

MOTION – to close the nominations and elect Jerry Carlson as Vice Mayor

M/S Marsala/Janz

Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

Oaths of Office

Acting City Clerk Kathi Hamilton administered the Oaths of Office to Mayor James R. Janz and Vice Mayor Jerry Carlson.

Mayor Janz said he looked forward to serving the Town of Atherton for the next year. There were a number of issues to look at in the Town and he hoped to discuss them at the meeting in January.

3A. PRESENTATIONS

A. Presentation to Outgoing Mayor Alan B. Carlson

Mayor Jim Janz presented outgoing Mayor Alan Carlson a plaque and thanked him for his service to the Town.

Assemblyman Ira Ruskin, presented Alan Carlson a Resolution on behalf of State Senator Joe Simitian and the California Legislature for demonstrating responsible citizenship, dedicated service, and enhancing the lives of the citizens of Atherton.

Council Member Marsala presented a Resolution on behalf of Rich Gordon, San Mateo County Board of Supervisors.

Council Member Marsala presented Alan Carlson with various items to remember and represent his contributions to the Town, the last was a fire helmet to recognize his work with the Menlo Park Fire Protection District throughout the last year. Council Member Marsala thanked him for the many years of service to improve the Town.

Council Member Jerry Carlson said sometimes people confused the two “Carlsons.” When it was favorable, he acknowledged he was the one; if not, he suggested it was the other. He presented Alan with an “emergency kit.”

Council Member McKeithen presented Alan Carlson with a “Red-legged frog” symbolizing their work together on the Atherton Channel Drainage District.

Mayor Jim Janz considered Alan Carlson one of the best Council Members and certainly one of the best Mayors the Town had had. He thanked him for his nine years on the Council.

Alan Carlson said in 1998, he wrote a letter that began, “You may not know me, but I’m your neighbor...,” and asked the residents to elect him to the Council. He thanked the residents for the opportunity to serve, which had been an honor. Additionally, his years of service had been very rewarding and he was honored to have served with his colleagues.

B. Final Park Landscaping Plan

Public Works Director Duncan Jones introduced Landscape Architect Chris Kinkle from Kikuchi Landscape.

Chris Kinkle updated Council on the final landscape plans for Holbrook-Palmer Park and responded to Council questions. He described the fountain, which had been restored and relocated; changes to the children’s restroom and surrounding area which needed to be re-vegetated; and the void space between the tennis courts and baseball field.

Public Works Director Duncan Jones said the approval of the Professional Services Agreement for Kikuchi Landscape was on the Consent Calendar that evening. The next step was to create construction drawings for the three projects and included cost estimates. Some monies were dedicated from the Town bar-be-cue and other Park functions that would be used as matching funds for grants.

C. Atherton Disaster Preparedness Committee

Bob Jenkins, Member, Atherton Disaster Preparedness Committee (Committee), presented an update on the Committee’s activities and distributed handouts. Atherton had approximately 2,500 homes and 7,000 residents. The Committee’s mission was to establish and maintain a disaster preparedness and response capability in conjunction with Menlo Park Fire Protection District (MPFPD). Monthly meetings were held at 9:00 a.m., every second Saturday, in the Council Chambers. He described the handouts and Committee activities.

Council Member Marsala said he attended CERT training and observed at the fire station on Valparaiso. He recently inspected a neighborhood “cache” in Lindenwood. A great deal had been accomplished in the last year.

Council Member McKeithen noted Council authorized approximately \$120,000 for emergency preparedness a year ago. Funds have been utilized for a second well at Holbrook-Palmer Park that was capable of supplying potable water for three or four days in case of an emergency, laptops were purchased for each police vehicle that were capable of operating as remote emergency operation centers that could also be utilized on a day-to-day basis, and the EOC was moved from Town Hall (which was not earthquake safe) to the new Public Works Corporation Yard. A new generator had also been purchased. She

noted Council would be asked to fund emergency communication equipment and emergency cache equipment for each of the 16 neighborhood organizations when they were ready to accept the equipment over a period of time.

4. PUBLIC COMMENTS

Lou Paponis, Atherton, asked Council to speak directly into the microphones for those who were hard of hearing.

Bruce Hamilton, Executive Director of HIP Housing, said HIP Housing was an organization that tried to find housing for those in need in San Mateo County. For 25 years, HIP Housing operated a home sharing program matching 13,000 people to live together. For the past seven years, a contest was held among elementary school children throughout the County. A calendar with 12 winning pictures was produced as a means of raising awareness for the lack of affordable housing. He thanked Atherton for its support and thanked Mayor Janz for his leadership on the HEART Board. He distributed calendars.

Randy Lamb, Atherton, congratulated Council on the evening's attendance. He suggested sending flyers to each home as a means of getting people to meetings, as well as utilizing the Teleminder. He believed Wendé Protzman had been an excellent Interim City Manager and encouraged Council to consider her for City Manager.

Mayor Janz said the City Manager selection process was underway, and a second round of interviews was scheduled.

Jim Dobbie, Atherton, said he read the public reports on the Building Department and John Johns and discerned the reason for the problems and high legal fees was because there was no management in the Town. He urged Council to bring in a very strong City Manager who would not allow the things to happen that appear in the reports.

John Rugeiro, Atherton, spoke regarding past mayoral term limits and what he termed the "rule of three." He suggested the Town impose term limits for Council Members.

5. STAFF REPORTS

- **City Manager Marc Hynes reported out of Closed Session as follows:**
 - A. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:
Two (2) potential cases
There was no reportable action on Item A.

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

John P. Johns Petitioner vs. Town of Atherton et. al. Respondent
Superior Court of California, San Mateo County, CIV 465782

There was no reportable action.

Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899

A final document would be available the next day.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: John P. Johns

Agency Claimed Against: Town of Atherton

The claim was denied.

- **Interim City Manager Wendé Protzman, updated Council on the financial audit. The Auditors wanted to see the Topliff report before concluding the audit. Additionally, they received the draft expense audit and an update of adjusted journal entries. The auditors would accept the new Mayor's signature on the Management Letter.**
- **Interim Finance Director Bill Yeomans conducted an independent review of expenditures and reviewed every credit card transaction over the past year and an additional year for any purchases over \$200. As a result, Department Heads reviewed purchasing practices and procedures. A special Purchasing Committee was formed to make recommendations. Staff was committed to updating the purchasing manual and to training departments in proper procedures. Despite all the public controversy, the purchasing issues did not involve large dollar amounts and related more to improper approvals. The more substantial issues related to improper use of time and Town property and to destructive communications that led to serious disagreements and public issues. He believed the heavy focus on expenditures and purchasing was out of proportion to the real problems in other areas. The goal was to complete the audit process including the Annual Financial Report within the next month. Management would prepare the Mid-Year Budget review for 2007/2008.**
- **Council Member McKeithen noted the General Fund reserves more than doubled from the \$4.45 million in 2000. Interim Finance Director Yeomans responded to questions from Council Member Marsala regarding the following: 1) a budget category for emergency preparedness; 2) a Town policy for reporting credit card fraud; 3) a policy for forbidding splitting a bid to avoid going to Council; and 4) timecard procedures.**

ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE

Adopted Ordinance 574, "AN ORDINANCE OF THE TOWN OF ATHERTON AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE, REPEALING ORDINANCE 537, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE, AND ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE"

11. PERFORMANCE REPORT OF TOWN LANDSCAPING CONTRACT WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE

Accepted staff recommendation that Commercial Environmental Landscape (CEL) is retained to continue performing landscaping duties in various locations in the Town of Atherton.

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

Approved staff and the General Plan Committee recommendation that the City Council authorize PMC's expanded scope of services and budget for the zoning code update.

13. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIKUCHI & ASSOCIATES FOR LANDSCAPE CONSTRUCTION DOCUMENT DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK MAIN HOUSE LAWN, PLAYGROUND RESTROOMS AND TENNIS COURT BUFFER LANDSCAPE PROJECT

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape construction document design services for the Holbrook-Palmer Park Main House Lawn, Playground Restrooms and Tennis Court Buffer Landscape Project in an amount not to exceed \$32,700, plus a 10% contingency, for a total authorization of \$35,970.

14. AMENDMENT TO REACT AGREEMENT -- RAPID ENFORCEMENT ALLIED COMPUTER TEAM (REACT) TASK FORCE

Authorized the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.

15. ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR AN APPOINTMENT TO THE PARK AND RECREATION COMMISSION

Accepted and approved the recommendation of the City Council Screening Committee to appoint Mr. David Wright to the Atherton Park and Recreation Commission to fill the unexpired term of Rodney Washburn, which expires April 30, 2008.

~~16. ADOPTION OF A RESOLUTION SETTING ASIDE THE DECISION OF THE CITY COUNCIL TO DENY A PERMIT AT 51 LABURNUM PENDING FUTURE RECONSIDERATION~~—(Removed and placed on the Regular Agenda for discussion.)

~~Recommendation: Adopt the attached resolution vacating and setting aside the Council's action of January 17, 2007, and Resolution 07-01 regarding issuance of a major alteration permit and to hold future related administrative proceedings as set forth in the resolution.~~

PUBLIC HEARINGS (Item 17)

17. APPEAL OF THE PLANNING COMMISSION'S DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA
(Continued from the November 14, 2007, City Council meeting.)

Deputy Town Planner Lisa Costa Sanders said the appellant was unable to remain for the duration of the evening's meeting and formally withdrew the appeal.

REGULAR AGENDA (Items 18-21)

18. DISCUSSION AND DIRECTION TO STAFF REGARDING THE PROCESS TO FILL A VACANCY ON THE CITY COUNCIL

- A. ADOPTION OF RESOLUTION CALLING SPECIAL ALL-MAIL BALLOT IN MAY**
- B. ADOPTION OF RESOLUTION CALLING SPECIAL ELECTION IN JUNE**
- C. ADOPTION OF URGENCY ORDINANCE TO FILL VACANCY BY SPECIAL ELECTION**

Acting City Clerk Kathi Hamilton responded to Council questions regarding the process to fill a vacancy on the City Council.

In response to Council Member Jerry Carlson, Acting City Clerk Hamilton responded that a minimum of 20 valid signatures of registered voters was required on the nomination papers. The Town was a General Law City and followed the California Election Code rules.

A discussion regarding an all-mail ballot election in May ensued. Acting City Clerk Hamilton clarified May 6 was the “election day” and ballots would be accepted until 8:00 p.m. as in any other election. The process is the same as an absentee ballot process with ballots being mailed to registered voters and returned by the required date (May 6). As for the June 3, 2008, election, it was unclear as to whether Town Hall would be used as a polling place. Staff would follow up with the County’s Chief Elections Official. Acting City Clerk Hamilton also noted that the Chief Elections Official had indicated a preference for the election to be held in June due to the large amount of elections scheduled during the first six months of the year.

Council Member Marsala said when he saw people in Iraq risking their lives to vote, he could not deny Atherton residents the ability to choose a candidate at a Special election. Residents should be able to choose a Member of the Council to represent them since three years remained in the term. There were numerous issues facing the Town. He favored a June election. He responded to a public comment and spoke to past election processes and the rotation of Mayor.

Council Member Jerry Carlson was concerned with Council’s workload with only four members. One of the pluses of an appointment process was that more people might come forward. A negative with the election process was if only one person came forward that was willing to put in the time and energy to campaign, there would not be an election. He encouraged people to come forward if a Special Election was called.

Council Member McKeithen was pleased to see how many people were present to support an election. She supported a Special Election in June and encouraged everyone to consider running.

Mayor Jim Janz said he received more emails on this one issue than any other in his seven years on the Council. He relayed an email exchange he had with a friend that included a rumor that some members of Council had already decided to appoint someone to the vacancy. For the record, he said he had always supported a Special Election to fill the position.

Lou Paponis, Atherton, expressed concern for the possibility of 2-2 votes. The Town was in a critical position, and having only four members could put the Town in the position of inaction. He urged Council to bring about election as soon as possible.

William Grindley, Atherton, said the need for an election was apparent. He agreed the election should take place as soon as possible.

Todd Beardsley, Atherton, was pleased Council supported a Special Election. He favored a June election and did not favor appointing anyone on an interim basis.

Susan Bird, Atherton, agreed with the previous speakers. The more people were encouraged to vote, the more people would attend meetings.

Nick Athens, Atherton, favored an election in June.

Neil Rasmussen, Atherton, said residents wanted to live in a Town where government worked in a democratic, efficient, and fair manner; where litigation was the exception rather than the norm. He believed the process had begun that evening and thanked Council.

Joe Lewis, Atherton, supported an election in June.

Robert Thomas, Atherton, said the Town was at a crisis point and he supported an election, which would restore confidence in the Council.

MaryAn Ackley, Atherton, supported the Special Election. She encouraged everyone to get involved in the process.

Steve Ackley, Atherton, thanked the Council for listening. He supported an election in June. He encouraged everyone to move on in a positive manner.

Elizabeth Lewis, Atherton, supported a June election. The time had come for the citizens of Atherton to come together and become more involved. Council needed to set the tone of high integrity.

Randy Lamb, Atherton, asked, as a Town, what would be done to get the vote out. He suggested putting out a public notice, using the Teleminder, and generally promoting the election.

Larry Sweeney, Atherton, realized there was big time commitment to run for election. Although he shared the concern for the possibility of a deadlocked Council, he preferred a Special Election in June to give more time to get candidates out. Finding better ways to get the word out was necessary. He noted the Lindenwood Homes Association had a website and encouraged others to get involved.

Jeff Wise, Atherton, believed having an even-numbered Council for a while was a good thing that would encourage Council to work things out and find consensus. He supported an election in June. He thought developing a broadcast email list was a great way to get the word out. Seven years without an election did not speak well for the Town. The burden rested with the citizens to take advantage of the opportunity.

John Ruggeiro, Atherton, spoke regarding political sign regulations and asked that the regulations be reviewed before the election.

Council Member Marsala said whether the Council was a 2/2 Council or not, he believed Council voted their conscience. He noted over the previous year, he had often voted no on issues. He supported an election and looked forward to a campaign where candidates knocked on doors to hear residents' concerns.

and Alan Carlson were never interviewed. He never had a private conversation with Ms. Topliff. In the declaration of Interim City Manager Wendé Protzman, under oath of penalty of perjury, she stated the decision to release Mr. Johns was solely her decision. She did not consult with any member of the City Council regarding the decision, informed them of her decision afterwards, and no member of the Town Council influenced her decision to release Mr. Johns. Alan Carlson queried how Dr. Goodman came to his conclusion that three members of the City Council ordered the termination of Mr. Johns. Dr. Goodman gave a declaration stating Mr. Johns uncovered some examples of favorable treatment being accorded three of the five current members of the City Council and that Mr. Johns' findings did not sit well with these members. Dr. Goodman's declaration further stated that Alan Carlson had written a letter on his law firm's letterhead to Council Member McKeithen stating that, "under no circumstances should such allegations of favoritism be revealed." Mr. Carlson presented a chronology of Mr. Johns' characterization of the favorable treatment. All documents were within the public domain with the exception with two. On May 3, 2007, Mr. Johns sent an email to Chris Carrigan, legal counsel for the Town, characterizing the anomalies of two relatively minor home remodeling projects. The anomalies were discovered as a result of the Phase III audit and could be considered as harmless, technical violations that could be expected to occur during the normal course of business. These projects involved Council Member Marsala and Council Member Janz. There was no mention of Alan Carlson. Mr. Johns raised the issue of whether there might be a conflict of interest on the upcoming 55 Bellbrook case. On May 7, there was a Closed Session regarding 55 Bellbrook, and it was a matter of public record that Council Members Marsala and Janz participated in that Closed Session. On May 8, Mr. Carlson wrote a letter to Council Member McKeithen, written on his law firm's letterhead. He had been advised he could not disclose the letter because it contained some matter from the Closed Session. However, he could state that the letter did not contain the statement that under no circumstances should such allegations of favoritism be revealed. On May 9, he wrote another letter to Council Member McKeithen and an identical letter to Council Member Jerry Carlson. He was advised not to disclose the letters. However, he could disclose the letters did not contain a statement that under no circumstances should such allegations of favoritism be revealed. On May 16, Mr. Johns sent an email to former City Manager Jim Robinson talking about Council Members Marsala and Janz and their permits. Again, Alan Carlson was not mentioned. Mr. Johns said the issues related to these properties were of an inconsequential nature. Given Mr. Johns' characterization of the anomalies, it seemed a stretch that either Council Member Marsala or Janz would take retaliatory action against Mr. Johns. On June 19, 2007, Alan Carlson received a telephone call from Mr. Robinson informing him that an anonymous letter had been sent to Planning Commissioner Jim Dobbie with a surveyor's letter addressed to Mr. Hood with respect to Alan Carlson's house that indicated there was an 8 foot stretch of his newly built house that was 7 inches too high. At the June 20, 2007, City Council meeting, with Mr. Johns present, Alan Carlson purposely publicly disclosed the issue because he did not want anyone to accuse him of something that was out of the ordinary or bordering on the illegal. He also publicly said he did not want Mr. Robinson to make an attempt to find out who brought it to light because he did not want to be accused in the future for a retaliatory action against whomever might have sent the anonymous letter. Alan Carlson said Dr. Goodman was

not a witness to anything but a reporter of what others told him from which he drew his conclusion that three members of the City Council caused the termination of Mr. Johns. On November 27, 2007, Dr. Goodman had also given a deposition, under oath of penalty of perjury. He stated his source of information regarding Council Members Janz and Marsala was a timeline from Mr. Johns, as well as a timeline regarding Alan Carlson. Dr. Goodman also stated that he had learned that Alan Carlson had written a letter on his law firm's letterhead to Council Member McKeithen stating that under no circumstances should such allegations of favoritism be revealed and the source of the information was Council Member McKeithen; however, he had never seen the letter. Alan Carlson stated he did not take any action against Mr. Johns because he uncovered favoritism by the Building Department toward him. Alan Carlson did not know he uncovered anything until after Mr. Johns was terminated. During the June 20, 2007, when Alan Carlson revealed the anonymous letter, Mr. Johns sat silent.

Council Member Marsala said he attended the Audit Committee meeting in September 2006 where Mr. Johns presented his findings regarding the Building Department. When Council Member Marsala analyzed the spreadsheets, he thought Mr. Hood had made the right decision not charging \$134,000 in fees; however, he did not speak to avoid a Brown Act violation. In a separate meeting with Mr. Johns, Mr. Johns stated some people believed Council Member Marsala was supporting the Building Department staff because they had something on him. Council Member Marsala described the nature of his kitchen remodel and the advice he received from the Building Department to Mr. Johns, which included an extension of his building permit, who later termed this favoritism. On May 16, Mr. Johns stated since the issues with the properties were of an inconsequential nature, he did not see any reason for any follow-up. Council Member Marsala explained the delay in finalizing his remodel and extending his permits. Council Member Marsala read a letter into the record he wrote to Dr. Goodman before Dr. Goodman's letter appeared in the *Almanac*, which explained that his remodel had been done in 1999 before he had become politically involved; that his support of the Building Department was from his own experience and based on other residents' experiences; the Atherton Building Department had been helpful, yet enforced the codes. He had also challenged the Building Department audits and offered to present his findings to the Audit Committee. Council Member Marsala noted software in the Building Department had been upgraded to help staff better track permits. He said he had no ill will. The Town needed to move forward.

Mayor Janz, said two building permits were involved and had been revealed in the May 8 email from Mr. Johns. He did not address the issues because the email stated, "it should be noted that the anomalies I discovered as a result of my Phase III audit, could be considered to be harmless technical violations." In a follow-up email of May 16 to Mr. Robinson, Mr. Johns stated, "Since these issues with these properties were of an inconsequential nature, I didn't see it as necessary to perform any other follow-up research." Mayor Janz considered the issues minor at the time; however, he wished he had addressed them at the time. He described the nature of the two building permits and the reason the final signoff was delayed. In speaking to the current Building Official, Mayor Janz was told the extension was standard operating procedure. Mayor Janz was unaware of any time limit associated with a final signoff, and he did not receive any

preferential treatment. When the second permit was issued in 2000, Mayor Janz was not on the City Council. The last inspection was conducted on April 19, 2000. He did not understand why the permit had been reviewed since it was not part of any open file in the Building Department, the department did not track expiring permits, and it was outside of the review parameters of the audit. He described his project and the lack of a final signoff. In discussing the issue with the Building Official recently, he was told it would only become an issue if the home was sold and a final inspection would be required. He would request a final inspection. He did not receive preferential treatment. He did not influence the decision of the Interim City Manager regarding the former Finance Director.

Council Member Jerry Carlson said the first time he was aware of Alan Carlson's issue was at the June 20 City Council meeting. He did not have prior knowledge.

Council Member McKeithen said ditto. The Finance Committee was not told of the issue.

Dr. Sam Goodman, Atherton, said the letter itself was prompted by his believing the process of evaluation of Mr. Johns was unfair, incomplete, and misleading. Although, Council denied any involvement in the termination of Mr. Johns, he believed Council was responsible for what happened. He said Council Member Marsala's courtesy extension was granted after the date of the final inspection, which was either approved along the way or the record was altered. He never inferred that Council Member Marsala sought favorable treatment; he just received it. He did not believe he would have received the same treatment. With respect to Mayor Janz' permits, he pointed out the issues but did not infer Mayor Janz sought favorable treatment. He believed the "buck" stopped with the Council.

The following Atherton residents commented on the issue:

**Steve Ackley
Mary Ann Ackley
Jeff Wise
Todd Beardsley
Melinda Tevis
Lisa Carey Lamb
John Rugeiro
Randy Lamb**

Council Member McKeithen said information contained in the Phase I, II, and III audits had to be shared with the Audit Committee and the Council since it was public information.

Council Member Marsala reiterated his remodeling project took place before he was involved politically in the Town. Helpfulness from the Building Department was accorded a new resident in Town. The Police Department and Public Works Department were also

helpful. He also said Phase I and II audits were never reviewed by the Council. He believed the Audit Committee needed to receive its direction from Council.

Council Member Jerry Carlson said from his perspective, all that happened did not need to happen. The Town was selecting a new City Manager and needed to select a manager who was a strong manager. Many things began as little bubbles and took a life of their own. He said if he knew six months ago what he knew today, he would have made different decisions.

Mayor Janz called for a recess at 10:50p.m. The meeting was reconvened at 11:00 p.m.

16. ADOPTION OF A RESOLUTION SETTING ASIDE THE DECISION OF THE CITY COUNCIL TO DENY A PERMIT AT 51 LABURNUM PENDING FUTURE RECONSIDERATION

City Attorney Marc Hynes presented the staff report. The resolution before the Council that evening would vacate the earlier action the City Council took when it upheld the appeal of the Planning Commission's grant of a major alteration permit for the movement of two historic urns at 51 Laburnum Road. A lawsuit was filed and the court, in upholding the lawsuit, basically commanded the Council to set aside the action it had granted and remanded the matter back to the Council with a number of recommendations the to consider. Therefore, the resolution set out the anticipated future actions that included revisiting the historical artifact ordinance; addressing some of the concerns the court expressed in its opinion; and in the event the Council decided to amend the ordinance, it would be appropriate to consider designation of the urns at 51 Laburnum. Once designated, it would be necessary to apply for a major alteration permit should the owners desire to move the urns. As part of the designation of the urns, the urns would need to be evaluated to see whether they would be added to the historic artifact list. A court hearing was set for December 21, 2007, to tell the court what was done relative to the courts action. He received a letter from the attorney for Randy and Lisa Lamb pointing out shortcomings or defects of the resolution. City Attorney Hynes did not recommend adopting any of the changes. The letter stated that the staff report did not contain an accurate recitation of what happened in court and recommended the resolution have the actual court determination as attachments. Since they were already a matter of public record, City Attorney Hynes did not recommend adding them to the resolution. A concern was also expressed there was improper language in the resolution itself relative to the need to preserve the urns in the status quo pending further action. The court spoke to the issue stating the Lambs were to take no action that would in any way alter or disturb the urns. City Attorney Hynes received a letter from the current owners of 51 Laburnum confirming they would not take any action on the urns pending the future proceedings. He recommended the Council adopt the resolution.

Randy Lamb, Atherton, said the resolution was not accurate. The judge was clear that the Town acted in an arbitrary and capricious way, that public opposition influenced Council's decision, and the decision was based on speculation and conjecture. Mr. Lamb accepted paragraph 1 in the resolution, but rejected paragraph 2 as a separate issue. The

judge ordered setting aside the decision on August 9, 2007, which could have been done in September or October. The bigger item was the historic artifact ordinance and that was what the public outcry was about and was completely separate than setting aside the decision. He believed the issue should never have come to Council in the first place. His intention of moving the urns was a matter of public record before the General Plan Committee, the Planning Commission, and the Council. Until the possibility of a Lindenwood Historic District, there was no opposition to keeping artifacts in the Town. The Town had spent over \$125,000 on the lawsuit. The amount of time and money spent on two small urns indicated mismanagement and could have been easily resolved.

Council Member McKeithen asked whether language designating a Lindenwood Historic District was in the ordinance at the time the General Plan Committee reviewed the ordinance.

Randy Lamb said the language was added at a very late date. He recalled an early discussion on the General Plan Committee as to whether Lindenwood artifacts should stay in Lindenwood. The view of staff and Historic Consultant Laura Jones was that the ordinance would not survive if such language were included. The General Plan Committee agreed that artifacts within Town of Atherton could be moved within the Town of Atherton.

Mayor Janz queried whether paragraph 2 was necessary.

City Attorney Hynes said the reason to include it was to point out there would be more of a process to come. Everything he understood from the Council was that the matter would continue through the evaluation of the historic ordinance. If changes were made, re-designation of the urns would be considered. If re-designation occurred, the urns would be added to the inventory, and the need for appropriate permits to be obtained.

Mayor Janz said whatever administrative proceedings or changes that might occur should take place when those administrative proceedings were discussed rather than prejudging it.

Council Member Marsala asked for clarification on what action Council was being asked to take.

City Attorney Hynes clarified Council was being asked to uphold the appeal of the grant of the permit that would have allowed the urns to be moved.

Council Member Marsala wanted to have a separate vote on the each of the paragraphs in the resolution. He was concerned about a clause in the settlement that the Town might eventually have to pay for the urns if the ordinance was rewritten to say the urns could not be moved. A lot of other things could have been done with the \$125,000 spent in a lawsuit and he did not want to spend more money. Initially, he supported historic preservation; however, he also said he wanted the Town to find a volunteer way to preserve the artifacts.

Mayor Janz said all that was being discussed in paragraph 2 was what might be done in the future and did not cause the Town to spend any more money. Considering further administrative proceedings was not on the agenda. At the time the historic artifact ordinance was being discussed, was the time to decide whether changes would be made or not. He suggested changing the word “shall” to “intends” in the first line of paragraph 2.

MOTION – to adopt Resolution No. 07-31 “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON VACATING RESOLUTION 07-01 UPHOLDING APPEAL OF MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD, ATHERTON,” changing the word “shall” to “intends” in paragraph 2

M/S J.Carlson/McKeithen Ayes: 3 Noes: 1 (Marsala) Absent: 0 Abstain: 0

19. RESOLUTION GOVERNING COMMITTEES/COMMISSION

- A. ADOPTION OF A GOVERNING RESOLUTION REGARDING COMMITTEES AND COMMISSIONS**
- B. ADOPTION OF A RESOLUTION AMENDING COUNCIL’S RULES OF PROCEDURE**
- C. INTRODUCTION OF AN ORDINANCE RESCINDING SECTIONS 2.37 AND 2.40 OF ATHERTON’S MUNICIPAL CODE**
- D. ADOPTION OF A RESOLUTION RESCINDING RESOLUTION NO. 98-06 ESTABLISHING AN ARTS COMMITTEE**

MOTION – to continue the item to the City Council meeting of January 16, 2008, and extend those committee terms expiring in January 2008 until action is taken on the item

M/S J.Carlson/Marsala Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

20. GARDEN ROOM REMODEL AND ADDITIONAL STORAGE

Malcolm Dudley presented the staff report. He urged Council to support the Arts Committee’s (AAC) request to use the Garden Room as an art museum. The intent was for the AAC to pay for the renovation. He presented a background of Rita Corbett-Evans’ will, noting that next year would be the 30-year anniversary of the gift of her home as an art center. He hoped that Council would honor Rita Corbett-Evans in 2008 with an ideal art center. If Council decided not to use the Town home for a new city manager, it could be used for a new art center fulfilling the wishes of Rita Corbett-Evans on the 30th anniversary.

A discussion took place regarding the Town home with respect to its condition, how much money was needed to remodel it, etc. Council Member Marsala suggested that the AAC tour the home for a first-hand view to understand what was needed.

Jean Schaaf, Arts Committee, said she thought the basement (which was given to the AAC) could be maintained/cleaned along with the Main House since the Parks Program Manager was onsite and would know what needed to be done. With respect to the Town home, she thought the Town could expend the funds necessary to “lift” the house to where the AAC could make it a functioning gallery. Funds for the art museum would be raised through fees for local artists and others to maintain an arts program, hire teachers, etc. There was a fiduciary responsibility to the trust.

Public Works Director Duncan Jones explained the need for three separate storage areas for the events that took place in the Pavilion. The Park and Recreation Commission directed staff to look for other storage areas, e.g., the water tower. Staff had not found suitable storage areas. A recommendation was to buy a prefabricated shed and place it next to the caterers’ parking area. Another suggested was to extend the wings of the Pavilion to be used as storage.

Lou Paponis, Atherton, had several questions and concerns related to the AAC’s request. He would like to see a more specific plan presented to the Council before a decision was made.

Council Member Marsala said Council approved the use of the room to the AAC in 1999. He noted there was a local artist exhibit in the Pavilion for the past two years as well as other activities. Other cities have funds provided for the arts. The arts bring people together. He was in favor of the proposal.

Mayor Janz was unclear as to who was to pay for any remodeling of the actual art museum. He was in favor of directing staff to find alternative storage.

Council Member Jerry Carlson was uncomfortable moving forward when there was no business plan addressing actual implementation of the vision/concepts. Ongoing costs needed to be clarified.

Council Member McKeithen said on January 20, 1999, Council gave the Arts Committee the Garden Room for its use. Although she shared everyone’s concern about use of funds, the Rita Corbett-Evans fund was theirs to use. She wanted people who cared about the arts to become enthused by Council’s “leap of faith” and was in favor of approving the proposal.

MOTION – to reaffirm the intent to use the Garden Room of the Main House as the Arts Committee’s designated space and directed staff to find an alternative storage solution

M/S J.Carlson/McKeithen

Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

22. **COUNCIL REPORTS**

23. **PUBLIC COMMENTS**

Lou Paponis, Atherton, expressed concern regarding the 3-minute rule for public comments.

24. ADJOURNMENT

Mayor Jim Janz adjourned the meeting at 12:15 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**