



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**AUGUST 20, 2008**

**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

**Mayor Janz called the meeting to order at 7:04 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.**

**3. PRESENTATIONS**

**There were no Presentations.**

**4. PUBLIC COMMENTS**

**William Grindley, Atherton, asked for the status of the PMC contract regarding historic artifacts and their future.**

**Deputy Town Planner Lisa Costa Sanders responded that PMC had conducted interviews with the stakeholders and obtained valuable information. PMC's recommendation for proceeding was to hold two public workshops to obtain feedback from the general public/residents of Atherton and bring recommendations from the workshops to Council.**

**Elizabeth Lewis, Atherton, asked when the Business License Tax and possible refund would be discussed.**

**City Attorney Marc Hynes said the matter would be the subject of a forthcoming report, possibly in October.**

## 5. REPORT OUT OF CLOSED SESSION

City Attorney Marc Hynes reported out of Closed Session as follows:

- 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

Mr. John P. Johns dismissed his case against the Town.

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:

Three (3) potential cases

There was no reportable action taken.

- C. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

Agency Negotiators: Jerry Gruber, City Manager;  
Glenn Berkheimer, I.E.D.A.

Employee Organization: Miscellaneous - Teamsters Local Union 856

Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.  
Employee Organization: Atherton Police Officers Association (APOA)

Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.  
Employee Organization: Management Employees

There was no reportable action taken.

## 6. CITY MANAGER'S REPORT

City Manager Jerry Gruber announced that Lieutenant Glenn Nielsen was selected as Atherton's Chief of Police. The new Finance Director, Louise Ho, would be starting in late September and came from the City of Sausalito. Eileen Wilkerson was named Assistant City Manager and worked previously with the County of San Mateo Harbor District. Recruitment for a City Clerk would begin soon. The City Attorney and legal counsel for Cal Water were working to finalize an MOU regarding an evacuation plan for west Atherton. Staff walked one of the recommended evacuation routes and would determine the cost to improve it, and other evacuation routes were being solicited. City Manager Gruber attended a Local Agency Formation Commission (LAFCo) Board meeting where the Municipal Services Review was adopted, as well as where the Sphere of Influence and the Sphere of Influence of the Town of Atherton Channel District were reaffirmed. If the Town wished to change the Sphere of Influence, a request for an amendment would need to be made to LAFCo. A Joint City

Council/Park and Recreation Commission workshop was scheduled for Monday, August 25, 2008, at 6:00 p.m., at the Main House in Holbrook-Palmer Park. City Manager Gruber reported on several other meetings he attended during the previous month.

In response to Council Member Marsala, City Manager Gruber said he spoke with some board members of Pop Warner Football. Thus far, he had not received any complaints regarding noise, etc. Regarding unfunded liability, City Manager Gruber thought another meeting with John Bartell would be beneficial. Regarding the General Plan revisions, Deputy Town Planner Lisa Costa Sanders responded that the General Plan Committee wanted its revisions incorporated into the General Plan and another meeting was scheduled for the first Wednesday in October. One or two meetings would be scheduled for the Planning Commission before going to the City Council.

Vice Mayor Carlson requested that minutes from all the committees/commissions be provided as soon as possible and posted on the website.

## 7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

The Atherton Dames – Marylue Timpson, President of the Atherton Dames, noted that Holbrook-Palmer Park was donated in 1950 and accepted by the Town in 1964. In 1968, the Atherton Dames was formed with the sole purpose of raising funds for Holbrook-Palmer Park capital projects. The Dames recently revised its fundraising efforts to have all funds go toward the Master Landscape Plan. Two projects would be implemented within the next 18 months: 1) The Pedestrian Bridge; and 2) Landscaping between the Water Tower and Carriage House. The next fundraiser was the Town Bar-be-cue, “Swing in the Park,” on September 7. During the holiday season, a Children’s Tea was scheduled, as well as the Easter Egg Hunt in the spring, which had been very successful in the past.

### CONSENT CALENDAR (Items 8-28)

Council Member Dobbie requested Item No. 21 be removed for discussion. In response to Vice Mayor Carlson, Interim Finance Officer Bill Yeomans clarified questions on Item No. 10. Public Works Director Duncan Jones clarified questions on Item No. 15.

In response to Council Member McKeithen, Public Works Director Duncan Jones clarified questions on Item Nos. 14, 16, and 18. Council Member McKeithen requested that Item No. 23 be removed for discussion. Police Chief Glenn Nielsen responded to a question regarding Item No. 24.

Elizabeth Lewis requested a correction to the Minutes of July 16, 2008, regarding a comment from Council Member Dobbie stating he won in every precinct in the June 3, 2008, Special Election. She clarified that she won in Precinct 3007. She submitted a printout from the Registrar of Voters office. *(Note: The Minutes actually read that Mr. Dobbie stated he won “support” in every precinct.)*

**MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 21 and 23 which were removed and placed on the Regular Agenda for discussion.**

**M/S Dobbie/J.Carlson**

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

- 8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL MEETING, THE SPECIAL CLOSED SESSION MEETING, AND REGULAR CITY COUNCIL MEETING OF JULY 18, 2008**
- 9. APPROVED BILLS AND CLAIMS FOR JULY IN THE AMOUNT OF \$1,215,264**
- 10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY 2008 AND ADOPTION OF A RESOLUTION MAKING A TECHNICAL CORRECTION TO THE 2008-09 BUDGET**

**Received the Monthly Financial Report for July 2008. Adopted Resolution No. 08-30, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO MAKE A TECHNICAL CORRECTION TO THE FY 2008-2009 BUDGET”**

- 11. ACCEPTANED THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2008**
- 12. APPROVED THE FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT WITH THE HOUSING ENDOWMENT AND REGIONAL TRUST (HEART) OF SAN MATEO COUNTY**

**Authorized the Mayor to execute the attached first Amendment to the Joint Exercise of Powers Agreement (JPA) for the Housing Endowment and Regional Trust of San Mateo County (HEART) to continue the Town’s participation in the San Mateo County Housing Foundation.**

- 13. APPROVE A PURCHASE ORDER TO SILICON CONSTELLATIONS FOR THE IN-STREET LIGHTED CROSSWALK AT SACRED HEART, PROJECT NO. 08-013**

**Approved a purchase order for the In-Street Lighted Crosswalk at Sacred Heart Project, project number 08-013 to Silicon Constellations, the low bidder on informal bids, for \$20,884.34, with a 10% construction contingency of \$2,088.43, for a total authorization of \$22,972.77; and to authorized the City Manger to sign the contract on behalf of the Town.**

- 14. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR FINAL DESIGN SERVICES FOR THE FLETCHER-RIDGEVIEW PROJECT**

**Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide final design services for the Fletcher Ridgeview Project in an amount not exceed \$70,244, plus a 10% contingency, for a total authorization of \$77,268.40.**

15. **APPROVE A PURCHASE ORDER WITH KIMLEY HORN AND ASSOCIATES, INC., FOR SPEED SURVEY SERVICES FOR 12 STREETS, IN AN AMOUNT NOT TO EXCEED \$20,000**

Accepted the proposal and authorized the City Manager to sign a Purchase Order with Kimley-Horn and Associates, Inc., to provide Speed Survey services for 12 streets in an amount not exceed \$20,000.

16. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR CREEK STABILIZATION DESIGN SERVICES FOR THE UPPER ATHERTON CHANNEL REPAIR PHASE 2 PROJECT**

Accepted the proposal and authorize the City Manager to sign a Professional Services Agreement with BKF Engineers to provide creek stabilization design services for the Upper Atherton Channel Repair Phase 2 Project in an amount not to exceed \$151,653, plus a 10% contingency, for a total authorization of \$166,818.30.

17. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC., FOR STRUCTURAL AND CIVIL ENGINEERING DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK TRAIL AND BRIDGE PROJECT**

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Biggs Cardosa Associates, Inc., (BCA) to provide Structural and Civil Engineering Design services for the Holbrook-Palmer Park Trails and Bridge Project in an amount not exceed \$33,500, plus a 10% contingency, for a total authorization of \$36,850.

18. **APPROVE AN AMENDMENT TO REVISE THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC., FOR MUNICIPAL CIVIL ENGINEERING SERVICES**

Approved an amendment to revise the Professional Services Agreement (PSA) with CSG Consultants, Inc.

19. **APPROVAL OF LEASE AGREEMENT TO WILLIAMS SCOTSMAN, INC., FOR - THE POLICE DEPARTMENT TRAILER REPLACEMENT PROJECT, PROJECT NO. 08-016**

Approved a lease for the Police Department Trailer Replacement, Project No. 08-016, to Williams Scotsman, the low bidder for \$37,616, with a demolition cost of \$4,856, for a total authorization of \$42,472; and to authorize the City Manager to sign the contract on behalf of the Town.

20. **REVIEW OF PROPOSAL FROM PMC FOR EXPANDED SCOPE OF SERVICES AND BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE**

Authorized PMC's expanded scope of services and budget for the zoning code update.

- ~~21. APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS  
(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.~~

~~Recommendation: Approve revised Council Committee assignments recommended by Mayor Janz.~~

22. APPROVAL OF STATE TELECOMMUNICATIONS CONTRACT

Authorized the City Manager to sign State contracts with AT&T.

- ~~23. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24 (Removed from the Consent Calendar and placed on the Regular Agenda for discussion.~~

24. APPROVAL OF 9-1-1 UPGRADE FROM ZETRON COMMUNICATIONS

Approved the contract with Zetron Inc., for the 9-1-1 emergency phone system upgrade.

25. APPROVAL OF THE PUBLIC WORKS DEPARTMENT PURCHASE OF A BACKHOE TRACTOR FOR FY 2008-09

Authorized the purchase of one John Deere Backhoe for a cost of \$97,742.68. The Town will “piggy back” on the State of California’s Multiple Award Schedule (CMAS) 4-08-23-0022A with Pape Machinery in lieu of receiving multiple bids.

26. APPROVAL OF AN EXTENSION OF THE CONTRACT FOR THE INDEPENDENT AUDITOR

Approved an extension of the contract with the independent audit firm of Caporicci & Larson, with the scope to include updating the Appropriations Limit review.

Mayor Janz moved Item No. 33 forward to be heard before Item No. 27.

33. APPROVAL OF THE SCREENING COMMITTEE RECOMMENDATION FOR AN APPOINTMENT TO THE ARTS COMMITTEE

Council Member Marsala indicated the Screening Committee did not have a recommendation that evening. The interview process was delayed.

Mayor Janz moved Item No. 29 forward to be heard before Item No. 27.

29. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY  
(Continued from the City Council meeting of July 16, 2008.)

City Attorney Marc Hynes said the item was brought back that evening in order to incorporate items that had been added to the Governing Resolution of Committees/Commissions relative to a policy regarding Council Members and Members of Committees/Commissions presenting themselves as speaking on behalf of the Town or City Council be limited to situations where there was prior City Council approval or a statement of previously approved City Council policy. Exhibit B (attached to the staff report) showed how the language would be revised in the City Council Rules of Procedure and the Town of Atherton Code of Conduct. Additionally, if there were an interest to go more broadly into the subject, a workshop could be scheduled for a future date.

Council Member McKeithen had asked for the item to be continued from the last meeting. She was asking a broader question; that is, when a Council Member acted in a private capacity but, in essence, acted as a representative of the Town, bringing the Town into the issue that might be an embarrassment to the Town, was there anything that could be done to control it.

City Attorney Hynes said drafting language was not only difficult due to First Amendment rights of the speaker but also the discussion and development of such a policy should take place in a future workshop.

Vice Mayor Carlson suggested focusing on Exhibit B that evening and discussing any other issues in a work shop.

**MOTION – to approve language as outlined in Exhibit B:** 1) City Council Rules of Procedure. 11.7 Representations of Town and/or City Council policy – Council members shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval; and 2) Town of Atherton Code of Conduct and Procedures 100.09.05 – City Council Members, Members of the Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

M/S J.Carlson/McKeithen

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

Mayor Janz moved Item No. 31 forward to be heard before Item No. 27.

**31. APPROVAL OF MEMBERS TO THE BLUE RIBBON TASK FORCE REGARDING A NEW TOWN CENTER**

At the May 21 City Council meeting, Council approved the creation of a Blue Ribbon Task Force (BRTF) to consider the feasibility of a new Town Center, as well as its composition that would include: Council Members from the Town Center Committee; staff from the Police, Administration, Building, Public Works, Planning, and Information Technology (IT) Departments; others who would use the facility such as the Heritage Committee, Friends of the Library, Arts Committee, Library staff; other interested parties such as the ACIL, Central Atherton Resident’s Association (CARA),

**Audit Committee (for Finance Oversight); a representative from Fundraising Task Force; and two representatives from the Design Committee - one architect and one landscape architect. On August 1, 2008, the Town Center Committee met and, as part of the agenda, discussed adding the two architects from the community at large to the BRTF. These positions were solicited by advertising in the *Almanac* and in the *Athertonian*.**

**Council Member Marsala said the first meeting of the BRTF was scheduled for August 27. The Town Center Committee was recommending William Grindley and James Ransohoff as the two architects to be appointed to the BRTF.**

**Council Member McKeithen believed an updated needs study should be conducted first. The potential effect of High-Speed Rail should be considered whether for a new facility or a remodeled one, along with what type of financing would be needed, either public or private or a combination of both. In addition to churettes, public input was very important and should include publications in the *Almanac*, *the Athertonian*, on the website, etc. There were many questions to be answered and information the public needed in order to make an informed decision.**

**Council Member Marsala agreed High-Speed Rail needed to be considered. There were at least 10 items to discuss at the first meeting as well as a tour of facilities. All the prior reports would be reviewed along with financials and other cities' reports. The possibility of a bond measure was discussed as an option.**

**Council Member McKeithen believed there was a perception that the project was a "done deal" without public input.**

**Council Member Dobbie believed three proposed solutions were needed to present to a considerable number of the public for input.**

**Mayor Janz said that was the purpose of the BRTF, i.e., to solicit that input. The BRTF should determine whether the 2006 Space Study needed to be updated. He hoped the BRTF would be spearheading the project, not the Council.**

**MOTION – to appoint William Grindley and James Ransohoff, architects, to the Blue Ribbon Task Force and to reaffirm the composition as outlined in the staff report of May 21, 2008**

**M/S Marsala/Janz**

**Paul Quinlan, Atherton, believed the BRTF should determine what was needed, what was deficient, and what should be done in order for the public to understand the issues. He said there was the perception that it was a "done deal." Additionally, broader representation on the BRTF was needed.**

**John Rugeiro, Atherton, asked for a list of potential private donors.**

**Jean Schaaf, Atherton, was familiar with Mr. Ransohoff's work and was disappointed he was being considered for appointment to the BRTF.**



pattern of access that had existed for over 60 years. The compromises being discussed did not address the issue of precedent. The street was not built to handle the level of traffic that would result. The Town had the right to revoke the encroachment permit. He urged Council to uphold the appeal.

Thom Bryant, applicant, met with the neighbors who had a direct view of the property and was prepared to extend a fence along the his property line on Madrone Road, to install a gate that coordinated with the fence, and believed they were the right thing to do. Alternatives suggested by the Whites were unworkable. The compromises were really above and beyond Town requirements. He urged Council to reject the appeal and grant the encroachment permit.

Sue Gallen, applicant, read a letter from David and Meg Freed, neighbors, indicating their support for the project at 99 DeBell Drive. The Town had approved all the plans; and if the Council did not allow completion of the project, the applicants would be left with no alternative but to pursue the matter in court. As taxpayers, they were angry that the Council would waste money on an issue that did not require a lawsuit to resolve. After driving on Madrone Road, they believed the White's new home had a far larger negative impact on the rural nature of the neighborhood. They encouraged Council to deny the appeal.

Leigh White, appellant, bought the property on Madrone Road to build a new home on a street that had a one-lane paved road 14-feet wide. She was unprepared for the changes as a result of the Bryant's project. She summarized her concerns: 1) setting a precedent; 2) creating a safety issue with a one-lane road with little visibility; 3) changing the character of the neighborhood; and 4) the possibility of devaluing properties. She believed there was still a question as to whether Madrone Road was a private street and what that might mean. The issue needed to be investigated in order to know how to protect the road from further encroachment and alternatives needed to be investigated more thoroughly.

John Beltramo, Atherton, said one of the reasons he had lived on Madrone Road for over 50 years was the unique, rural, country character of the road. His concerns were: 1) the visual aspect of the scenic road and its character would be forever ruined; 2) a precedent would be set for other homes to seek access on Madrone Road; and 3) there was no assurance of long-term maintenance with a future owner. The benefit to one homeowner was at the expense of the residents of Atherton. He urged Council to grant the appeal.

Nancy Sterling, Atherton, said those who built new homes in Atherton deserved to know what the rules were at the time they built. The Bryants followed all the rules the Town presented, submitted their plans which were approved, and built their home. Madrone Road was like any other street in Town; the public drove down it, parked on it, and used a driveway to turn around. The precedent was already set in other areas of Town where driveways were on streets other than at the front of the property. Change was happening all over Town and all residents were created equal with the same rights.

**Michael Demeter, Atherton, lived on Toyon Road, a private road with public access. The property owners on Toyon Road were responsible for all the maintenance and received nothing from the Town. In the future, staff should talk to the people who own the road early in the process.**

**Mayor Janz closed the public hearing.**

**Public Works Director Duncan Jones explained that Madrone Road had not been constructed to Town standards or in compliance with the General Plan and remained a private street, subject to private maintenance, with a public right-of-way. As a condition for the approval of the project, the homeowner agreed to participate in maintaining the road.**

**In response to Mayor Janz, Attorney Jean Savaree clarified Council could direct that the condition be recorded on the deed.**

**In response to Council Member Marsala, Attorney Savaree said the definition of “rural” was one the Council would ponder that evening, e.g., did rural mean trees on one side of the street, or did it mean the type of street as opposed to the vegetation along the side of it. Additionally, the Council had the ability to revise any ordinance and could ensure a precedent would not be set.**

**In response to Vice Mayor Carlson, Public Works Director Jones explained he issued approximately six encroachment permits a day and consulted the General Plan, the Municipal Code, and ordinances to help him evaluate the permits, which was the administrative procedure in place. On the subject property line, he ensured there was not a “no access strip,” and he determined there was no reason to withhold the permit. Once the issue arose, he met with those neighbors, the City Manager, and the City Attorney before issuing the permit.**

**In response to Vice Mayor Carlson, Attorney Savaree said Council could take as much time as needed to make a determination on the appeal.**

**In response to Mayor Janz, Public Works Director Jones said the potential increased traffic on Madrone Road would not be any different than that of any other cul-de-sac of the same size. Having one additional home to help maintain the road would be a benefit to the other property owners. Additionally, the overgrown state of the vegetation on the side of the road, which was in the right-of-way, would become a violation of the Municipal Code as a safety issue if the road were upgraded to Town standards.**

**MOTION – to grant the appeal**

**M/S J. Carlson/Dobbie**

**Vice Mayor Carlson said the General Plan called for maintaining existing neighborhood environments. By not including the residents from the beginning, staff did not have the proper perspective to ascertain if what was being proposed was or was not in the best interests of the Town. The burden was placed upon the appellant and**

**the Council to demonstrate that the permit should be withdrawn. He addressed the issues raised by Attorney Savaree at the July City Council meeting: 1) the garage could be accessed by using the existing driveway on DeBell Drive and/or Fair Oaks; 2) he was unsure whether structural changes to the garage would be necessary to use the accesses; and 3) the driveway certainly changed the look and feel of the neighborhood, and 4) property owners believed their properties would be devalued. The public interest issues in the matter were: 1) ensuring and maintaining the rural quality of life environment as specified in Atherton's General Plan; 2) the importance of residents' engagement in matters that affected their neighborhoods should be actively sought early in the process; 3) ordinances, rules, and regulations could not foresee every eventuality, and staff should make an extra effort to explore other feasible solutions when things were out of the norm; and 4) special situations needed to be given recognition and factored into the process. If Council were to grant the appeal, he hoped the applicant would consider other alternatives before seeking legal action. Additionally, he hoped the neighbors would reach out and show appreciation to the Bryants.**

**Council Member Dobbie said the General Plan was similar to the Constitution of the United States. Everything should be measured against the General Plan. The owners of 99 DeBell had other methods of accessing the garage that were feasible. Once the encroachment permit was allowed, stopping other neighbors on 99 DeBell from doing the same thing would be impossible. The rural atmosphere would be degraded and against the tenants of the General Plan. He supported granting the appeal.**

**Council Member Marsala disclosed that prior to the meeting he met with the homeowner, Ms. White, and Wayne. He encouraged the homeowner to work with the neighbors. He did not believe the General Plan was the Constitution and Council needed to be careful not to pass ordinances that violated it as both the State and Federal Constitutions trumped Town ordinances. The definition of rural needed to be defined. Although maintaining the rural character was important, being fair to those building new homes as to what was right and what was not was also important.**

**Mayor Janz concurred with many of the comments of his colleagues. The reality was the situation was not unique; there were other locations where homes fronted on one street and backed on another. The situation could occur again and he encouraged the General Plan Committee to address the issue. The General Plan stated, "...in the best interests of the Town," not the street and not the neighbors. The project was designed and built and permits were given following the code. People were permitted to do things that neighbors might not like. Traffic from one home would be added to Madrone Road but taken off DeBell. From a Town-wide perspective, there was really no effect. The fact the house was at the end of DeBell was important because it would not affect every home on Madrone. He frankly did not believe home values would be devalued. Neither did he think a boat or racecar were relevant. Regarding the visual impact of the street, he believed the visual appearance was actually improved. The current landscaping was in fact illegal and did not really serve as a screen. A precedent for the future cut both ways: if allowed, the other homes could do the same thing; if denied, Atherton would be embarking on design review.**

**Mayor Janz called for a vote on the Motion.**

**Ayes: 2 (Dobbie/J.Carlson) Noes: 2 (Marsala/Janz) Absent: 0 Abstain: 0**

**Motion failed.**

**MOTION – to deny the appeal on the condition that the applicant be required to 1) participate in the cost of maintaining Madrone Road and the requirement be a recorded covenant running with the land; 2) that the applicant agree to install and maintain a fence, a solid gate, and landscape screening with a covenant running with the land so long as access to the property was from Madrone Road**

**M/S Janz/Marsala**

**Council Member Marsala wanted the Council to have input on how the issue of access was addressed at the General Plan Committee.**

**Mayor Janz called for a vote on the Motion.**

**Ayes: 2 (Marala/Janz) Noes: 2 (Dobbie/J.Carlson) Absent: 0 Abstain: 0**

**Motion failed.**

**Attorney Savaree clarified if there were no further motions, the affect was that the encroachment permit would remain in effect.**

**MOTION – to deny the appeal and grant the Encroachment Permit with the following conditions: 1) the applicant participates in the maintenance of the road; and 2) the applicant installs a solid fence, entry gate, and landscape screening, with both conditions to be enforced through deed restrictions**

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

**Mayor Janz called for a recess at 9:25 p.m. The meeting was reconvened at 9:30 p.m. Council Member McKeithen and City Attorney Marc Hynes returned to the dais.**

**REGULAR AGENDA (Items 30-34)**

**28. REQUEST TO INITIATE REZONING OF PARKER AVENUE FROM R1-A TO R1-B ZONING DISTRICT**

**At the request of the applicant, the item was continued to the City Council meeting of September 17, 2008.**

**30. DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER (*Continued from the City Council meeting of July 16, 2008.*)**

**Interim Finance Officer Bill Yeomans said the item was placed on the agenda as a follow up to the action to increase the Building Department fees in January. Council had discretion as to whether monies would be set aside out of Building funds in a**

**special fund or as a reserve in the General Fund or remaining within the General Fund balance.**

**Discussion ensued regarding language in the resolution adopted in 2000 stating \$200,000 should be set aside in a 406 Fund and subsequent budget resolutions that set aside \$220,000, as well as subsequent Council's authorizing the use of those funds for other projects. Additionally, there was discussion regarding confusion in the resolution referencing a staff report from the Public Works Department and not the Building Department**

**Council Member Marsala said he listened to the tape of the May 2000 meeting (a verbatim transcript was included in the packet) that mirrored the resolution passed the in 2000. The transcript stated the building fees would be raised for staff time and administrative services: 1) \$146,000 a year would be added from the Building Department to allocate towards operations such as the City Manager, Finance, and City Clerk, and 2) establish a carryover fund. Additionally, the former Building Official proposed setting aside \$200,000 a year for four years as the Building Department's share of a new facility to replace the trailers. At the end of the four years, the program would be reevaluated. Council Member Marsala provided handouts showing the total revenues minus expenses in the Building Department over the years. He showed what should have been set aside for the Building Department's share of administrative overhead. The net surplus of \$2.9 million was what should be available for the building fund.**

**Council Member Dobbie asked if funds were set aside for a new Town Center in a special account, and private contributions paid for the building, could the funds be transferred back to the General Fund easily. Conversely, if the funds were kept in the General Fund, would there be more revenue than needed.**

**Interim Finance Officer Yeomans said Council policy would set it aside; and if the fund were not necessary, Council could return it to the General Fund.**

**City Attorney Marc Hynes clarified if the rationale for establishing the fees in the Building Department were based in part on replacing facilities, the funds could be kept anywhere; however, the money should go toward replacing the Building Department space.**

**A discussion ensued regarding the inspection carryover fund. Additional discussion took place regarding the ambiguity of the resolution adopted in May 2000.**

**Council Member McKeithen said clear numbers were needed, i.e., real cost accounting to determine what remained.**

**City Attorney Hynes said an audit trail between collection of fees and costs upon which the fees were based was needed. He would be distressed to find the department could be run on \$50 a square foot and the Town was collecting \$250.**

**Vice Mayor Carlson suggested that Council could take action that evening ratifying what went on in the past. Further, Council could request an analysis of a cost**

**allocation to support the Building Department that would become the new basis for future fees.**

**Virginia Rugeiro, Atherton, thought money should be allocated for more speed signs in the Town rather than for a new facility.**

**Richard Moore, Atherton, said he would like a fee chart showing where the money was going when residents pay building permit fees. As a public relations tool, Council should do an analysis to justify the fees every year.**

**Paul Quinlan, Atherton, agreed with the City Attorney that the first step was to determine whether there was a surplus or not. If there were a surplus, legally the funds needed to be used for the Building Department and could be used for capital projects.**

**Council Member McKeithen reiterated clear numbers were needed. Once expenses were determined in the Building Department including overhead, administrative support, software, corporation yard, and inspection carryover a surplus could be determined. Additionally, Council could determine whether to set up a fund for capital improvement or commit a certain amount of monies from the reserves to support a capital improvement program.**

**Council Member Marsala believed it would be difficult to determine administrative costs over the past years. He suggested determining a number everyone could agree on and move forward.**

**Interim Finance Director Yeomans suggested looking at other Building Departments to help determine a cost.**

**Vice Mayor Carlson made the following motion:**

**MOTION – to ratify what happened in the past based on the 2000 analysis, instruct staff to undertake a detailed analysis of Building Department costs projected in 2008-09, and return to Council no later than December**

**City Attorney Hynes clarified the rationale as set out in the May 9, 2000, staff report would be set forth in a resolution and brought to Council at its next meeting for ratification.**

**Vice Mayor Carlson withdrew the motion.**

**Staff was to return to Council by the December City Council meeting with a complete analysis of the Building Department costs.**

**23. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24 (Removed from the Consent Calendar for discussion.)**

**Council Member McKeithen said since the structure of the committees/commissions had been changed and, in some instances, recruitment for the entire committee was necessary, e.g., the Audit Committee and the Traffic/Transportation Subcommittee; and given the fact that the Screening Committee consisted of only two Council Members, one of whom had served for two years, she suggested the entire Council act as the Screening Committee for the vacancies.**

**Council Member Dobbie concurred.**

**Council Member Marsala disagreed. He did not believe, with the exception of the Audit Committee and the Traffic/Transportation Subcommittee, there would be that much turnover not to utilize the Screening Committee.**

**Vice Mayor Carlson said the situation was unique with regard to the two committees. In the future, terms would be staggered. As long as Council Members were willing to schedule their time to interview potential candidates, he was in favor of the entire Council interviewing all the applicants for the Audit Committee and the Traffic/Transportation Subcommittee.**

**Mayor Janz was concerned that the process would take place at a Special meeting and not part of a Regular City Council meeting.**

**City Attorney Marc Hynes reminded Council that Resolution No. 08-24 set out that the Screening Committee would interview and recommend appointments to the City Council.**

**Vice Mayor Carlson suggested the Screening Committee could present the full number of applicants to the Council without a recommendation.**

**City Attorney Hynes said that could be done and the resolution would not need to be amended.**

**Council Member Marsala reminded the Council that Vice Mayor Carlson had recommended not having a Screening Committee in the past and which he favored at the time. It was said that by having Screening Committee members rotated, any preferences on the part of Council Members would be balanced. He suggested Council might need to move away from the Screening Committee process altogether.**

**Vice Mayor Carlson suggested that issue could be discussed at a workshop. The immediate question was whether the current Screening Committee should submit all candidates for the Audit Committee and Traffic/Transportation Subcommittee to the full Council.**

**City Attorney Hynes suggested that Council direct the Screening Committee to submit all the candidates for the Audit Committee and the Traffic/Transportation Subcommittee to the Council for consideration of appointment.**

**By consensus, the Council so directed.**

**John Ruggeiro, Atherton, said the Screening Committee was the most important committee and believed there should be more than two Council Members making the recommendations.**

**David Henig, Atherton, questioned whether the Council should be selecting members of the Audit Committee at all. He suggested an independent process.**

**Mayor Janz clarified the Audit Committee was tasked with assisting the independent auditors in the annual audit.**

**32. CITY MANAGER'S WORK PLAN FOR IMPLEMENTATION OF GOALS AND OBJECTIVES**

**City Manager Jerry Gruber said Council directed him to develop a Work Plan to implement the five Goals and Objectives developed at the May 2, 2008, Council Work Session. City Manager Gruber worked with Senior Management Staff and the proposed Work Plan was before the Council that evening.**

**Vice Mayor Carlson commented on the Goals as follows: 1) Long-term financing mechanisms for the Town: staff should determine the dates when Council would begin to consider a measure, along with what education and community outreach would be necessary, as well as whether the parcel tax should be continued or a gross receipts tax should be pursued, etc; 2) the Housing Element: dates for the General Plan Committee and Planning Commission to discuss the issues needed to be determined; 3) the Town Center: Council agreement was needed on the scope of the project; 4) the Quad Gates: determine whether the Town would provide funds; additionally, there was a need to inform the public of the impact of High-Speed Rail.; 5) Annexation: Council discussion was needed and whether a consultant was needed to work out the pros and cons with a financial analysis and how it would benefit the Town.**

**Council Member McKeithen suggested making the changes as suggested by Vice Mayor Carlson and distributing them to Council. She further suggested discussing them after the November election,**

**Vice Mayor Carlson suggested a Council workshop be scheduled for January.**

**City Manager Gruber said he would make the suggested changes to the Work Plan and distribute it to Council.**

## **21. APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

**Council Member Dobbie was dissatisfied with the Council Committee assignments. He requested to be assigned to the Town Center Committee, the Screening Committee, and the Holbrook-Palmer Park Foundation.**

**Mayor Janz indicated he referenced Council Member Dobbie's checklist of preferences before making assignments. Additionally, there was less than six months left before new assignments would be made; however, he suggested that all Council Members fill out a new checklist and submit it to him for reassignments.**

**Richard Moore, Atherton, said the Emergency Preparedness Committee was important and asked Council to consider reinstated it.**

**John Rugeiro, Atherton, agreed with Council Member Dobbie's comments.**

## **34. COUNCIL REPORTS**

- Council Member McKeithen attended the Finance Committee meeting and discussed financing alternatives, reserves, Financial Plan, and the contract with Caporicci and Larsen. A Disaster Preparedness Day was scheduled for September 13 at the San Mateo Expo Center, from 10 a.m. to 2 p.m.**
- Council Member Marsala wanted a discussion of financial procedures scheduled for a future meeting for the entire Council. The League of California Cities was encouraging people to write, call, etc., State Legislators regarding the budget. The State could borrow 10% of property tax revenues but would have to pay interest. He suggested setting side money in the reserves for the State borrowing fund.**
- Vice Mayor Carlson attended the Council of Cities meeting where the Genentech tax problem was discussed. He had questions regarding SBWMA's request for all the participating agencies to approve a \$60 million bond and would be meeting with Mr. McCarthy before next month's presentation to Council.**
- Council Member Dobbie said the General Plan Committee reviewed the Zoning Code Update and a final review was scheduled. He went of a Police ride-along.**
- Mayor Janz said the Council and Rail Committee had a Joint meeting on August 5. Council joined in a lawsuit with the California Planning and Conservation League and two rail organizations that were bringing a California Environmental Quality Act (CEQA) lawsuit against the High-Speed Rail over the adequacy of their Environmental Impact Statement and Report (EIS/EIR) for the connection of the Peninsula with the Central Valley. The City of Menlo Park also joined in the lawsuit. Further, if the Bond passed, the Town was being asked to go on the record to say the train should be built in a trench rather than a tunnel. Both items would be included on the September agenda. Mayor Janz said a workshop was scheduled in Menlo Park on September 9 and he encouraged Council Members to attend. City Attorney Hynes said the challenge was focused on the EIR.**

**35. PUBLIC COMMENTS**

**John Ruggeiro, Atherton, noted that Tim Wang passed away on Saturday, August 16.**

**36. ADJOURN**

**Mayor Janz adjourned the meeting at 11:12 p.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**