting.

Public Works Supervisor Steve Tyler responded to Vice Mayor Carlson that the bridge to Holbrook-Palmer Park needed to tie into the quad gates at Watkins Avenue.

Council Member Dobbie wanted a spreadsheet listing all projects with dates, intermediate checkpoints, priorities, etc., in order to ascertain when projects would be completed.

Council Member McKeithen suggested the August meeting could be dedicated to Park issues, namely maintenance, use of the Park, discontinuing weddings, and a new capital project.

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

None.

**CONSENT CALENDAR (Items 8-21)**

Item Nos. 13 and 14 were removed and placed at the beginning of the Regular Agenda for discussion.

Council Member McKeithen removed Item No. 19 for discussion.

Council Member Marsala removed Item No. 20 for discussion.

Vice Mayor Carlson commented on Item Nos. 9 and 10.

**MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 13, 14, 19, and 20, which were removed and placed on the Regular Agenda for discussion.**

M/S J.Carlson/Dobbie                      Ayes: 5    Noes: 0    Absent: 0    Abstain: 0

**8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING AND SPECIAL CITY COUNCIL MEETING OF JUNE 11, 2008; THE SPECIAL CITY COUNCIL CLOSES SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF JUNE 18, 2008**

**9. APPROVED BILLS AND CLAIMS FOR JUNE IN THE AMOUNT OF \$896,006**

**10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JUNE 2008**

**11. APPROVED FY 2008-09 INVESTMENT POLICY**

Approved the Investment Policy.

**12. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE AND AWARD STREET RECONSTRUCTION PHASE 4 PROJECT, PROJECT NO. 08-001**

**Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Street Reconstruction Phase 4 Project, Project No. 08-001; Authorize the City Manager to award the contract for the Street Reconstruction Phase 4 Project, Project No. 08-001, for an amount not to exceed the Engineer's Estimate of \$424,489.20.**

- ~~13. AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS CAPE SEAL PROJECT, PROJECT NO. 07-012 (Removed and placed on the Regular Agenda for discussion.)~~

~~**Recommendation: Award the contract for the Alameda de las Pulgas Cape Seal Project, Project No. 07-012, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.**~~

- ~~14. AWARD OF CONTRACT FOR 2008 PARK PATH MICRO-SURFACING PROJECT, PROJECT NO. 08-003 (Removed and placed on the Regular Agenda for discussion.)~~

~~**Recommendation: Award the contract for the 2008 Park Path Micro-Surfacing Project, Project No. 08-003, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.**~~

15. **AUTHORIZATION TO AWARD THE STEVICK DRIVE RECONSTRUCTION PROJECT, PROJECT NO. 08-002**

**Authorized the City Manager to award the contract for the Stevick Drive Reconstruction Project, Project No. 08-002, for an amount not to exceed the Engineer's Estimate of \$546,815.29 based on the August 7, 2008 bids opening.**

16. **APPROVAL OF THE POLICE DEPARTMENT PURCHASE OF A POLICE VEHICLE FOR FY 2008-09**

**Authorized the Town to "piggy back" on the City and County of San Francisco's bid in order to purchase one marked police vehicle for the fiscal 2008-2009 budget cycle for a total cost not to exceed \$24,228.61.**

17. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING CHAPTERS 2.37 AND 2.40 OF THE ATHERTON MUNICIPAL CODE PERTAINING TO THE GENERAL PLAN COMMITTEE AND THE PARK AND RECREATION COMMISSION**

**Adopted Ordinance 576 repealing Chapters 2.37 and 2.40 of the Atherton Municipal Code pertaining to the General Plan Committee and Park and Recreation Commission.**

**18. FIFTH AMENDMENT TO AGREEMENT FOR MARC HYNES**

**Approved Fifth Amendment to City Attorney's Agreement between Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.**

~~**19. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY**~~

~~**Recommendation: Consider proposed revisions to paragraph 11 of "miscellaneous rules" of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures. (Removed and placed on the Regular Agenda for discussion.)**~~

~~**20. ADOPTION OF SECONDARY GOALS AND OBJECTIVES FROM THE MAY 2, 2008, COUNCIL WORKSHOP**~~

~~**Recommendation: Approve lower priority goals and objectives based on availability of staff time, resources, and a philosophy of a "pay-as-you-go" budget for fiscal year 2008/2009. (Removed and placed on the Regular Agenda for discussion.)**~~

**PUBLIC HEARINGS (Items 21-22)**

**21. APPEAL OF THE PUBLIC WORKS DIRECTOR'S DECISION REGARDING 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT PERMIT TO MADRONE ROAD**

**City Attorney Marc Hynes said because he worked with the staff regarding the appeal in the first instance, he recused himself. Attorney Jean Savaree would advise Council on the item.**

**Council Member McKeithen recused herself as she was a resident of the area.**

**Attorney Jean Savaree said what was before Council that evening was an appeal of a decision by the Public Works Director granting an encroachment permit at 99 DeBell Drive. Other residents appealed that decision asking Council to deny the encroachment permit. On page 2 of the staff report, appropriate code sections were listed as well as an explanation of the findings made by the Public Works Director in granting the permit.**

**Mayor Janz opened the public hearing.**

**Leigh White, appellant, Madrone Road, said the remodel began on 99 DeBell Drive approximately one year ago, and Oak Grove and Madrone were completely screened at that time. She met the owners of 99 DeBell Drive in March and discovered they did not intend to screen the property being accessed on Madrone. She and her husband met with the City Attorney, the Public Works Director, and the City Manager to discuss the encroachment permit and were told there was nothing to be done before the Town issued the encroachment permit; however, the course of action would be to appeal it once it was issued. The City Attorney also advised that the residents could**

apply for a zoning overlay to protect Madrone in the future. She believed if the five houses on DeBell Drive all decided to access their properties from Madrone, the street would become an alley, which changed the character of the street and eroded property values. If the property rights were being given to someone else that eroded others' property rights, the system was designed for the Council to step in and make a decision. She discussed the property owners' letter which included six objections: 1) the property was part of the original Ringwood subdivision; 2) the appeal was untimely; 3) the owners' had a vested right to complete the garage project, and the Town was estopped from revoking the encroachment permit; 4) accessing the garage from Oak Grove or DeBell was not feasible; 5) allowing the project to be completed would not mean the Town would have to grant similar access to all properties between DeBell and Madrone; and 6) The Town adequately considered setback and other zoning regulations. Ms. White believed that 1) the property was part of the Maple Manor subdivision; 2) the appeal was of the encroachment permit, not the building permit and therefore timely; 3) the garage was completed, access was the issue; 4) the garage could be accessed by using the existing driveway access from DeBell; 5) the precedent would be set and denying access to others would be difficult; and 6) the setbacks were fine so long as the encroachment was according to the purpose stated in the Municipal Code, which was to preserve the rural nature of the Town. Code Section 17.64.060 gave the Council authority to act within 60 days. Additionally, a landscape screening plan was required to reduce the visual impact of structures on neighborhoods. The General Plan's intent was to preserve the rural character.

David White, appellant, said the value of maintaining the scenic and rural quality of Atherton was well established. There was no question that a service yard and open parking area on Madrone degraded the quality of the street. Madrone was a 14-foot wide private road and was not adequate for heavier traffic. He believed the encroachment permit did away with the 60-foot setback requirement and the landscape screening requirement. The street became an alleyway. He urged Council to grant the appeal.

Thom Bryant, property owner of 99 DeBell Drive, said both he and the Whites started building their dream houses approximately at the same time. Atherton's zoning ordinance was very clear and his project was in complete compliance. The setbacks were not 10 feet but were 30 feet from the property boundary which was 20 feet from the center of the road. The garage was set back 50 feet. The Menlo Park Fire Protection District approved the plans. Additionally, the landscape screening requirements would be met and plans were underway. Trying to reengineer the driveway would be a significant undertaking and would be completely different from what was approved by the Town. Significant trees would have to be removed and an adequate turning radius would not be possible to make a U-turn. He noted the home the Whites were building also changed the character of the neighborhood. Extensive landscaping along Madrone had been removed. The City Council had the authority to change zoning laws to effect any "go-forward" rights of the other properties. By the fact that his property was part of the Ringwood Park subdivision in 1907, it had the same access rights to Madrone as the White's parcel. Mr. Bryant stated he went through the entire permit process, obtained the proper approvals, complied completely, the driveway was identified on the plans, and to deny the encroachment permit at the present time would be unjust. He urged Council to deny the appeal.

**Mike Gaulke, Madrone Road, was a resident at the end of Madrone for 21 years. The attraction when he bought his property was the rural nature of the area. That rural nature would be fundamentally changed if Council allowed the road to become an alley. The encroachment permit was an opportunity for him and his neighbors to look at up to five properties' rear-ends. He urged Council to grant the appeal.**

**Wayne Cappa, Oak Grove Avenue, said his residence was at the corner of Oak Grove and Madrone. He supported granting the appeal. He believed the owners of 99 DeBell benefited by approving a driveway on Madrone which, in effect gave, them two accesses while the people on Madrone and he were being burdened by the driveway, as it was not complementary to the street scene.**

**Michael Demeter, Toyon Road, said his street was also a private road with public access. The property owners paid for all maintenance of the road just like the property owners on Madrone Road. The road was narrow, about 14 feet, and maintained by 3 or 4 property owners. For the past 63 years, access to 99 DeBell was on DeBell. By granting the encroachment permit, the Town was turning his neighbors' street into an alley.**

**John Beltramo, Madrone, said for more than 65 years, Madrone was a rural country road. Granting access from Madrone completely obliterated the nature of the road. He believed property values would be adversely affected. He urged Council to grant the appeal.**

**Jeff Beltramo, Madrone Road, said he lived on the road when it was a dirt, country road. The road was private with public access. The property owners on Madrone paid for the road to be paved and maintained. The encroachment permit would change the nature of the road. He wanted the permit to be revoked.**

**Kathy McKeithen, Maple Leaf Way, spoke as a private citizen. What was at issue was to what extent one had a right to develop one's property to adversely affect that of one's neighbor or neighborhood. If the driveway was allowed to come off of Madrone, a precedent would be set which could potentially create an alley-like situation. She believed allowing the driveway off of Madrone could radically change the nature of the neighborhood and diminish property values. A review of whether it was in accordance with the General Plan was missing. She supported granting the appeal.**

**Mayor Janz called for a recess at 9:53 p.m. The meeting was reconvened at 9:58 p.m.**

**Carol Smith, Oak Grove Ave., said the situation was unfortunate. Madrone was a small, idyllic road where there was a common belief it was a private road. Both parties were being damaged. She believed staff should have brought it to the attention of the community before the plans were approved. She recommended that Council support the appeal. The existing garage could be accessed from the existing driveway on DeBell.**

**Thom Bryant confirmed his project had the same screening requirements as any other project and plans had been reviewed by the Town. The driveway was the minimum**

**“throat-width” required by the Town. The parking area in front of the garage was larger and on his property, which would be screened. The screening for the garbage bins had not been completed because the paving was not yet completed. He was sympathetic to the fact that many people viewed the driveway as a private driveway; however, it had been a public street since 1907.**

**Leigh White believed her project had increased the property values of her neighbors. Access to her property was very similar to that of 99 DeBell if access were from DeBell. There were three areas of the law that were important to the issue: 1) the building code; 2) the encroachment code; and 3) the landscape screening code. There were absolute rules that the applicants had followed, and the garage was in compliance in its location on the property. The objection was the interaction of the three areas of law and flexibility was built into the law. The zoning codes were designed to access properties, including accessory structures and garages, from the front, set back 60 to 100 feet. Access from Madrone was contrary to what was in the General Plan and Council had the authority to revoke a permit.**

**Mayor Janz closed the public hearing.**

**Council Member Dobbie thought staff should have looked at the access before issuing a permit for the garage. He believed access off of Madrone Road was not consistent with the General Plan.**

**Council Member Marsala believed the situation was difficult for everyone. If the property owner was denied access from Madrone, the garage might need to be torn down. However, changing the nature of the street would be a loss to the neighbors. He asked Attorney Savaree what would happen if Council estopped the project.**

**Attorney Jean Savaree said the cases cited by the property owners were distinguishable in that the projects were finished but a certificate of occupancy was not issued. In the current instance, whether the encroachment permit was issued or not they would have the use of the garage. There was conflicting evidence of what that meant.**

**Attorney Jean Savaree responded to Mayor Janz that Section 12.06.060 of the Municipal Code stated if Council found the two findings in the affirmative, an encroachment permit shall be issued: 1) the encroachment would not interfere with any Town facility or use thereof; and 2) the encroachment would not be detrimental to the best interests of the Town. Council needed to determine whether the findings were in the affirmative or not: if both were affirmed, the encroachment permit would stand; if one or both did not stand, the encroachment permit would be revoked.**

**Council Member Dobbie said the decision was difficult; however, he was in favor of granting the appeal. Every other house on DeBell was accessed from the front. Although, it might not be as convenient, access would be possible from DeBell. He believed a precedent would be set if access was allowed from Madrone. He believed the rural character of the street would be totally changed; therefore, it was detrimental to the best interests of the Town.**

Vice Mayor Carlson understood how staff reached its conclusions. He looked at it from a 1,000 foot perspective. The Town had its unique mini communities. He was in favor of maintaining the quality of life of those mini communities and granting the appeal.

Council Member Marsala said Council had 60 days to make a decision and he wanted more time to consider the appeal. He thought a Closed Session might be appropriate to secure more legal advice to protect the Town and believed legal action was a possibility.

Attorney Jean Savaree said the open questions that evening were: 1) whether or not access from DeBell was actually possible; 2) whether there would be significant changes necessary to the garage if access was from DeBell; and 3) whether access off of Madrone would devalue property.

Council Member Dobbie did not believe much more information would be forthcoming and did not want the issue postponed any further.

Mayor Janz wanted the applicant to address the issue of access from DeBell, e.g., to see what trees, if any, would be destroyed and what impact it would have on the garage. He proposed those questions to the applicant and wanted him to return to the next meeting.

Town Planner Neal Martin suggested that staff also talk to the applicant regarding what other types of landscape screening were available to satisfy the rural character of Madrone.

**MOTION – to continue the item to the City Council meeting of August 20 to allow staff to work with the applicant and the neighbors to find other possible solutions**

**M/S Janz/Marsala Ayes: 3 Noes: 1 (Dobbie) Absent: 0 Abstain:1 (McKeithen)**

**22. ADOPTION OF A RESOLUTION FOR PLANNING FEE INCREASE**

Interim Finance Officer Bill Yeomans presented the staff report. He said Deputy Town Planner Lisa Costa Sanders researched planning fees in six similar jurisdictions. In an attempt to have full cost recovery, staff recommended planning fee increases and an ability to collect a deposit. He clarified that some of the proposed deposits were incorrect in the resolution; however, the staff report listed the correct fee. The table showed current fees and proposed fees, and proposed deposits. There were direct fees in addition, so billing rates for the Town's actual cost plus a 15% overhead charge were also included. If the fees were adopted, the estimated annual recovery was \$40 to \$50,000, which had been included in the budget.

Vice Mayor Carlson noted the Town had not raised fees in eight years. As part of the budgeting process, a review of fees should automatically take place. A discussion ensued regarding the fee structures in surrounding jurisdictions. Vice Mayor Carlson was not satisfied that the fees were appropriate. There was opportunity to review fees

for a greater cost recovery. Cost accounting needed to be done in a more detailed manner on a routine basis.

Council Member Dobbie questioned the fee for School Master Plans.

Town Planner Neal Martin explained there was no current fee, so the fee was the institution of a new fee at \$250. The amount of staff time was minimal and was a matter of presenting the Master Plan Update at the Planning Commission.

Council Member Dobbie thought \$400 was barely enough to cover the Deputy Town Planner's time at a Planning Commission meeting.

Council Member McKeithen was concerned as well. There was no way to tell what the scope of an amendment might be. She thought the fee should be \$750 and should include a proposed deposit. Everything should be reviewed on a yearly basis. She suggested changing the wording for deposits from "Proposed Deposit" to "Initial Proposed Deposit" to allow the Building Department the ability to charge an additional deposit based upon the size of the project.

Council Marsala thought some fees were higher than other jurisdictions such as a tree removal permit or lot line adjustment.

Town Planner Neal Martin said the \$1500 fee was for a heritage tree removal permit which required the Town Arborist's time, the planning staff's time to prepare for the Planning Commission meeting, etc. Previously, the Building Official was a civil engineer and could do lot-line adjustments. Currently, an outside engineer was needed to plan check lot-line adjustments.

Mayor Janz opened the public hearing. No one came forward to speak and the public hearing was closed.

Interim Finance Officer Bill Yeomans clarified the proposed changes as discussed and Mayor Janz made the following motion:

**MOTION – to adopt Resolution No. 08-28, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RELATING TO CHARGES FOR PLANNING SERVICES" with the following changes: 1) change the title "Proposed Deposit" to "Initial Proposed Deposit"; 2) raise the Initial Proposed Deposit for Conditional Use Permit, Variance, Heritage Trees Removal Permit, and Excessive Height from \$1,000 to \$2,000; 3) raise the Initial Proposed Deposit for Appeal from \$500 to \$1,000; 4) reduce to zero the Current Fee for School Master Plan, raise the Proposed Fee to \$750, and institute an Initial Proposed Deposit of \$1,000; Further, add the word "the" in the first "Whereas" before the word "cost," add the word "the" after the third "Whereas," change Heritage Tree to Heritage Trees, change the word "planned" to "planning services" in the "Now Therefore" clause, and eliminate the words "with \$500 deposit" after the "first hour free, bill hourly thereafter" under Staff Time**

M/S Janz/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

**REGULAR AGENDA (Items 24-25)**

- 13. AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS CAPE SEAL PROJECT, PROJECT NO. 07-012 (Removed from the Consent Calendar and placed here for discussion.)**

**Public Works Superintendent Steve Tyler presented the staff report. He said two bids were received. Graham Contractors was the low bidder with \$185,095.61 including a 10% contingency. Although the bid was a few thousand over the engineer's estimate, Public Works Superintendent Tyler recommended approval.**

**Council Member Dobbie queried whether, in general, the engineer's estimate was made public. He did not believe it was a good idea.**

**Public Works Superintendent Tyler said as a general rule, staff did make the engineer's estimate public; however, with the item under discussion, it had not been made public.**

**City Attorney Marc Hynes said he would check Public Works law to determine whether making the engineer's estimate public was a requirement.**

**MOTION – to award the contract to Graham Contractors for \$168,268.74 based on the July 11, 2008, bids, with a 10% contingency of \$16,826.87, for a total of \$185,095.61**

**M/S McKeithen/Janz**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

- 14. AWARD OF CONTRACT FOR 2008 PARK PATH MICRO-SURFACING PROJECT, PROJECT NO. 08-003 (Removed from the Consent Calendar and placed here for discussion.)**

**City Manager Jerry Gruber said only one bid was received which was considerably over the engineer's estimate. Staff recommended rejecting the bid and wanted to reassess the project. Council concurred.**

- 23. APPROVAL OF PROCESS FOR PREPARATION OF THE 2007-14 HOUSING ELEMENT UPDATE INCLUDING APPROVAL OF THE NEAL MARTIN & ASSOCIATES SCOPE OF WORK AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE (Continued from the City Council meeting of June 18, 2008)**

**City Manager Jerry Gruber gave a brief staff report. Additional information was provided from the last meeting. A detailed chronological history was included to inform the Council on the reasons it was required, as well as a breakdown of the Neal Martin & Associates fees.**

**Council Member McKeithen said with regard to Goldfarb & Lipman, she had the following concerns: 1) the law firm had done a fair amount of litigation in the Housing Element area with regard to appeals and issues; and 2) the law firm had not developed**



- 19. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY (Removed from the Consent Calendar and placed here for discussion.)**

The item was continued to the City Council meeting of August 20, 2008.

- 20. ADOPTION OF SECONDARY GOALS AND OBJECTIVES FROM THE MAY 2, 2008, COUNCIL WORKSHOP (Removed from the Consent Calendar and placed here for discussion.)**

The item was continued to a City Council Workshop, date to be determined.

- 25. DISCUSSION AND POSSIBLE CANCELLATION OF AUGUST MEETING**

Mayor Janz believed there was a need to have an August meeting. He asked his colleagues whether a workshop or regular meeting or both would be appropriate. In addition to Item Nos. 19 and 20, he believed the items mentioned for the Finance Committee to discuss should be addressed as part of a workshop for the entire Council.

Council Member Marsala was in favor of a regular meeting because he believed workshops did not allow for residents' participation.

Council Member Dobbie pointed out there was also a need for a regular meeting with regard to the appeal of 99 DeBell Drive.

Council Member McKeithen also noted there were issues related to Holbrook-Palmer Park. People involved with Park and Recreation had strong feelings about the issue, e.g., park irrigation (adding it to capital improvements), the maintenance issue, and the wedding events issue.

Council Member Dobbie also stated there was a need for a complete financial analysis of the Park to ascertain how much money was being lost and where it was going.

Vice Mayor Carlson suggested having a joint meeting with the Park and Recreation Commission.

Council Member McKeithen had already requested a financial analysis of how many weddings were planned and when, i.e., how far out on the schedule in case weddings were terminated. Additionally, she asked what the general cost was for Park maintenance with the Jensen contract, with one full-time and one part-time staff, etc.

Mayor Janz said he would work with the City Manager on the setup of the agenda for the August meeting and an agenda for a joint meeting with the Park and Recreation Commission.

Vice Mayor Carlson suggested an agenda item for the August meeting regarding the City Manager's work plan for goals and objectives, as well as the City Attorney's goals, staff goals, etc.

Mayor Janz said there was still a need for a workshop to discuss Item No. 20.

Acting City Clerk Kathi Hamilton clarified that Item No. 19 was continued to the August City Council meeting, Item No. 20 was continued to a workshop in September, and a Joint workshop of the Council and the Park and Recreation Commission was to be scheduled in August.

## 26. COUNCIL REPORTS

- Council Member McKeithen attended a meeting of the San Francisco Airport Roundtable where the Woodside corridor was discussed. Pacific oceanic flights came in either over Point Reyes or the Woodside corridor. With the new aircraft, they would be turning right over Atherton and Menlo Park. However, the new aircraft should not generate more noise. She attended several meetings regarding Holbrook-Palmer Park. She was looking into the Safe Routes to School issue regarding Encinal. A preliminary meeting to discuss the Felton Gables gate alternative with the co-presidents was scheduled for the next evening. She ascertained that Las Lomitas and La Entrada had a school bus service. After raising the issue with the Peninsula Congestion Relief Alliance, the Alliance would look into possibly providing a shuttle program for schools.
- Mayor Janz said tomorrow evening at the ABAG meeting, two items would be discussed: 1) The executive from Building Green would discuss a certification program for green development; and 2) a discussion on the adoption of priority conservation areas. He attended a public hearing for the adoption of project level EIR/EIS for the connection of high-speed rail from the Central Valley. The staff-recommended route was chosen coming through the Pacheco Pass through San Jose and up the Caltrain corridor. He and the mayor of Menlo Park both recommended looking at other routes and trenching it as much as possible. Nonetheless, the staff recommendation was adopted and it would be on the ballot in November.
- Council Member Marsala said the Environmental Programs Committee would hold a Town evening meeting on August 13 to seek input from residents on issues. He attended a solar hot water heater workshop in Palo Alto. Since heating water was one of the biggest consumers of energy for Atherton, solar hot water heaters could be an answer. At the Town Center meeting, a discussion was held regarding a potential for a bond election, perhaps \$400 per household per year to raise \$10 million. He asked the Joint Powers Board for the Library to agendize the library reserve funds and how they could be used. He was on the screening committee for the new executive director for the Library. He met with the Friends of the Library. He corrected an assumption that comments he made increased the expense of the Building Department audit by \$15,000. He said the actual cost was \$2,300.
- Vice Mayor Carlson said there was an ad hoc committee regarding Safe Routes to Schools chaired by Supervisor Richard Gordon. He suggested Council Member McKeithen attend the next meeting. He attended a Council of Cities function in Redwood City. Using public transportation was discussed with an emphasis on senior mobility. The Metropolitan Transportation Commission was suggesting diverting the \$91 million for the Dumbarton Rail project to the

**BART extension. The City of Menlo Park installed red light cameras on Valparaiso and El Camino and needed Atherton's approval.**

- **Council Member Dobbie attended a meeting regarding Safe Routes to School at Encinal School. With the augmentation in the lower grades, substantial traffic congestion would result. He wanted to know how many keys were issued to the Felton Gable residents and how many Felton Gable residents had keys to the tennis court. Public Works Superintendent Steve Tyler said the gate belonged to Felton Gable residents and they issued the keys. He could provide the information on the tennis court keys.**

**27. PUBLIC COMMENTS**

**There were no further public comments.**

**28. ADJOURN**

**Mayor Janz adjourned the meeting at 12:02 a.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**