



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**August 16, 2006**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Marsala called the meeting to order at 7:10 p.m.

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**

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

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

3. **PRESENTATION**

NONE

4. **COUNCIL REPORTS**

- Council Member McKeithen said the newly formed Emergency Preparedness Committee met that afternoon with Sergeant Grimm, Chief Brennan, and the City Manager and looked into securing vital equipment: 1) a new generator was needed in order to move the emergency operations center from the Council Chambers to the Corporation Yard, as well as moving telephone lines; 2) a mobile command center operation so police cars would have monitors to access vital information; 3) the well at the park; and 4) a trailer for the police to use at incident sites. A report would be provided to the Council on how the funds would be spent. The citizens' emergency preparedness group met and was working on a citizens' Captain Manual for each of the 14 to 16 divisions of the Town. Community groups were also meeting on the issue.

- Vice Mayor Alan Carlson also attended the meetings of the Emergency Preparedness Committee and the citizens' group.
- Council Member Jerry Carlson attended the San Francisco Airport Roundtable meeting. Discussion centered on the budget.
- Council Member Janz said the Atherton Rail Committee was involved in discussions with Menlo Park regarding quiet zones and pursuing money for safety improvements on the Caltrain line. He attended the August 10<sup>th</sup> Cities/County Association of Governments (C/CAG) meeting. C/CAG was supporting several bond issues on the November ballot. Proposition 1b, SB1266, provided \$40 million to San Mateo County for local street and road improvements of which Atherton would receive \$40 thousand. With regard to the sub-regional allocation process for the San Mateo County housing allocation, 16 cities had already approved it and the remaining 5 were scheduled to consider it and indicated support for the process.
- Mayor Marsala announced the Town barbecue, sponsored by the Atherton Dames and Holbrook-Palmer Park Foundation, was scheduled for October 15, at 3:00 p.m. He and Council Member Jerry Carlson attended the League of California Cities meetings in July. Menlo College asked Mayor Marsala to be on its Board of Directors. The college was organizing its students to do more community service and to apply for an Americorp grant to work on improving test scores in the local area. He discussed upcoming issues regarding "finished" grade and allowing basements under accessory structures on large lots and the need for clarification in the Zoning Code. Mayor Marsala wrote to one newspaper expressing disappointment in the headline of an article about the Town. He and Council Member Janz attended a Waste Reduction Committee meeting, which would be renamed the Environmental Policy Committee and would be promoting "green" building.
- Council Member McKeithen said the Atherton Channel needed additional repair along the entire wall on Marsh Road. Additionally, she met with Public Works Director Duncan Jones, Rosemary Maulbetsch, Public Works Supervisor Steve Tyler, as well as Town Arborist Kathy Hughes Anderson to discuss the train station. City Manager Jim Robinson would ask Caltrain to replace missing windows, to repair wood rot, and to do some painting. Regarding the landscaping, dead trees, bushes, and flowers were removed, making an immediate improvement.

## 5. PUBLIC COMMENTS

**Jim Dobbie, James Avenue, spoke regarding the cancellation of a recent General Plan Committee meeting. He suggested preparing rules and procedures for at least the General Plan Committee and the Planning Commission. Additionally, he believed the website was not up to date.**

**Assistant to the City Manager Wende Protzman explained the Town was experiencing temporary problems with website posting, which should be solved in the next two weeks. An announcement to that effect was posted on the home page.**

A short discussion took place regarding the merits of developing rules and procedures for the General Plan Committee. City Attorney Marc Hynes noted that Section 2.37.060 of the Atherton Municipal Code spoke to meetings and quorums: “The general plan committee shall meet on the call of its chairperson, at least annually. A quorum shall consist of a majority of the members of the committee.” Section 2.37.040 gave authority to adopt guidelines for the committee’s transactions and business.

John Sisson, Belleau Avenue, spoke regarding the Building Department audit and the right for the public to be informed.

Don Arata, Encinal Avenue, offered to donate a sandbagging machine to the Town.

Pat Gemma, Superintendent, Sequoia Union High School District, spoke regarding the Pop Warner Football organization and his decision to grant permission for Pop Warner to use the Menlo-Atherton High School football field for games and practices. An attempt was made to meet the new guidelines. Pop Warner made many changes to its game and practice schedule with the exception of August practices, which ended at 8 p.m. He asked that any complaints be referred to him in the future.

Council Member McKeithen said she received many complaints from neighbors. People were upset and disheartened with the Town and the District. She did not believe Pop Warner should be encouraged to violate an ordinance given that so much went into making compromises in the first place.

Vice Mayor Alan Carlson thought the decision by the District put the Town in a difficult position. The Town enacted the ordinance and needed to determine what to do about the violation. Additionally, he disagreed with the legal authority under which the District was acting.

Jim Dobbie, James Avenue, said clarification was needed as to who had authority over the school fields for non-school related activities, i.e., Pop Warner. His understanding was except for school-related activities, the schools had to abide by Atherton’s ordinances.

**6. STAFF REPORTS**

- City Attorney Marc Hynes reported out of Closed Session as follows:
  - A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
City Attorney
  - 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

**C CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

**Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:**

Two (2) potential cases

The Closed Session was continued at 7:05 p.m. to the end of the Regular Meeting.

- **City Manager Jim Robinson announced that articles were being solicited for the fall *Athertonian* and should be sent to Wende Protzman at the Town Administrative Offices. He complimented the citizens' emergency preparedness group of the ACIL for its display of the emergency preparedness kit at Town Hall. Additionally, he testified before the Caltrain Joint Powers Board regarding improvements needed to the Atherton train station: painting, a new roof, hold-out improvements, fencing, quad gates, etc. Staff was continuing to work on behalf of the Town to ensure service was restored. The results of the attitudinal survey regarding the Police Department would be presented at the September Council meeting.**
- **Finance Director John Johns said the auditors were performing the yearend review.**

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**Carolyn Williams, Principal, Selby Lane School, said she had been at Selby Lane School for the past six years, five years in administration and currently as the principal. Test scores had increased, and the school was approaching a score of 800, which was considered an excellent school. Hopefully, in the next year, the school would soon become an International Baccalaureate Middle Years Program School.**

**A short discussion ensued regarding the street reconstruction project on Selby Lane.**

**Mayor Marsala offered his congratulations for the turnaround in Selby Lane School over the past four years. The rising test scores were a great inspiration to the community.**

**Council Member Jerry Carlson offered his thanks, as well. He would like to see the high school become involved in the International Baccalaureate Program so the Selby Lane School students could make a smooth transition to high school.**

**CONSENT CALENDAR (Items 8 –13)**

Council Member Janz suggested with regard to Item No. 12, the BKF agreement, the first line in paragraph 10 should read, “The consultant *has not* employed or retained any....”; line 3, remove the words “*that he*”; line 6 should read, “For breach or violation of the *foregoing*....”

Council Member McKeithen, suggested with regard to Item No. 13, the CSG Consultants agreement, the term Building Official should be replaced with Director of Building and Planning in Section 8. In Section 17, A 4, Errors and Omissions Insurance should reflect \$2,000,000.

**MOTION – to approve the Consent Calendar as presented with modifications to Items 12 and 13.**

**M/S McKeithen/Janz**

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

- 8. APPROVED MINUTES OF THE SPECIAL AND REGULAR MEETINGS OF JULY 19, 2006**
- 9. APPROVED BILLS AND CLAIMS FOR JUNE 2006 IN THE AMOUNT OF \$975,498**
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JULY 2006**
- 11. ACCEPTED STAFF RESPONSE TO CIVIL GRAND JURY REQUEST (INTERNET CRIME REPORT)**
- 12. APPROVAL OF AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF ATHERTON AND BKF ENGINEERS TO REVIEW THE TOWN’S DRAINAGE CRITERIA**

**Approved the amendments in the attached Professional Services Agreement with BKF Engineers for the Review of the Town’s Drainage Criteria with above-noted changes.**

- 13. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF ATHERTON AND CSG CONSULTANTS, INC., FOR BUILDING OFFICIAL, BUILDING INSPECTION, PLAN REVIEW AND CODE ENFORCEMENT SERVICES**

**Approved the attached Agreement for Professional Services with CSG (Consultants) to provide interim Building Official Services and Code Enforcement Services to the Town of Atherton with above-noted changes.**

**PUBLIC HEARINGS NONE**

## **REGULAR AGENDA (Items 14 - 17)**

### **14. PHASE III BUILDING DEPARTMENT PERMIT AND PROCESS AUDIT**

**Finance Director John Johns presented the staff report. The first two phases of the audit focused on fee collection practices. The emphasis in Phase III was to look at the permit issuance process, the plan check process, and the building inspection process. The project should be completed in approximately 400 hours over 7 weeks. A report would be submitted to the Council by October 9<sup>th</sup> to be discussed at the City Council meeting of October 18th. The Building Department would be asked to assist in collecting the records, particularly those records that had been closed or were on microfiche. Preliminary assessment of the physical and electronic recordkeeping systems resulted in the need for a new permit tracking system. Additionally, the records out in the field were not coming back to the office when a project was closed resulting in the inability to verify whether inspections were conducted. An immediate remedy was put in place that a copy of the permit card which recorded the inspections would be retained as a part of the permit record. The type and characteristics of the files that needed to be examined were identified, along with the objective evaluative criteria that would be used, e.g., the files should contain a record of a licensed civil engineer having verified setback requirements and height limitations. Developing subjective criteria would require the use of a subject matter expert, particularly in examining whether the number and frequency of inspections were reasonable in relation to the complexity and size of the project. Approximately 80 hours would be required for this part of the project. A great deal of work had been done with the risk assessment process and the assessment of the physical and electronic recordkeeping systems.**

**A discussion ensued regarding what systems and procedures had been put in place as a result of the Phase I and Phase II audits. The Building Department had implemented new fee assessment collection procedures. More work needed to be done in the area of better documentation of policy and procedures for the entire department, as well as acquiring a new permit tracking system. Staff was visiting various cities to observe different software. A temporary, short-term improvement to the current system would be implemented within the next few weeks. Cost varied depending upon how many “bells and whistles” would be included. Staff would submit a recommendation to Council at the October Council meeting.**

**Council Member Janz wanted to know how much of the Phase III audit addressed the issues in Phase I and Phase II. He was concerned about spending \$32,000 to review files over the past 5 to 6 years when what needed to be done had already been determined and work was being done to remedy the issues.**

**Finance Director Johns said the objective was to identify whether there were recurring instances of non-compliance with essential elements of the permit process, e.g., whether the Building Department had consistently required**

**applicants to submit their engineer reports for setback and height requirements. The fundamental question that Phase III would address was whether builders adhered to the Zoning Ordinance and Building Codes.**

**Council Member Jerry Carlson listed five items to be addressed: 1) The Phase III audit needed to be completed, and the implementation of new processes, new computer software, the completion of documentation, the institution of internal controls, and training of employees needed to be completed by October. He asked that the outside auditors verify that the systems and procedures were adequate and complete. He also requested that any new systems captured information at the front-end to be tracked throughout the entire process and brought to closure. 2) A professional Personnel/Human Resources function as part of Town staff was needed. 3) He believed there was an unresolved issue with the City Attorney regarding the City Council's right to decide whether or not to accept the risk of reading the special investigator's report. 4) A follow-up was needed regarding the City Manager's handling of the matter which would be addressed as part of the evaluation process. 5) He was under certain constraints as to what could be made public: a) concern for residents' privacy who were quoted in the report; employees had privacy rights when disciplinary actions were taken; b) employee personnel records could not be disclosed pursuant to a request under the California Public Records Act; c) disclosure of the report to the public without the permission of the affected employees could subject the Council to legal liabilities based upon claims of invasion of privacy; d) personal liability may attach to any disclosure to confidential personnel records. He believed the Finance Director was doing a thorough job with the Phase III audit.**

**Vice Mayor Alan Carlson was also concerned with spending \$32,000 for the Phase III audit and asked what the Finance Director's time would cost for the project, as well as the cost for the Phase I and Phase II audits.**

**Finance Director Johns said his hourly rate was \$65 an hour. The cost of Phase I and Phase II, not including the Finance Director's time, was approximately \$12,000.**

**Vice Mayor Carlson said once a system was selected, it should include 1) a software system by which all permit activity could be tracked from issuance of the permit to compliance with the critical criteria; 2) policies and procedures that included human systems checks; and 3) adequate management of the system. His question was whether the \$32,000 would be better spent putting the system together and moving forward rather than looking backward to find consistency. He was willing to assume consistency was not present and suggested moving forward to remedy the system. If it were decided to look back, only look back one year to determine whether you needed to look back further.**

**Council Member Jerry Carlson believed there were unanswered questions that constituted a reason for the Finance Director to decide what proper amount of data/time was needed.**

**Finance Director Johns said no matter how good a new system would be it would be unable to determine for many months what the opportunities for improvement were. The real purpose of looking back was to determine what the department was doing right and what it needed to do to improve, as well as to address the concerns brought forward by constituents.**

**Council Member McKeithen believed if spending \$32,000 would finally put an end to the matter, the money would be well spent. Until the records were examined and all the constituents' issues and concerns were answered, credibility would not be restored to the Building Department. Examining the records would show how to avoid the systematic violations in the future.**

**Discussion ensued regarding the transfer of data from the old data base to a new system and the integrity of the information being transferred. One reason for performing the audit and for looking back was to determine that the information that was unreliable by virtue of the lack of security did have some reliability to it. Even with very good systems, ongoing audits were essential. Additionally, changes in procedures had taken place in the Building Department such as the Plan Checker or the Building Official needing to sign off on issuing permits. Staffing issues would be examined and recommendations would be forthcoming. Training needs would also be addressed.**

**Mayor Marsala said there was a balance between spending \$32,000 and restoring credibility in the Building Department. He had visited over 40 projects in the past few years only to discover that everything was done right. Upgrading software throughout the Town had been identified at least 5 years ago. Some of the \$32,000 could be used for that purpose.**

**Council Member Jerry Carlson suggested talking with other cities for solutions, particularly the cities of Dublin, Pleasanton, and Martinez, before spending thousands of dollars for a new system.**

**The discussion centered on what information the Phase III report would actually ascertain other than how many times a mistake was made since the Town's records were inadequate. There was an argument for doing substantive testing; however, if the Council preferred, a report could be written based upon the analytical review and the understanding of the process already completed.**

**Vice Mayor Alan Carlson preferred a report from the Finance Director where deficiencies were identified and subsequent to that the Council could determine whether it wanted to go through the records and prove the deficiencies. The \$32,000 could then be spent to fix the problem.**

**Council Member McKeithen disagreed. Until the files were reviewed, the issues and problems could not be determined, i.e., that calculations were based on property records from ten years ago or that there were three different notations for the square footage of a property. Without researching the files, the Town was being reactive rather than proactive: 1) A generic system could not be built to account for the kinds of creativity found in the Town; 2) the citizens who raised concerns could not be answered; and 3) the entire issue of credibility would not be addressed.**

**In response to Vice Mayor Alan Carlson, Finance Director Johns said audit staff would not be able to render a definitive answer as to whether a particular project had met all the zoning and building requirements applicable. However, should instances of apparent non-compliance were discovered, the files would be flag for a more thorough review by a qualified individual. In the end, a statement of findings would be produced.**

**Bob Jenkins, Atherton, spoke regarding construction projects and the data that should be retained. Additionally, he noted a significant number of projects were found that used the value as represented by the owner. He believed the actual square footage should be determined for residential properties in Atherton.**

**Mayor Marsala queried whether any funds would actually be recaptured.**

**Finance Director Johns said the \$32,000 would be charged to the Building Department and would be recovered from building fees.**

**Vice Mayor Alan Carlson suggested the Council authorize the Phase III audit, not to exceed \$32,000, with the understanding that the Finance Director could use his discretion to go back up to five years to review files.**

**Council Member Janz believed the audit was a “fishing” expedition. His concern was that after spending \$32,000, nothing new would be discovered, or a situation would arise that required more money to be spent to find an answer. He did not have a fundamental issue with reviewing the files, he wished it cost less.**

**In response to Council Member Jerry Carlson, Finance Director Johns said the probable range for the cost of the audit was between \$24,000 and \$32,000. He believed the money would be well spent from a systems planning standpoint.**

**Mayor Marsala agreed with Council Member Janz but also thought gaining value from a software standpoint was important.**

**MOTION – to approve the scope of the Phase III of the Building Department Permit and Process Audit with the understanding that the Finance Director reserved the right, after review of 20+ files, to cut back or stop the review if nothing new was discovered**

**15. DISCUSSION AND CONSIDERATION OF APPOINTING ALTERNATES TO CITY COUNCIL STANDING COMMITTEES**

**Mayor Marsala noted that alternates for City Council Standing Committees did not exist and believed there were times when a backup was necessary.**

**A discussion ensued and the consensus was there would be a lack of continuity. Generally, Council Members were not concerned if one of the appointed members could not attend.**

**No action was taken.**

**16. DISCUSSION AND POSSIBLE ACTION REGARDING CITY COUNCIL GOALS AND OBJECTIVES**

**City Manager Jim Robinson presented the staff report. Before the Council was a prior list of goals, newly identified goals and the status of whether the goals had been completed or were ongoing. He suggested that Council either identify new goals that evening so staff could prepare a list to send out to Council for prioritizing, or address the list that evening.**

**Vice Mayor Carlson favored using a ranking system that staff would analyze and then return the prioritized list for Council to consider. He also thought establishing a Human Resources function for the Town should be added which went along with revising Employee Personnel Rules and Procedures.**

**A discussion ensued as to the timeline for reviewing the General Plan (every five years) and a determination was made to add it to the list.**

**City Manager Robinson said he would add the new items to the previously established list and send it to the Council to prioritize.**

**Bob Jenkins, Atherton, spoke regarding developing a Strategic Plan for the Town. The Strategic Plan should include a Vision Statement and a Mission Statement from which the goals would flow.**

**A discussion ensued regarding the merits of developing a Mission Statement.**

**John Sisson, Atherton, spoke regarding Mission Statements and thought they became useless. He favored prioritizing the list of goals and seeking public input on the process.**

**Council Member Janz did not think a Mission Statement could be written for the Town but thought one could be written for employees as part of the Personnel Rules and Procedures.**

**MOTION – to continue the item to the next meeting with the understanding that the City Manager would provide a list to the City Council**

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

- 17.    CONSIDER ADOPTION OF A RESOLUTION PROVIDING FOR THE APPOINTMENT TO THE OFFICE OF CITY COUNCIL THOSE PERSONS WHO HAVE BEEN NOMINATED, OR ADOPTION OF A RESOLUTION TO HOLD THE GENERAL MUNICIPAL ELECTION AS SCHEDULED ON NOVEMBER 7, 2006**

**MOTION – to adopt Resolution No. 06-15, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON PROVIDING FOR APPOINTMENTS TO THE OFFICE OF CITY COUNCIL OF THE TOWN OF ATHERTON THAT WERE TO BE ELECTED ON TUESDAY, NOVEMBER 7, 2006” and cancelling the election**

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

- 18.    PUBLIC COMMENTS**

**There were no public comments.**

- 19.    ADJOURNMENT**

**Mayor Marsala adjourned the meeting at 10:05 p.m. to a *Continued* Closed Session**

- A.    PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

**City Attorney**

- 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**

- C    CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

**Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:**

**Two (2) potential cases**

**There was no reportable action taken on Items A. B. & C.**

**Mayor Marsala adjourned the *Continued* Closed Session at 10:20 p.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**