



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON
CHANNEL DRAINAGE DISTRICT
September 20, 2006
7:00 p.m.
Pavilion
Holbrook-Palmer Park, 150 Watkins Avenue
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.

City Attorney Marc Hynes reported out of Closed Session as follows: On Monday, September 18, 2006, the Council met in Closed Session from 5:30 p.m. to 8:45 p.m., at which time the Closed Session was continued to the Closed Session of September 20, 2006. The Closed Session was called to order at 5:45 p.m. and adjourned at 6:30 p.m.

A. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Pasquale Exposito
Agency Claimed Against: Town of Atherton

Claimant: Giselle McKeller (2 claims)
Agency Claimed Against: Town of Atherton

Claimnant: Min Katrina Lieskovsky
Agency Claimed Against: Town of Atherton

There was no reportable action regarding claimants Pasquale Exposito and Giselle McKeller. The claim brought forth by Min Katrina Lieskovsky was denied.

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 one reportable action. The City Council discussed the matter with legal counsel and directed preparation of a draft Resolution that the Council would consider later that evening. The Resolution immediately rescinded, revoked and terminated the excavation surcharge (off-haul fee) enacted by Resolution 05-34. The Resolution also provided for refunding excavation surcharges received by the Town.

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

Four (4) potential cases

There were two reportable items. The City Attorney was authorized to commence litigation in two matters. Upon filing of the complaints, information regarding the names of the defendants and/or addresses of the property would be made available.

**D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Pursuant to subsection (b) of Government Code Section 54956.8:**

**Property: 49 McCormick Lane
Agency Negotiator: James H. Robinson, City Manager**

Direction was given to the Agency Negotiator, James H. Robinson, relative to acquisition of rights for pedestrian and vehicular access regarding the property at 49 McCormick Lane.

Carol Flaherty, Camino Por Los Arboles, spoke regarding the excavation surcharge and thanked the Council for initiating the legal review and rescinding the fee.

Charles Ramorino, Gresham Lane, was an expert in trucking and offered his services to the Town if there was a need in the future.

Gary Tuckman, Maple Leaf Lane, spoke regarding the excavation surcharge and queried whether Council rescinded the fee to satisfy a small number of people who were building very large homes. He said road conditions affected everyone in the Town.

City Attorney Marc Hynes said Council discussed the matter and determined to take the action set out in the resolution.

Greg Conlon, Virginia Lane, asked for clarification on the item regarding 49 McCormick Lane.

City Attorney Hynes said 49 McCormick Lane involved real property negotiations and involved rights of bicycle and pedestrian access over a portion of 49 McCormick Lane. The City Manager was given direction to negotiate the acquisition of those rights.

John Sisson, Belleau Avenue, read an excerpt of two letters into the record regarding the Building Department that appeared in the September 19, 2006, edition of *The Almanac*

Perry Thorndyke, Marianna Lane, asked for clarification on 49 McCormick Lane as it related to vehicular traffic.

City Attorney Hynes said the matter was the subject of negotiations and he could not comment further.

3. **PRESENTATION**

None.

4. **COUNCIL REPORTS**

- Vice Mayor Alan Carlson said he and Mayor Marsala attended a meeting last week at Menlo-Atherton High School, along with representatives from the City of Menlo Park, regarding the new performing arts center. Discussions were ongoing as to the applicability of the Town's special events ordinance. The General Plan Committee met on September 13th to discuss four items: 1) A review of the draft preservation ordinance for artifacts -- the Committee continued the item for further discussion; 2) Options to modify the allowed floor area ratio with respect to larger lots -- the Committee decided not to take any action; 3) The permitted location of basements -- the Committee continued the item to require additional staff study; and 4) Garages in basements -- the Committee took no action but asked staff to return with further options concerning landscape screening and conditional use permit procedures for approving garages. The next meeting was schedule for January 10, 2007.
- Council Member Jerry Carlson attended the League of California Cities annual conference in San Diego. As a member of the Finance Committee, he attended sessions of interest such as Generating Revenue via Fees, Special Taxes, and

Special Assessments and Post Retirement Medical Costs. He asked the Finance Director to include a cost estimate in the five-year financial statements to project the future liability of retiree medical costs. Other sessions included topics regarding the state mandate on housing issues (500,000 new residents arrived in California every year) and Code Enforcement. Of particular interest to the League were Propositions 1, A, B, and C, and Proposition 90 which dealt with eminent domain. Council Member Carlson attended the opening of the San Mateo County Youth Services Center which provided housing and education for troubled youth. He attended the San Mateo County Council of Cities meeting hosted by Menlo Park. The Audit Committee presented the preliminary yearend financials prepared by staff and a Phase III Audit update. He asked the City Manager to develop a follow-up list for pending items. He thanked the members of the audience for their attendance.

- **Council Member Janz** said one approach the state had used for decades to deal with the influx of residents was to require every city and county in the state to take its fair share of new housing. Within the Bay Area, there was a housing allocation process where a desired number of housing units was allocated and the Association of Bay Area Governments (ABAG) assigned housing to the cities and counties. Within the last year, state law changed so counties and cities could agree to work together to devise their own allocation process. All of the cities in San Mateo County, as well as the County, agreed to develop their own process. He said the Atherton Rail Committee and multi-city group (CETS) continued to meet regarding restoring train service along the Peninsula.
- **Council Member McKeithen** attended the Lindenwood Homes' Association meeting hosted by Bob and Bobbi Huber where she spoke about several issues such as Atherton Channel repairs along Marsh Road. The Office of Emergency Services was holding a meeting in Redwood City the next day at 5:30 p.m. She attended the Audit Committee meeting. The citizens group for emergency preparedness met on Saturday, September 16th. The group met on a monthly basis and was open to the public. Council Member McKeithen spoke regarding her role as a council member and her responsibility of representing the residents of Atherton. She gave a chronology of the Building Department investigation. She commended Finance Director John Johns for his service to the Town. Council Member McKeithen corrected what she considered were misrepresentations and misinformation that occurred along the way.
- **Mayor Marsala** thanked the Atherton Civic Interest League (ACIL) for a book he received and took the opportunity to remind the audience that Town staff, Council, and Committee/Commission members could not accept gifts over \$25. The Waste Reduction Committee changed its name to the Environmental Programs Committee and was recruiting new members. The Town had a tremendous reduction of waste, 60-70% in home demolition. There were handouts announcing an Emergency Preparedness Day on September 30th being held at the San Mateo County Event Center. On Sunday, October 15th, the Town Barbecue was scheduled from 3 to 7 p.m. at Holbrook-Palmer Park. The Dames and the Holbrook-Palmer Park Foundation were raising funds for a matching grant to build a bridge in the park. On October 11th, Mayor Marsala would host a rally at his home in support of Measure A, the ballot measure to

support parks. Atherton would receive \$212,000 a year if it passed. He attended the Library Committee and was impressed with the programs at the Library where 91 people attended the movie night for kids. Countywide activities included a program where everyone read the same book. In 1981 and 1991, \$80,000 was raised to expand the Library, which had not been done. The state returned Educational Revenue Augmentation Fund (ERAF) money to the Town, and there was approximately \$1,500,000 to pursue options for the Library. He also attended the League of California Cities annual conference. One session focused on the best practices among small cities such as creating a community gathering place. He believed the Library provided the opportunity to create a place to bring the community together. The Building and Facilities Committee had been working for several months on a plan for a new Town Hall and Police Station. Input from the community was needed as well. He met with City Manager Jim Robinson; Planning/Building Administrator Gary Binger; and a group of 40 residents, developers, and contractors. An item of note was the concern that there was insufficient notice for agenda items regarding the General Plan Committee, the Planning Commission, and the Council. He attended a meeting on August 30th where concerns were raised regarding why the Town did not issue press releases to counteract some of the headlines in the press that were misleading or incorrect, i.e., there was no missing money. He suggested having the independent investigator review the 11 cases in question. He also reiterated a need for an annual Town forum or other venue to engage the residents.

Given the length of the meeting, Vice Mayor Alan Carlson suggested continuing Item Nos. 21 and 22 to the next Council meeting.

MOTION - to continue Agenda Item Nos. 21 and 22 to the regular City Council meeting of October 18, 2006

M/S A.Carlson/Janz

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

5. PUBLIC COMMENTS

Virginia Ruggeiro, Stockbridge Avenue, spoke regarding adverse comments regarding the Town of Atherton.

Thomas Colby, Stockbridge Avenue, spoke regarding issues related to remodeling a home and an encounter with Council Member McKeithen.

Carol Flaherty, Camino Por Los Arboles, spoke regarding the Building Department. She took exception to the assertion in an article in *The Almanac* that morale and timeliness had never been better in the Building Department.

Pat Engasser, Ashfield Road, spoke regarding a possible recall campaign involving Council Member McKeithen and her opposition to it.

Bob Jenkins, Irving Avenue, spoke regarding the election campaign six years ago, his tenure on the Audit Committee, and Council Members Jerry Carlson's and Kathy McKeithen's roles in the Town's six consecutive, unqualified audits.

Smith McKeithen, Maple Leaf Way, spoke regarding Council Member McKeithen and her dedication to her responsibilities as an elected official.

Jean Schaaf, Stockbridge Avenue, spoke regarding her longtime involvement with the Town and her pleasure with the current Council and its ability to work together to solve problems.

Julie Quinlan, Maple Avenue, spoke regarding the Building Department investigation and her personal experiences. She appreciated Council Member McKeithen's efforts, accessibility, and tenacity.

John Rugeiro, Stockbridge Avenue, spoke regarding two meetings attended by Mayor Marsala and asked the Mayor about an e-mail group formed for issues regarding construction.

Shirley Carlson, Mt. Vernon Lane, encouraged everyone to attend the Town Barbecue, a family event, scheduled for Sunday, October 15, 2006, at Holbrook-Palmer Park.

Jillian Manus-Salzman, Polhemus Avenue, spoke on behalf of a newly formed group, Atherton Residents for Responsible Governance, a group that was organized to address various Town issues. The group intended to exercise its right to file a petition to recall Council Member McKeithen.

Alan Salzman, Polhemus Avenue, spoke regarding the off-haul fee, which he believed was a thinly disguised tax that would not withstand legal challenge and was adopted without proper public noticing. Additionally, he spoke regarding the impending recall campaign.

Randy Lamb, Laburnum Road, member of the General Plan Committee, spoke regarding apathy within the Town. He believed Atherton was the best place to live; however, everyone needed to live by the Town's regulations and hold the Town's leaders accountable.

Lisa Carey-Lamb, Laburnum Road, spoke regarding what she interpreted as misrepresentations written in *The Almanac* regarding the Building Department's turn-around time for permit approval.

Joe Comartin, Alejandra Avenue, spoke regarding current staffing and morale within the Building Department.

Alan Douglass, Sargent Lane, spoke regarding the financial obligation incurred for the Building Department investigation and audit. He called for an immediate stop to the audit.

Harriet Tuckman, Maple Leaf Way, spoke regarding her support for the City Council and its work to provide information to “informed” citizens.

Steve Dostart, Patricia Drive, spoke regarding the discussion at the General Plan Committee regarding basements under accessory structures. Additionally, he spoke in support of Mayor Marsala as a good role model for how a mayor should act.

Jeff Wise, Linden Avenue, spoke regarding his past experiences with the Building Department and his belief that the department was now struggling. Additionally, he spoke to the need for a better notification process to inform residents about items before the Council.

Sam Goodman, Shearer Drive, spoke regarding the Police Department survey and the investigation of the Building Department. Surveys were not new and were not associated with the questions surrounding the Building Department. He believed the Council had a fiduciary responsibility to investigate or question any matter.

Donna Hopkins, Fair Oaks Lane, said perhaps there was a possible subtle sex discrimination issue pertaining to Council Member McKeithen since she was the only woman on the Council. She spoke in support of Council Member McKeithen.

Caroline Beverstock, Walsh Road, spoke regarding constant construction in her neighborhood, which created constant noise between the hours of 8 and 5 Monday through Friday and road damage.

Barbara Proulx, west Atherton, expressed appreciation on behalf of herself and her neighbors for Council Member McKeithen’s support with the Mountain Lion issue.

Ross Finestein was in the process of renovating a home at 130 Selby Lane and said one of the reasons he chose Atherton was because the Building Department was one the best in the Bay Area.

Council Member McKeithen responded to comments made by an earlier speaker regarding an alleged trespassing incident. She asked for specifics regarding accusations that she had not served the best interests of the Town.

Mayor Marsala said he attended two meetings for the sole purpose of answering questions. He said he formed the Yahoo group and was actually involved in four e-mail groups because it was a very effective way of getting the word out. Additionally, he commended the Police Officers who attended the meeting and commented on the favorable outcome of the Police Department Survey.

5. STAFF REPORTS

City Manager Jim Robinson said a copy of the PowerPoint presentation regarding the Police Department Survey would be available the next day. The Godbe report was very

favorable and supportive of all the operations in the Police Department which was a reflection on all the men and women on the force. Through the efforts of the emergency preparedness group, the ACIL, and Council Members Alan Carlson and Kathy McKeithen a training session was scheduled for a Personal Emergency Preparedness Plan (PEPP) on October 24, at 7:00 p.m., in the Pavilion, for the Lindenwood Homes' Association. As a result of the Acorn closing, the lighting on Watkins was lost. A street light was installed, and a plan was submitted to the City of Menlo Park for a two-story office complex. Staff would be providing comments by the end of the week. Menlo Park was asked to notify residents within a certain distance of the proposed project.

City Attorney Marc Hynes also attended League of California Cities' conference. He said the good news for the Town of Atherton was that most issues affected much larger cities. The biggest issue concerned the Supreme Court's most recent decision regarding the applicability of Proposition 218 for water fees, which did not affect Atherton since the Town had a private water service.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

None

CONSENT CALENDAR (Items 8 – 17)

MOTION - to approve the Consent Calendar as presented.

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

8. **APPROVED MINUTES OF THE SPECIAL MEETING OF AUGUST 3, 2006, AND THE REGULAR AND SPECIAL MEETINGS OF AUGUST 16, 2006**

9. **APPROVED BILLS AND CLAIMS FOR AUGUST 2006 IN THE AMOUNT OF \$ 1,117,357**

10. **ACCEPTED MONTHLY FINANCIAL REPORT FOR AUGUST 2006**

11. **ADOPTED A RESOLUTION APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE CALIFORNIA RIVER PARKWAYS GRANT PROGRAM UNDER THE WATER SECURITY, CLEAN DRINKING WATER, COASTAL AND BEACH PROTECTION ACT OF 2002 (PROPOSITION 50) FOR THE ATHERTON CHANNEL AT HOLBROOK-PALMER PARK RESTORATION AND PATHWAY PROJECT**

Adopted Resolution No. 06-16 authorizing staff to submit an application for a California River Parkways Program grant to restore and expand the Atherton Channel adjacent to the Holbrook-Palmer Park south meadow and create a new pathway.

- 12. ADOPTED A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE LOCAL AGENCY GRANT PROGRAM - FISCAL YEAR 2006/07 UNDER THE HABITAT CONSERVATION FUND PROGRAM OF THE CALIFORNIA WILDLIFE PROTECTION ACT OF 1990 FOR THE ATHERTON CHANNEL AT HOLBROOK-PALMER PARK RESTORATION AND PATHWAY PROJECT**

Adopted Resolution No. 06-17 authorizing staff to submit an application for A Habitat Conservation Fund (HCF) Program grant to restore and expand the riparian habitat of the Atherton Channel adjacent to the Holbrook-Palmer Park south meadow and create a new pathway, and committing the required local match of 50%

- 13. ADOPTED A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE LOCAL AGENCY GRANT PROGRAM- FISCAL YEAR 2006/07 UNDER THE HABITAT CONSERVATION FUND PROGRAM OF THE CALIFORNIA WILDLIFE PROTECTION ACT OF 1990 FOR THE UPPER ATHERTON CHANNEL RESTORATION PROJECT**

Adopted Resolution No. 06-18 authorizing staff to submit an application for a Habitat Conservation Fund (HCF) Program grant to rehabilitate and restore the Upper Atherton Channel adjacent to Walsh Road and Reservoir Road, and committing the required local match of 50%.

- 14. BIENNIAL REVIEW OF THE TOWN'S CONFLICT OF INTEREST CODE**

Conducted a review of the Town's Conflict of Interest Code and confirmed, by motion, its continued effect.

- 15. ACCEPTED STAFF RESPONSE TO GRAND JURY REGARDING DISASTER PREPAREDNESS**

- 16. ACCEPTED STAFF RESPONSE TO GRAND JURY REGARDING REPORT ON POLICE DEPARTMENT RADIOS**

- 17. APPROVED AN AGREEMENT BETWEEN THE TOWN OF ATHERTON AND THE SEQUOIA UNION HIGH SCHOOL DISTRICT TO CONTINUE THE SCHOOL RESOURCE OFFICER PROGRAM**

Authorized the Mayor to sign the agreement between the Town and Sequoia Union High School District to continue participation in the School Resource Officer Program at Menlo-Atherton High School.

PUBLIC HEARINGS (Items 18 & 19)

18. INTRODUCTION OF AN ORDINANCE FOR THE PRESERVATION OF HISTORICAL ARTIFACTS

Deputy Town Planner Lisa Costa Sanders presented the staff report. The Council adopted an urgency ordinance to protect historic artifacts and retained the services of Laura Jones, a historical consultant, to evaluate artifacts and to prepare a report. Two public meetings were held; the first to review findings of the inventory, and the second was a workshop to solicit community input. Staff drafted an ordinance that was reviewed at three separate meetings of the General Plan Committee. The Committee was unable to recommend the ordinance to the Council and voted to continue the item for further study. Committee members expressed concern that the ordinance was punitive and did not encourage preservation. Additionally, they expressed concern for property owners' rights and that the artifacts should be considered as personal property and not be regulated. The moratorium was due to expire next month and staff decided to bring the ordinance forward that evening for Council consideration.

Laura Jones, archeologist and historic preservation planner, believed an ordinance had been successfully crafted, with the help of a dedicated citizens group, that met Atherton's special needs. The purpose of the ordinance was to protect Atherton's heritage. The ordinance protected landscape artifacts such as gates, lampposts, urns, and fountains and did not affect houses or other buildings. The ordinance sought very creative ways to balance the rights of property owners with the common shared value of quality of life. The inventory was a 50-page document that discovered amazing treasures; no one said they were not worthy of preservation. The ordinance streamlined permitting. An owner who wished to move an artifact or make a major alteration needed to apply for a permit that was reviewed by the Planning Commission, with the right of appeal to the City Council. Participation in the survey was voluntary. Listing in the official inventory was also subject to owner's consent. Because of privacy rights, an owner could decide not to be on the official list; however, one could not decide to not be subject to the terms of the ordinance. Staff tried to allow as much flexibility as possible in order to preserve the objects for the Town and balance personal privacy rights.

Council Member McKeithen noted some corrections and clarifications that were needed in the ordinance and asked how the fees were determined.

Deputy Town Planner Costa Sanders said she consulted with the Finance Director. Fees were a major discussion at the General Plan Committee which queried whether all fees should be waived. In evaluating the fees, the Committee determined the review of artifacts mirrored a conditional use permit process and arrived at the \$750 fee.

Council Member McKeithen thought the fee was too high. She asked for clarification regarding the Penalty section, 14.082.c.

Ms. Jones said the section was meant to cover someone who made a repair or alteration to an artifact unknowingly without a permit. If the artifact could be restored to its original appearance at the time of the inventory, the penalty could be waived.

Mayor Marsala asked what would happen if someone refurbished an artifact and then wanted to move it out of the Town.

Ms. Jones said property owners had the discretion to ask the Council to grant their request to move the artifact or they could pay the fine to the Town for the loss of its heritage. However, the ordinance was intended to prevent that from happening and was the most stringently regulated area.

Vice Mayor Alan Carlson asked whether waiving all fees for the owner of the artifact had been considered.

Deputy Town Planner Costa Sanders said she understood that Council policy was to obtain cost recovery.

Vice Mayor Carlson believed these fees should be an exception. He asked how many properties were affected.

Ms. Jones said the inventory currently included approximately 36 artifacts and approximately 20 owners who voluntarily participated. The total owners included in the emergency moratorium were between 40 and 45.

A discussion ensued regarding noticing procedures. Ms. Jones said she believed there were three owners who thought the ordinance should be voluntary. Those owners who participated in the inventory were in favor of the ordinance. Staff was bringing the item forward because the urgency ordinance expiring.

Council Member Jerry Carlson thought the work that was done in identifying the artifacts was a great step. He found the ordinance confusing to follow. He suggested a flow chart be added. He asked whether any other cities in San Mateo County had an ordinance.

Ms. Jones said the Town of Woodside had very active historic preservation ordinance and a special commission for review. Hillsborough, San Carlos, and San Bruno also had ordinances. Hillsborough's ordinance was totally voluntary and there was a beautification committee that raised funds.

Council Member Janz thanked Ms. Jones and staff for the terrific work not only in the inventory but also in trying to make the ordinance workable. He supported the ordinance. He asked for clarification regarding the criteria defined in Section 8.14.052.

Ms. Jones said the artifact needed to meet the criteria for Item 1 and one of the other listed criteria, Item No. 2, 3, or 4.

Council Member Janz clarified that under Item No. 4, an artifact needed to meet Item a or b and had to meet Item c. He shared concern about the fees. He believed if an owner was making the designation, he/she should not have to pay a fee.

Mayor Marsala opened the public hearing.

Neal Rasmussen, Lindenwood Ave, applauded Council for its dedication to the Town of Atherton as volunteers. He read a letter into the record that suggested a nonprofit foundation be formed by those Atherton citizens who supported historic preservation in order to purchase artifacts located on private property for the Town.

Lisa Carey-Lamb, Laburnum Road, owned three artifacts, two of which were in complete disrepair when the property was purchased seven years ago. She spent \$5,000 to refurbish two urns and believed they were personal property that she should be able to move out of the Town.

Marion Oster, president of the Atherton Heritage Association, said Atherton was a wonderful place to live. The early residents from the 1860s, the Athertons, the Selbys, the Floods, the four Stern brothers, the Watkins, and many others, built large estates and decorated their gardens. Unfortunately, little or almost nothing is left. The remaining artifacts were here because previous property owners valued, honored, and maintained the artifacts. As an artifact owner, she had a responsibility to preserve what had been on her property for 130 years. She urged Council to adopt the ordinance.

Judy Castiallac, Linden Avenue, said state and national historic standards were used while researching and evaluating the artifacts for the inventory. She believed in private property rights; however, the situation called for balancing private concerns and the common good. Many artifacts were lost, endangered, or moved. There were three artifacts that were currently endangered, i.e., the owners wanted to take them when they moved.

Randy Lamb, Labernum Road, member of the General Plan Committee, said the language in the ordinance was confusing and seemed negative and punitive rather than positive. He believed having a fee added to the punitive nature of the ordinance. He wanted to move two artifacts that he restored to a new home. He hoped the concerns of the General Plan Committee were heard: was it a positive thing, was it an incentive for residents, and was it something that could be done on a voluntary basis.

Phil Lively, Hawthorne, said the heritage artifact ordinance was a Town issue much like the heritage tree ordinance. He urged Council to pass the ordinance.

Mayor Marsala closed the public hearing.

City Attorney Marc Hynes said staff brought the item to Council because of the concern that the urgency ordinance was going to expire. Council could make changes that evening which would still be considered a first reading, have the second reading in November, and the ordinance would go into affect 30 days later. The ordinance could always go back to

the General Plan Committee to consider other substantive changes and amend the ordinance at a later time. No continuity would be lost in the protection of the artifacts.

Discussion took place regarding what was discussed at the General Plan Committee and how ordinances were administered in other communities.

Ms. Jones said three-fourths of the artifacts needed a crane to move. In historic preservation terms, structures and objects were different and these artifacts were designed to be displayed outside.

Vice Mayor Carlson said the moratorium would expire in October and was not renewable. If Council did not pass the ordinance for first reading that evening, there would be a window with no ordinance. He asked whether the removal of any fee chargeable to the property owner would cause the ordinance not be a legitimate first reading.

City Attorney Hynes said changes could be made that evening and the ordinance could be introduced.

Vice Mayor Carlson said the time had come to move forward, i.e., introduce the ordinance for first reading so protection of the artifacts would not be lost. He urged his colleagues to pass the ordinance that evening with the deletion of all fees to the property owners. The General Plan Committee could review the ordinance at a latter date.

Council Member Jerry Carlson believed in preservation and wanted to see the artifacts stay in Atherton; however he did want to make a hasty decision because of deadlines. He wanted the ordinance to be more readable and understandable.

City Attorney Hynes recommended striking the fee provisions, introducing the ordinance that evening, adopting the ordinance at the second reading, and then sending it back to the General Plan Committee for review.

Council Member Janz said Council should make the changes that were suggested that evening. He did not want penalty fees for violations to be eliminated. He moved for first reading the following:

MOTION – to introduce for first reading Ordinance No. 567, “AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING CHAPTER 8.14 REQUIRING PRESERVATION OF HISTORICAL ARTIFACTS WITHIN THE TOWN OF ATHERTON,” with the following changes: 1) Eliminate Section 8.14.083, Fee Schedule, for actions taken by the property owners; 2) Clarify Section 8.14.052, Criteria, that artifacts must meet the criteria for Item No. 1 and at least one of the remaining criteria listed as Item Nos. 2, 3, and 4; and 3) Regarding Item No. 4, Local Significance, artifacts must meet the criteria of either subsection a or b and c. Further, direction was given to the General Plan Committee to pursue creating a public trust or foundation to solicit funds for the purpose of acquiring the artifacts for the Town. Additionally, staff was asked to prepare a flow chart to help clarify the ordinance.

Council Member Janz said the Town did not have a “building” historic preservation ordinance because there were not many buildings left that would qualify. Property owners had a public trust to deal properly with artifacts that provide aesthetic, artistic, and historic benefit to the Town and its future generations.

Council Member McKeithen supported no fees for the property owner. She thought Mr. Rasmussen’s suggestion of creating a public trust was a good one and suggested direction be given to the General Plan Committee to look into creating a public trust to determine whether any owners were willing to donate items to the Town. Staff was asked to prepare a flow chart at the beginning of the ordinance.

Mayor Marsala wanted to see how Hillsborough’s ordinance compared with Atherton’s and how it might be applied. He thought that a foundation to solicit funds and to acquire items was more appropriate with a voluntary ordinance.

M/S Janz/A.Carlson

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

Mayor Marsala called a recess at 11:00 p.m. The meeting was reconvened at 11:05 p.m.

19. INTRODUCTION OF AN ORDINANCE TO AMEND THE LENGTH OF THE CONSTRUCTION TIME ORDINANCE

Deputy Town Planner Lisa Costa Sanders presented a brief staff report. The amendment was a minor change to redefine what a project was. Staff recommended that term “project” be defined in the ordinance as all the work on the site, taking the largest square footage to apply to the length of construction.

Mayor Marsala said what would happen to the person who built a house and decided to build an accessory structure four months later.

Deputy Town Planner Costa Sanders said the majority of the projects that came through the Building Department typically had one permit issued for an entire project. A possible alternative would be to set a time limit, a one-year break, before another project could start.

Vice Mayor Alan Carlson said most projects were submitted in their entirety and, as part of the plan, a conditional use permit was applied for to occupy an accessory structure for more than 30 days, resulting in continuous-stage construction which the ordinance was trying to prevent. He asked what would happen to someone who built a house and then legitimately decided to build something else six months later.

Council Member McKeithen suggested that the Planning Commission could become involved to provide flexibility depending upon the circumstances to allow further construction. The Planning Commission’s decision could also be appealed to the City Council

Vice Mayor Alan Carlson suggested adding a presumptive time period, i.e., once a project was completed, another project could not be started within 18 months or 2 years with the proviso that during the presumptive time period, the Planning Commission could waive the requirement.

Council Member Jerry Carlson suggested sending the item back to staff for further review.

Council Member Janz agreed.

Mayor Marsala opened the public hearing.

Melinda Tevis, Tallwood Court, spoke regarding ongoing constructions projects near her home. She suggested that the Planning Commission be given the ability to stagger those projects.

Suzanne Saunders, Stockbridge Avenue, spoke regarding smaller projects, under 5,000 square feet, and the impact to construction time due to unintentional delays.

Carol Flaherty, Camino Por Los Arboles, fully supported the time limits on construction. However, she queried whether a pool, landscaping, or a retaining wall should be considered a part of the project. She thought the time limits should be applied to the physical structures.

David McAdoo, Menlo School, commented on non-residential construction and the ability to get waivers for a school campus.

Council Member Janz said schools had a conditional use permit requirement.

Mayor Marsala closed the public hearing.

MOTION – to return the item to the General Plan Committee for further consideration; to add a presumptive time period, i.e., once a project was completed, another project could not be started for 18 months or 2 years, with the proviso that during the presumptive time period, the Planning Commission could provide flexibility to allow further construction and waive the time period; and to bring the item back to the City Council for introduction.

M/S McKeithen/A.Carlson

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

Deputy Town Planner Lisa Costa Sanders clarified that that Atherton Municipal Code was the authority on the number of members for the General Plan Committee (up to five residents) and the Residents' Handbook was inconsistent with the municipal code.

Ms. Tevis asked whether a member of the committee should recuse himself/herself if he/she had a personal interest in an item on the agenda.

City Attorney Marc Hynes said that because the General Plan Committee was an advisory group, members did not need to recuse themselves. They were not obliged to step down through state law or the Town's Conflict of Interest Code.

"Speaker," spoke regarding the process for selecting members of the General Plan Committee. She was concerned by the number of homeowners/developers on the committee.

24. ADJOURNMENT

Mayor Marsala adjourned the meeting at 11:40 p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**