



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**OCTOBER 29, 2007**

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

**SPECIAL MEETING**

Mayor Alan Carlson called the meeting to order at 7:14 p.m.

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL

**PRESENT:** James R. Janz  
Jerry Carlson  
Charles E. Marsala  
Alan B. Carlson  
Kathy McKeithen

Interim City Manager Wendé Protzman and City Attorney Marc Hynes were also present.

**PUBLIC COMMENTS**

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

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

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

No reportable action was taken.

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

One (1) potential case  
No reportable action was taken.

## **REGULAR AGENDA (Items 3)**

### **3. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.14 OF THE ATHERTON MUNICIPAL CODE REGARDING HISTORICAL ARTIFACTS**

**City Attorney Marc Hynes presented the staff report. The amendment before the Council was prepared as a result of the decision made in the case of Lambs vs. Town of Atherton, which resulted in the action of the City Council being overturned under the Historical Artifact Ordinance. The court required that the Town rescind the denial of a permit application pending later reconsideration. The court suggested that the Town clarify certain parts of Chapter 8.14, which was the action before the Council that evening. The principal revisions identified by the court involved the definition of the Lindendwood Historic District and clarification of certain provisions in the ordinance relative to an owner's consent at the time of designation of a historical artifact. Other "cleanup actions" were taken to delete language that was duplicative and to clarify terms such as the distinction between the physical property location and the artifact itself. If Council approved the changes that evening, the ordinance would be introduced for first reading, a second reading and adoption would be necessary in December, and the ordinance would become effective 30 days later.**

**Laura Jones, Historic Preservation consultant, clarified historic districts could be comprised of a set of properties that were related to each other by their theme; in Atherton's case, the theme was associated with the Flood estate. The theme was meant as an inventory or survey tool to find a collection and had very broad categories such as court houses of an entire state. The boundaries were very large and the space between them was not governed by the designation. She said it was common for historic districts to have both significant and non-significant resources in it. There were historic districts that did not contain buildings. She clarified the inventory included artifacts where the owner gave consent to be part of the study. The artifacts in the appendix to the inventory were identified in the moratorium list, but their owners either did not respond or refused permission to be studied.**

**Steve Ackley, Atherton, submitted a letter to Council and queried why two significant items were being discussed on a Monday evening rather than a regular meeting date. He asked how much the Town had spent on legal fees regarding the court case with the Lambs.**

**Mary Ann Ackley, Atherton, expressed concern for the process. She thought having the discussion on a special agenda was inappropriate. She queried what the cost was to the homeowners affected by the ordinance and what the cost was to the Town to enforce the ordinance. She believed the Town would be open to more lawsuits and additional legal fees.**

**Larry Sweeney, Atherton, member of the Lindenwood Homes' Association, was concerned that the people he spoke with in Lindenwood were unaware of the meeting. He expressed concern for homeowners who lived in historic districts and the effects resulting from such a designation.**

**Neil Rasmussen, Atherton, believed Council had listened to a few residents who were pushing the ordinance forward. The General Plan Committee had voted against passing such an ordinance, was composed of a wider cross-section of Atherton residents than the Council, and deserved to be heard. He raised the issue of whether the tax dollars of the entire Town should be used in defending an ordinance that benefited Lindenwood.**

**Carol Flaherty, Atherton, believed residents wanted to preserve historic artifacts; however, she was concerned about the process. She queried whether adequate notice had been given to the Lindenwood residents who would be impacted by designating the entire Lindenwood area as a historic district. Additionally, she was concerned about potential litigation.**

**George Garrick, Atherton, said the ordinance would affect approximately 500 families, and he did not understand the urgency. The Council should represent the majority of the Town's residents rather than a small minority who seemed to be railroading the ordinance through the process. He did not want his tax dollars funding litigation. More time was needed for the process.**

**Scott Mitchell, Atherton, requested that his property be exempted from the overall Lindenwood Historic District.**

**Dave Dollinger, Atherton, was concerned about the issues affecting his neighbors and friends. He believed ninety-nine percent of Atherton residents could care less. Atherton was not a historical Town and designating parts of it was an infringement on the rights of the homeowners. Enough funds had been wasted on legal fees.**

**Elizabeth Lewis, Atherton, was dismayed regarding how the special meeting was called and the apparent lack of notice. She noted, as a member of the General Plan Committee, valid issues over the significance of the artifacts had been raised. She understood preserving history was important. Many property owners believed the movable artifacts were their personal property. She said the Lambs should be able to move their urns.**

**George Shaheen, Atherton, spoke in support of preserving artifacts and did not believe it to be an infringement on personal rights. One could not rely on the good will of people to do the right thing. In order to preserve the artifacts, rules were necessary. Many residents in Lindenwood would like to have the artifacts kept in their original sites.**

**Lisa Lamb, Atherton, was concerned about the public process and the lack of transparency in government. She gathered 75 letters in one day of people who did not agree with the way Council was doing business. None of the 75 knew about the meeting.**

**Pat Dobbie, Atherton, attended several meetings regarding the artifacts. Many options were discussed on how the issue would ultimately be solved. She took responsibility for the Lindenwood Homes' Association for not keeping people more informed.**

**Randy Lamb, Atherton, said the Lambs were the first test of the ordinance. He agreed with previous speakers and reiterated the lack of transparency. He believed notices should have been mailed to every homeowner and the meeting held in the Pavilion. The**

General Plan Committee could not come to a conclusion because the language of the ordinance was terrible. The ordinance was not ready for a first reading. More input from the Town was needed.

Scott Carey, father of Lisa Carey Lamb, former City Council Member/Mayor of the City of Palo Alto, spoke regarding a lawsuit the city was involved in, “a taking without compensation.” The city lost the case and faced \$30 million worth of damages. He believed the Town was in a similar circumstance, i.e. the Town could dictate what property someone owned. He cautioned Council regarding the inadequacy of notice and suggested the item be continued.

Deputy Town Planner Lisa Costa Sanders read a letter from William Grindley into the record. She noted that a public notice was mailed to all property owners who had artifacts on their property on Friday, October 19, 2007, at least 10 days prior to the meeting. The Lambs were notified by email and by phone the previous Wednesday.

Council Member McKeithen said everyone had an interest, not just the property owners. She said the item should be continued to allow for proper notice and more participation by all the residents of Atherton.

Mayor Alan Carlson stated it was not possible to give personal notice to every resident regarding an action that might impact them. Although, the Town provided legally required notice, he agreed with his colleague that the item should be continued. He suggested that notice be mailed to those within the proposed boundary of the Lindenwood Historic District. Additionally, he suggested the City Attorney draft a summary of the ordinance as it existed and how it might change, which would be included with the notice. He said Council’s role was to balance interests; the interests of the public against the individual, the interests of the individual against another individual.

Council Member Marsala expressed concern for the Town’s noticing procedures. A better system was needed. He suggested regularly scheduled quarterly or semi-annual special meetings for ordinance discussions in order for everyone to schedule the meetings in advance. He initially supported the ordinance; however, given the circumstances of the past 18 months, he questioned whether an ordinance should be in place at all. He thought the Town had the potential for several historic districts. He was also in favor of soliciting donations to buy artifacts or seeking donations of artifacts as a better way to protect them. He recommended a voluntary process.

Council Member Jerry Carlson agreed to continue the item to a later date. He asked for clarification on what designating Lindenwood as a historic district really meant.

City Attorney Hynes said designating the district under the ordinance, provided there was a finding of local significance, conveyed the ability to consider all the artifacts within the Lindenwood district and, consequently, the restrictions as to what could be done with artifacts in terms of altering/moving them. The purpose of the permit process within the ordinance was to confirm the significance of the artifacts and ensure they were preserved and protected.

Vice Mayor Janz agreed with his colleagues to continue the item.

**MOTION – to continue the item to the December City Council meeting, with proper mail notice to the property owners within the proposed boundaries of the Lindenwood Historic District, including a summary of the existing ordinance and how it might change, and a display ad notice in the *Almanac***

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

**STUDY SESSION (Item 4)**

**4. DRAFT ZONING CODE UPDATE**

Deputy Town Planner Lisa Costa Sanders said the Study Session was a prelude to a full public process, a first look at the update to the zoning code.

Christopher Jordan, PMC, gave a PowerPoint Presentation, which was a cursory overview of the project, emphasizing it was a preliminary “check-in.” A question and answer period ensued. Mr. Jordan responded to Council questions.

Philip Lively, Atherton, Planning Commission member, said the Chapter 17, Zoning Code, was the second most important document in the Town. He recommended that the public, Planning Commission and the General Plan Committee members be notified that the draft was available. The update was a big undertaking and should not be rushed.

Carol Flaherty, Atherton, spoke regarding dormers on French style homes. She asked for clarification on retaining walls and the need for a Conditional Use Permit in certain circumstances. She thought the need for a second kitchen was the result of older parents moving in with their children.

Mr. Jordan explained that a Conditional Use Permit was required for retaining walls taller than 6’ in height or located less than 20’ from other retaining walls on the same property; otherwise, only a building permit was required.

Jeff Wise, Atherton, said a great deal of what was reflected in the update was very helpful and clarified what was confusing. Summaries of the parts that were substantive changes would be helpful. He was baffled by light well restrictions that no one could see. He agreed with Mr. Lively’s comments on the importance of the update.

Charles King, Atherton, spoke regarding height limitations on a hillside. He encouraged the Council to look at it not only from a mass standpoint but also how the proposed calculation would affect the floor plan of a structure.

Council Member McKeithen suggested putting a notices in the Building Department and Administrative offices indicating that copies of the draft update were available, place copies in the packets for the General Plan Committee and Planning Commission, and add annotations explaining what was new and what was old.

**Mayor Carlson said the item should be referred to the General Plan Committee with instructions to meet monthly until the item was sent to the Planning Commission.**

**Council Member Marsala suggested that the General Plan Committee, at its first meeting, decide what items would be discussed in what timeframes, in order for residents to plan ahead.**

**Council Member Carlson suggested a process was needed for people to convey their comments as they reviewed the update.**

**Deputy Town Planner Costa Sanders said a cover sheet could be added to the document for comments and where to direct comments. When the item goes before the General Plan Committee, a list of the comments received with responses would be provided.**

**Vice May Janz suggested once the update was circulated to committees, builders, architects, a general meeting could be held in the Pavilion to hear the list of questions and concerns. The General Plan Committee could address them one at a time.**

**Deputy Town Planner Costa Sanders said the initial process envisioned by Council was to look at the zoning code and provide a comprehensive update, not necessarily opening it up for significant changes. Three public sessions were held. If Council wished to open up the process, an amendment to the PMC contract would be necessary.**

**Mayor Carlson suggested there would expanded opportunity for public comment when the General Plan Committee reviewed the proposals, when the Planning Commission reviewed the item, and when it was returned to the City Council.**

**MOTION – to refer the draft zoning code to the General Plan Committee for review, with instructions to meet monthly until making recommendations to the Planning Commission**

**Council Member Marsala took exception to directing the General Plan Committee to meet monthly.**

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

**5. ADJOURNMENT**

**Mayor Carlson adjourned the meeting at 10:12p.m.**

**Respectfully submitted,**

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**Kathi Hamilton**  
**Acting City Clerk**