



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON
CHANNEL DRAINAGE DISTRICT
May 18, 2005
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Conwell called the meeting to order at 7:07 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

PRESENT: James R. Janz
Charles E. Marsala
Alan B. Carlson
William R. Conwell
Kathy McKeithen

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

3. **PRESENTATIONS**

- a. **Recognition of Outgoing Committee Members**

Mayor Conwell presented Certificates of Appreciation to outgoing Committee Members Robert L. Jenkins, Audit Committee; Lida Urbanek, General Plan Committee; Phil Thaire, General Plan Committee; and Leo Joseph, MidPeninsula Community Media Center (not present).

- b. **Presentation of ISA Gold Leaf Award to Atherton Tree Committee**

Ray Morneau, Vice President of the Western Chapter of the International Society of Arboriculture, recognized the Atherton Tree Committee with a plaque for its outstanding Arbor Day activities. Shirley Carlson accepted the award on behalf of the committee.

Kathy Hughes Anderson commended the volunteers, past and present, which comprised the Atherton Tree Committee.

City Manager Jim Robinson recognized Kathy Hughes Anderson for her work as the Town Arborist and for organizing participation in various events.

- c. Proclamation Declaring “West Nile Virus and Mosquito and Vector Control Awareness Week,” to be presented to Doris Kellett, Atherton Representative to the San Mateo County Mosquito Abatement District**

Mayor Conwell presented the proclamation to Doris Kellett. Ms. Kellett noted the mosquito abatement technicians had doubly sprayed most of the mosquitoes, particularly in the swamp areas.

3. COUNCIL REPORTS

- Council Member McKeithen attended the Office of Emergency Services (OES) meeting. The budget was approved and assessments were based on many emergency services including the removal of hazardous materials. Atherton had challenged the 50/50 split of population vs. real estate values to determine fees. The OES performed services including finding oil reserves in case of pipeline problems, participated in the Mosquito Abatement District with regards to West Nile Virus and other activities, and maintained medical supplies in the event of a disaster.**
- Council Member Janz reported a number of Caltrain meetings were held during the month. At the Transportation Authority Board meeting, a commitment was made to continue the funding for the design work to make the Atherton Station a non-holdout station. A request was made to allocate money in next year’s budget for the necessary construction at the station. Discussions were taking place with representatives of the Caltrain operating system and the Joint Powers Board (JPB) to preserve some limited train service in Atherton, along with shuttle service to connect Atherton to other stations.**
- Vice Mayor Marsala attended the Library Joint Powers Board meeting. Libraries in the County were funded through property taxes. Because Atherton’s Library budgeted efficiently, surplus funds were available to improve the Library. On Friday, May 13, Vice Mayor Marsala spoke at the Atherton Dames’ luncheon and with the Sisters of the Sacred Heart of Menlo regarding the upcoming parcel tax election. Additionally, he met with staff regarding statistics on police activity since 1999 and parcel tax projects during the past four years. Vice Mayor Marsala was scheduled to speak at the annual Atherton Civic Interest League (ACIL) meeting on Thursday, May 26, with a focus on the parcel tax, the State of the Town, and the initiative process at the State level. He had dinner with John Russo, President of the League of California Cities, who was responsible for Measure 1A which stopped the State from raiding monies from cities. He noted three Governors passed through Atherton during the past week: Governor Christine Todd-Richmond, New Jersey; Mark Warner, Virginia; and Mike Huckabee, Arkansas.**
- Council Member Carlson had nothing to report.**

- **Mayor Conwell attended the San Francisco Airport Roundtable meeting. Atherton had the greatest number of noise complaints, 200+, all from one individual. There was nothing noteworthy to report from City/County Association of Governments (C/CAG). He was saddened to report the San Mateo Criminal Justice Commission was being phased out as of December 31, 2005. Comprised of the Sheriff, District Attorney, elected officials, judges, and members of the Probation Department, the Commission, after 25 years, was being forced out of service due to reduced funding. He was unable to attend the annual meeting of the ACIL, and Vice Mayor Marsala would be presenting the State of the Town Address. Mayor Conwell participated in the Menlo College graduation and executed two aerial salutes.**

4. PUBLIC COMMENTS

Gertrude Blue, Atherton, spoke regarding a newly constructed home neighboring her property. The large structure overlooked her swimming pool and intruded on her privacy. She requested help to encourage the property owner to put in early landscape screening. She recommended that Council revisit the Building Code to determine whether anything could be changed regarding non-conforming sites.

Following Council questions, direction was given for Town Arborist Kathy Hughes Anderson to prepare a report for the City Council meeting of June 15, 2005, on the landscape screening requirements for the property at 77 Flood Circle.

Jerry Carlson, President of the Atherton Civic Interest League (ACIL), announced the annual State of the Town Address was scheduled for Thursday, May 26, at Holbrook-Palmer Park Pavilion. The Redwood City School District Parcel Tax failed to receive the necessary 2/3-majority vote; the vote in Atherton was 57.2% in favor. The ACIL Board met and he thanked Council Member Janz for his work on Caltrain issues. ACIL made a \$1000 donation to the Holbrook-Palmer Park Foundation to supplement a grant to improve the pathways. Finally, he urged Council to take a visible role in passing Measure W.

Mayor Conwell urged everyone to vote “yes” for the renewal of Atherton’s Parcel Tax, a tax-deductible item.

Paul Quinlan, Atherton, spoke regarding the development at 50 Ashfield Road. He believed the recent Certificates of Compliance for a three-lot subdivision were improperly issued. After a brief history of the property, he stated in 1989, a developer asked the Town to issue Certificates of Compliance for the same three lots on the property, and the Town denied the request because the lots did not comply with the State of California Subdivision Map Act. In 2005, the Building Official issued three certificates to a new developer, one of which states the lots conform to the State of California Subdivision Map Act. Mr. Quinlan took exception to that fact. He submitted a comprehensive written report to the Council on the issue.

Council Member Carlson suggested the matter be referred to the City Attorney for review.

City Attorney Marc Hynes confirmed no action could be taken that evening. He would review the Certificates of Compliance and prepare a report for City Council review.

Dr. Patricia Engasser, Atherton, presented Council a copy of the letter her attorney sent to the Town in 1990 requesting notification of any changes being considered to the property. Her property is adjacent to 50 Ashfield Road and would be affected by any development that occurred. (A copy of her letter was now on file in the City Clerk's Office.)

Julie Quinlan, Atherton, said many people were concerned about the issue. As an attorney, she noted that case law did not bar a city from acting to correct a mistake.

Eric Hanson, Atherton, said he and his neighbors were concerned that the developer was moving too quickly and urged Council to expedite the process before something unfortunate occurred.

Alice Hanson, Atherton, was a longtime resident and supported the Town and its activities. She thanked Council for listening to everyone's concerns and reminded the members that developers walked away, but residents stayed.

After questions and clarifications of the Council, direction was given to the City Attorney to review the Certificates of Compliance regarding 50 Ashfield Road, to prepare a report and share the draft report with Mr. Quinlan, and to forward the final report to Council by Friday, May 27, 2005. Further, if the City Attorney determined an error was made, the City Manager should poll the Council to determine if a Special Meeting of the Council should be called.

6. STAFF REPORTS

- Public Works Director Duncan Jones said three of four permits had been received to begin the Upper Atherton Channel repairs. The California Department of Fish and Game needed to respond by May 22 or the permit would issue. Construction plans would be presented to Council at the June 15, 2005, meeting with an award of contract at the July 20, 2005, meeting. Council Member McKeithen requested that Dr. Beekley be notified when construction was to begin.
- City Attorney Marc Hynes reported out of Closed Session as follows:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of litigation pursuant to Government Code Section 54956.9(c):
2 potential cases

No reportable action was taken.

Atherton Municipal Code and the Subdivision ordinance. The applicant indicated he would meet all the conditions within the two-year period. The main residence had been moved to meet the current setback requirements. A few smaller structures on the access portion of the flag lot needed to be removed prior to acceptance of the Final Parcel Map. Staff was recommending approval of the Tentative Parcel Map.

Mayor Conwell opened the Public Hearing.

Frank Merrill, applicant, noted his intention to comply with the conditions of the Tentative Parcel Map.

Mayor Conwell closed the Public Hearing.

MOTION – to approve the Tentative Parcel Map for the subdivision of one parcel into two parcels at 64 Moulton Drive based on the findings and for the reasons stated in the staff report dated May 18, 2005.

M/S Carlson/Marsala

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

13. INTERIM ORDINANCE REGARDING HISTORICAL ARTIFACTS

City Attorney Marc Hynes presented the staff report. The Interim Ordinance before the Council would extend the moratorium that was adopted at the City Council meeting of April 20, 2005. Since that meeting, the Town had engaged the services of a consultant with a background in historic preservation. In order to continue the moratorium, a 4/5 vote was required to adopt the ordinance. The ordinance before the Council would not only protect the items listed in Exhibit A, but also could expand/contract Town-wide to include/exclude other properties.

Deputy Town Planner Lisa Costa Sanders noted Public Hearing Notices had been posted and mailed to property owners listed in Exhibit A as required by law.

In response to Council Member Carlson, City Attorney Hynes said the final ordinance would require a hearing before the Planning Commission. Deputy Town Planner Costa Sanders said staff received a draft proposal from the historic consultant. The process would begin by building a team of volunteers to inventory artifacts using County and local resources to authenticate and document the artifacts. Two community meetings would be held to gather input, the artifacts would be evaluated against state and federal criteria, and regulations would be proposed with tiered implementation measures. The process would take two to three months and would be a Town-wide approach.

After a brief discussion regarding the status of the fountain at 42 Flood Circle, Deputy Town Planner Costa Sanders said staff had received an application for a Conditional Use Permit to move the fountain offsite. Staff met with the applicant to discuss mitigation measures to ensure they met the qualifications of the California Environmental Quality Act (CEQA). Alternate mitigation measures were not

proposed in time for the document to be published for the May Planning Commission meeting. Since that time, an application was submitted to keep the fountain onsite; however, the applicant wished to continue with the Conditional Use Permit process to keep the option of moving the fountain offsite. Additionally, the item before the Council was clarified to include the extension of the moratorium and not a discussion of any particular item, e.g., the fountain at 42 Flood Circle.

Mayor Conwell opened the Public Hearing.

John Hanna, Hanna and Van Atta Law Offices, Palo Alto, represented the prospective homebuyer for 42 Flood Circle, questioned whether there ever was a real urgency/emergency to warrant the moratorium. Additionally, in order to extend the ordinance, Council needed to find an immediate threat to the public health, safety and welfare, which he did not believe existed. The Conditional Use Permit process was expensive and lengthy, and he questioned whether Council really wanted to add the burden of the process to property owners who might want to remodel or sell their homes.

Harriett Tuckman, Atherton, Board Member, Lindenwood Homes Association, noted the subject of proposing a historic ordinance had been discussed at the Lindenwood Homes Association long before the present issue arose. She spoke in favor of extending the urgency ordinance.

William Grindley, Atherton, said each historic object was in the mind of the beholder. He believed that Frank Lloyd Wright's house should be on the list, as well as others. He applauded preservation but believed the item before the Council was draconian and should be reconsidered.

Natalie Cardenas, Government Affairs Director, Silicon Valley Association of Realtors, stated she had sent a letter to the Council (on file in the City Clerk's Office) and spoke against the urgency ordinance.

Judy Castaillac, Atherton, spoke in support of extending the moratorium so the artifacts on the list could be studied and a solution that was fair to everyone could be reached.

Neil Rasmussen, Atherton, owner of Item 1 on Exhibit A, spoke against extending the urgency ordinance.

Monique Cannell, Atherton, supported preserving the fountain onsite. She urged Council to vote against extending the ordinance.

Fred Chapman, 42 Flood Circle, spoke on behalf of the trustees of the Virginia Pond Chapman Trust and submitted his comments to Council (on file in the City Clerk's Office). He appeared that evening to "show cause" why the ordinance should not be extended.

Mayor Conwell closed the Public Hearing.

City Attorney Hynes clarified the ordinance before the Council was temporary and not necessarily what would be adopted in permanent form. The items in Exhibit A were a starting point; the items would be analyzed and possibly considered not to have historic value. Unfortunately, CEQA had oftentimes been misused to stall or thwart a project. The Act, itself, talked about analyzing a project, developing information, and circulating the information.

Vice Mayor Marsala was not comfortable going forward due to the number of items on Exhibit A that needed to be reviewed and a number of items that were not on the list but perhaps should be. He wanted to place an item on a future agenda to instruct staff how items should be donated to the Town.

Council Member McKeithen clarified the ordinance was a work in progress. A historical consultant would authenticate the items to determine what was worthwhile and why it was historical. The ordinance before the Council was an ordinance to consider what would become part of a true ordinance and what process should be followed. Individuals would have a say on what should or should not be included and a right to challenge the findings.

Council Member Carlson agreed with Council Member McKeithen. Additionally, he explained that due process was the process by which a matter came before the Council and the status quo was preserved until a final ordinance was put in place. The process was one of balancing private and public interests. With respect to the fountain, he noted that if the property owners wanted to donate the fountain to the Town, they needed to write a letter to the Town, and the City Manager would enter into discussions with the owners.

Council Member Janz agreed with the previous speakers. The Interim Ordinance might appear to be broad and sweeping; however, there was no other way to keep the artifacts safe until the determination was made of whether a permanent ordinance would be enacted.

Vice Mayor Marsala opposed the ordinance. There was a proposal on the table for donating the fountain from Mr. Chapman, and he believed the other issues could be resolved outside of a moratorium.

In response to Council Member Carlson, City Attorney Hynes said Council could direct staff to discuss Mr. Chapman's proposal for donating the fountain to the Town. If an agreement were reached, Council could call a special meeting to exempt the fountain from the Conditional Use Permit process.

After further discussion of the status of Mr. Chapman's proposal to donate the fountain to the Town, the length of time to extend the ordinance, and the public process of developing a permanent ordinance, Council Member Carlson made the following motion:

MOTION – to adopt Ordinance No. 558 extending the urgency measures adopted by the City Council on April 20, 2005, for a period of six months. Interim regulations would require a Conditional Use Permit to remove, alter or demolish any historical item described in Exhibit A to the ordinance.

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

Further, by consensus, the Council requested if a proposal were presented to the Town with respect to the fountain at 42 Flood Circle, that the City Attorney/City Manager engage in discussions and report back to the Council whether that proposal should be accepted and under what conditions and, if necessary, call a Special City Council meeting to consider the proposal.

REGULAR AGENDA (Item 14)

14. REQUEST TO REFER THE REVIEW OF THE NOISE ORDINANCE TO THE GENERAL PLAN COMMITTEE

Council Member McKeithen stated when the Noise Ordinance was discussed previously at the General Plan Committee, various methods of measuring noise levels were reviewed, e.g., ambient vs. peak. She thought the previous consultant could update and/or recommend changes to the General Plan Committee for a minimal cost.

Council Member Carlson said the General Plan Committee decided not to adopt the peak noise level method because it created violations such as the sound of a bouncing basketball. Most ordinances did not use “peak” as the method of measuring noise levels. He was not in favor of sending the item to the General Plan Committee.

Council Member McKeithen said the Police Department had a continuing problem with understanding how to measure. She believed there was no harm in reviewing the issue to assess whether any new methods and/or equipment were available.

Council Member Janz thought the issue should be reviewed.

Mayor Conwell said in deference to the citizens, he was in favor of reviewing the ordinance.

Carol Smith, Atherton, spoke regarding the noise at Menlo-Atherton High School. She said the noise had become significantly different over the past 1-1/2 years. She asked Council to revisit the ordinance and review new methods.

In response to Council’s question regarding officers’ understanding of the Noise Ordinance and the use of meters, Police Chief Bob Brennan said reasons included the Police Department was called upon so infrequently to use the meters, there were a number of new officers needing training, and the training diminished over time.

MOTION – to refer the review of the Noise Ordinance to the General Plan Committee.

M/S McKeithen/Janz

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

15. PUBLIC COMMENTS

There were no public comments.

16. ADJOURNMENT

The meeting was adjourned by Mayor Conwell at 10:22 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk

Minutes Prepared By:

Kathi Hamilton