



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**JANUARY 21, 2009**

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

**REGULAR MEETING**

**Mayor Carlson called the meeting to order at 7:02 p.m.**

**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**PRESENT:** Elizabeth Lewis  
Charles E. Marsala  
Jerry Carlson  
Kathy McKeithen

**ABSENT:** Jim Dobbie (Excused)

**City Manager Jerry Gruber and City Attorney Marc Hynes were also present.**

**3. PRESENTATIONS**

**A. Mayor Jerry Carlson – State of the Town**

**Mayor Jerry Carlson noted the previous day's Presidential Inauguration was a historic event in the country's history with the hope for a new beginning. He believed Atherton residents were also hoping for a new beginning from the Council. He said Council's goal would be to clean up old business as expeditiously and as fairly as possible. On January 30, 2009, Council and senior staff would be holding a study session to discuss key issues facing the Town. The meeting was open to the public and everyone was invited to attend. Some topics for discussion would be: 1) the Town's financial well-being; 2) a new Town Center; 3) passage of Proposition IA, High-Speed Rail; 4) safety concerns such as a west Atherton evacuation plan and safe routes to school; and 4) encouraging greater resident involvement in the community. He was proud that Council had selected a good City Manager who fostered a healthier Council/staff relationship. The next challenge would be selecting a new City Attorney. He believed, with the community's support, Council could bring about a new beginning in dealing with issues and bringing the community**

together, not a good community but a great community. In the words of President Obama, "Yes we can."

**B. Police Department, Officer Sherman Hall, Home Video Surveillance**

Police Chief Glenn Nielsen introduced a new program to the community that would add to its safety and security. The Atherton Police Department was one of the few police departments that accepted direct burglar alarms into its dispatch system. Council approved an upgrade to the video surveillance system in the Police Department that enabled the two systems to be integrated and provide a new service. Chief Nielsen introduced Police Detective Sherman Hall who gave a PowerPoint presentation on the new capabilities of the system. Among other uses, residents would be able to install video cameras on their property that would be tied into the dispatch system in the Police Department. The system would be completely private and only activated if an incident occurred and an alarm was activated. Detective Hall explained the technology aspects of the system, equipment requirements, and cost.

John Ruggeiro, Atherton, said the City Council in Palo Alto accepted a \$120,000 grant to install cameras at intersections. He suggested the Council/staff look into obtaining a grant.

**4. PUBLIC COMMENTS**

Carol Flaherty, Atherton, agreed with the Mayor's earlier comments that the Town needed to develop a spirit of working together; however, she believed the Town's decision to limit business license refunds to two years was not in that spirit. She submitted a letter regarding the issue. She encouraged Council to look at the Town of Roseville's municipal code and California's Tax and Revenue Code rather than relying on the Union City case. She urged Council to reopen the matter and reconsider it.

MaryAn Ackley, Pacific Peninsula Group (PPG), spoke regarding the business license tax that was erroneously assessed from 2003 to 2008. In establishing an arbitrary period to allow refunds, many Town residents were required to bear the economic cost of another error by the prior Finance Director. Over the period from 2003 to 2008, PPG paid over \$204,000 in business license tax. Under Council's refund policy, only \$74,000 would be potentially eligible for a refund. She believed to only go back two years was unfair. She would prefer not to make another legal issue. She urged Council to revisit the two-year limit. Additionally, she urged the Town to take a closer look at road impact fees.

**5. REPORT OUT OF CLOSED SESSION**

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

**A. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Miscellaneous - Teamsters Local Union 856**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Atherton Police Officers Association (APOA)**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.**

**Employee Organization: Management Employees**

**There was no reportable action taken.**

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

**John P. Johns vs. the Town of Atherton CIV 479972 Superior Court of California, County of San Mateo**

**City Attorney Marc Hynes said the Town would defend the litigation.**

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

**Four (4) potential cases**

**The item was not concluded and would be discussed in a Continued Closed Session to be convened at the end of the Regular Agenda.**

**5. CITY MANAGER’S REPORT**

**City Manager Jerry Gruber handed out and reviewed a revised agenda for the City Council/Staff Study Session to be held on January 30, 2009. Additionally, he handed out a second memo regarding a possible Study Session regarding the Town’s finances on February 13, 2009. During that session training mandated by AB-1234, Ethics Training, would also be held.**

**Council Member Marsala recognized a boy scout in the audience who was working on his citizenship badge. He said a policy was needed for a procedure for Council Members to put items on the agenda. He suggested added a discussion to the Study Session.**

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**Atherton Disaster Preparedness Committee – Doug Davivo**

Doug Davivo, current Chair of the Disaster Preparedness Committee, said the committee was working with the Police Chief to upgrade emergency communication capability by constructing an emergency command vehicle equipped with a radio bank that could talk to all the different agencies involved in an emergency. A new Ford Expedition would be purchased for that purpose. An emergency could cut out all landline communications. Additionally, three medical trailers had been fully equipped; one was placed in East Menlo Park, one in Menlo Park, and one at the Atherton Police Department. The next meeting of the committee would take place sometime in February and was open to the public.

**CONSENT CALENDAR (Items 8-27)**

Vice Mayor McKeithen asked that Item No. 15 be placed on the Regular agenda for discussion; Council Member Marsala requested that Item Nos. 8, 10, and 22 be removed for discussion. Council Member Lewis asked that Item Nos. 9, 11, 12, 18, 20, and 25 be removed for discussion.

City Attorney Marc Hynes noted Item No. 23 would be continued because Council Member Marsala and Council Member Lewis were unable to participate due to their residences being within 500 feet of Sacred Heart Schools, resulting in less than a quorum.

Staff clarified Vice Mayor McKeithen's questions on Items Nos. 16, 17, and 19. She noted regarding Item No. 23 that the agreement had a termination provision of 10 days with the consulting firm; however, there was no side agreement with Sacred Heart Schools. Sacred Heart Schools had a number of obligations and there was a need for a side agreement outlining the requirements.

Staff clarified Council Member Marsala's questions on Item Nos. 13, 16, and 27.

**MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 8, 9, 10, 11, 12, 15, 18, 20, 22, and 25, which were removed and placed on the Regular Agenda for discussion; further Item No. 23 was continued to the City Council meeting of February 18, 2009**

M/S McKeithen/Lewis                      Ayes: 4    Noes: 0    Absent: 1 (Dobbie)    Abstain: 0

~~8. — APPROVAL OF MINUTES OF THE SPECIAL CLOSED SESSION MEETING OF DECEMBER 8, 2008, AND SPECIAL CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF DECEMBER 17, 2008~~

~~9. — APPROVAL OF BILLS AND CLAIMS FOR DECEMBER IN THE AMOUNT OF \$1,075,297~~

~~10. — ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE SIX MONTHS ENDED DECEMBER 31, 2008 (To be delivered under separate cover on Tuesday, January 20, 2009.)~~

~~11. — AWARD OF CONTRACT FOR AUDITING SERVICES~~

~~Recommendation: Approve the Professional/Consulting Services Agreement selecting MAZE & ASSOCIATES as the new independent auditor for the Town's Financial Statements for Fiscal Years 2008-09, 2009-10, and 2010-11 with two one-year options to extend.~~

~~12. APPROVAL OF A PROFESSIONAL/CONSULTING SERVICES AGREEMENT WITH NBS FOR A COST ALLOCATION PLAN, FULL COST RECOVERY STAFF HOURLY LABOR RATES, AND COMPREHENSIVE FEE STUDY~~

~~Recommendation: Approve the professional/consulting services agreement with NBS for a cost allocation plan, full cost recovery staff hourly labor rates, and comprehensive fee study; and authorize the City Manager to execute the agreement.~~

13. ADOPTION OF THE CAPITAL ASSETS POLICY

Adopted the attached Capital Assets Policy.

14. APPROVAL FOR THE FINANCE DIRECTOR TO ATTEND THE GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA) CONFERENCE

Approved the Finance Director to attend the GFOA Conference in Seattle, Washington.

~~15. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS~~

~~Recommendation: Approve an Amendment to the Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$97,000 for the remainder of Fiscal Year 2008-09.~~

16. ADOPTION OF A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE MENLO PARK SCHOOL DISTRICT FOR DISTRICT PARTICIPATION IN AN AMOUNT UP TO \$187,167 IN THE COST OF INSTALLING A TRAFFIC SIGNAL ON MIDDLEFIELD ROAD AT ENCINAL AVENUE

Adopted Resolution No. 09-01 approving a Memorandum of Understanding with the Menlo Park School District (MPSD) for District participation in an amount up to \$187,167 in the cost of installing a traffic signal on Middlefield Road at Encinal Avenue.

17. APPROVE AN EMERGENCY SERVICES AGREEMENT WITH WATERWORKS FOR PLUMBING SERVICES FOR THE HOLBROOK-PALMER PARK SEWER REPLACEMENT PROJECT, IN AN AMOUNT NOT TO EXCEED \$63,000

Accepted the proposal and authorized the City Manager to sign an Emergency Services Agreement with Waterworks to provide plumbing services for the Holbrook-

Palmer Park Sewer Project in an amount not exceed \$63,000. The City Manager recommends that competitive bidding be dispensed with under Municipal Code Section 3.16.110(1) and (7).

~~18. AWARD OF CONTRACT TO J. J. NGUYEN, INC. FOR THE HOLBROOK PALMER PARK FOUNTAIN PROJECT NUMBER 08-006~~

~~Recommendation: Award the contract for the Holbrook Palmer Park Fountain Project, Project No. 08-006 to J. J. Nguyen, Inc., the low bidder on the January 8, 2009, bids, for \$68,637.70, with a 10% construction contingency of \$6,863.70, for a total authorization of \$75,501.47; and to authorize the City Manager to sign the contract on behalf of the Town.~~

19. ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING THE APPLICATION FOR LAND AND WATER CONSERVATION FUND FOR THE HOLBROOK-PALMER PARK TENNIS COURT REHABILITATION PROJECT

Adopted Resolution No. 09-02 of the City Council of the Town of Atherton approving the application for Land and Water Conservation Fund (LWCF) for the Holbrook-Palmer Park Tennis Court Rehabilitation project, and committing the required local match of 50%.

~~20. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR STREET RECONSTRUCTION FINAL DESIGN SERVICES FOR THE FLETCHER RIDGEVIEW PROJECT~~

~~Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide street reconstruction final design services for the Fletcher Ridgeview Project in an amount not exceed \$37,596, plus a 10% contingency, for a total authorization of \$41,345.~~

21. ADOPTION OF A RESOLUTION APPROVING AN AGREEMENT FOR DISTRIBUTION OF SAN MATEO COUNTY MEASURE A FUNDS FOR LOCAL TRANSPORTATION PURPOSES IN ACCORDANCE WITH THE 2004 MEASURE A, EFFECTIVE JANUARY 1, 2009

Adopted Resolution No. 09-03 approving an agreement for distribution of San Mateo County Measure A funds for local transportation purposes in accordance with the 2004 Measure A, effective January 1, 2009.

~~22. APPROVAL OF CITY COUNCIL COMMITTEE ASSIGNMENTS~~

~~Recommendation: Approve Council Committee assignments made by Mayor Jerry Carlson~~

~~23. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH CHRISTOPHER A. JOSEPH & ASSOCIATES FOR PREPARATION OF ENVIRONMENTAL IMPACT DOCUMENTS FOR SACRED HEART SCHOOLS~~

~~Recommendation: Approve the attached Professional Services Agreement with Christopher A. Joseph & Associates for the preparation of Environmental Impact documents for the St. Joseph's School reconstruction and other Master Plan projects at Sacred Heart Schools.~~

**24. APPROVE ALLOCATING \$5,000.00 FOR PUBLIC OUTREACH AND CREATING AN INTERACTIVE MODEL FOR THE NEW TOWN CENTER**

Approved a total of \$5,000.00 for public outreach and creating an interactive model for the New Town Center; \$1,000.00, or 20%, to come from the 406 account and \$4,000.00, or 80%, to be funded from the fund balance. The \$4,000.00, or 80%, would be allocated as part of the Mid-Year Budget adjustment.

~~25. REVIEW OF PROPOSAL FROM PMC FOR EXPANDED BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE~~

~~Recommendation: Staff, at the request of the Planning Commission, recommends that the City Council authorize PMC's expanded budget for the zoning code update.~~

**26. PURCHASE OF A DISASTER PREPAREDNESS VEHICLE**

Authorized the Town to "piggy back" on the City of Redwood City's competitive bid in order to purchase one Ford Expedition 4x4 disaster management and recovery police vehicle for the fiscal 2008-2009 budget cycle, for a total cost of \$29,007.06.

**27. REORGANIZATION OF THE ADMINISTRATION OFFICE AND FINANCE DEPARTMENT (Continued from the City Council meeting of December 17, 2008.)**

Approved the City Manager's request for the following: 1) Eliminate the 0.5 FTE City Clerk position; 2) Assign responsibility for City Clerk duties to the Assistant City Manager; 3) Add 1.0 FTE Executive Assistant/Deputy City Clerk position per attached Job Description; 4) Eliminate the 1.0 FTE Assistant Finance Director position; 5) Add 1.0 FTE Accountant position per attached Job Description; 6) Increase the Finance Assistant position from 0.50 FTE to 0.60 FTE; 7) Layoff 0.25FTE Office Assistant position due to a lack of work at that level; 8) Approve salary range for Executive Assistant/Deputy City Clerk; 9) Approve salary range for Accountant

**PUBLIC HEARINGS (Item 28)**

**28. MENLO SCHOOL PHASE III DEVELOPMENT PROJECT AND SEPARATION FROM MENLO COLLEGE; INCLUDING AN INITIAL STUDY, MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM, ZONING ORDINANCE AMENDMENT AND TENTATIVE PARCEL MAP (50 VALPARAISO AVENUE AND 1000 EL CAMINO REAL – APN 070-360-070 and 070-250-190)**

Council Member Marsala recused himself from the item because his residence was within 500 feet of the subject property.

Mayor Carlson opened the public hearing.

Deputy Town Planner Lisa Costa Sanders presented the staff report. A request for a Tentative Parcel Map, ordinance amendment, and a division of the property currently owned by Menlo School and Menlo College was before the Council. The existing site was approximately 58.7 acres in area. The proposed subdivision would create four parcels: one parcel would be 16.4 acres for the Menlo School campus; a 7-acre parcel of identical size to the original subdivision on Leon Way would contain the Menlo College president's home; a 20-acre parcel would be utilized for Menlo College; and a 5.6-acre parcel would continue to be a shared-use parcel. The Tentative Parcel Map did not include the 50-acre parcel that was used as Cartan field. The new property line would be located approximately 10 feet from some of the existing buildings on campus. The applicant was requesting an ordinance amendment to the PFS District that would allow a 10-foot side- and rear-yard setback only when a private or public school abutted another private or public school. Staff prepared a Mitigated Negative Declaration with a Mitigated Monitoring Plan. At its December 3, 2008, meeting, the Planning Commission voted to recommend that the Council approve the Tentative Parcel Map and the ordinance amendment. The Commission also approved the Mitigated Negative Declaration, a Conditional Use Permit (CUP), and a Heritage Tree Removal Permit. The CUP included a new gymnasium building, a new performing arts theater, a new science and arts building, the demolition of some of the existing structures, and a temporary campus that would be located in the middle loop road for Menlo School. A condition of approval for the parcel map required the school and the college to apply to rezone portions of the property, specifically the president's home on Leon Way, as well as a portion of the Menlo School parcel along Valparaiso Avenue where the parking lot was located. The application would need to be applied for before the Council accepted the Final Parcel Map. Additionally, Condition 6 related to the separation and external openings in the existing buildings with the new property line. The architect had prepared the study to see if the buildings complied with the current building code. Some alterations might be needed, and Menlo School suggested alternate language that was included in Council's packet. Staff and the City Attorney were agreeable to the additional language with the inclusion of a requirement for a bond. Council was being asked to approve the Mitigated Negative Declaration, to introduce the ordinance, and approve the Tentative Parcel Map. The ordinance required a second reading and would become effective 30 days later. The Tentative Parcel Map would be effective for two years at which time a Final Parcel Map was required to be filed. If the conditions of the Tentative Parcel Map were met, the consulting city engineer would recommend the Council accept the Final Parcel Map for filing which would be recorded in the San Mateo County Recorder's office.

Norman Colb, Head of Menlo School, gave the history of Menlo School and Menlo College, which operated as one institution until July 1, 1994. Since 1994, each had operated as entirely autonomous institutions; however, separating the land had not been accomplished. Both owned the entire land. During the past two years, the school and college entered into serious negotiations culminating in a set of agreements approved by both boards, truly a historic moment, 15 years in the making. Chop Keenan, President of Board of Trustees, was also present.

**Matt Madison, Chair of the Building and Grants Committee for Menlo School and a Member of the Board of Trustees, said the goal over the long term was to provide each school with its academic core campus and to reduce the shared areas. Close consideration was given to the needs of each school and its neighbors. The college had worked with the school to create a mechanism by which emergency vehicles and police and fire personnel had access to the buildings. The setback was designed to build closer together where the college and school abutted each other but did not impact any neighbors.**

**Jeff Berry, Board of Trustees, Menlo School, said a formal working group was created with some of the neighbors that met regularly over the past few years. Other communications also took place related to specific issues that might arise. The design parameters such as noise mitigation, elimination of views, and traffic circulation were some of the topics discussed with neighbors. Last year, discussions centered on proposed hours of use. Currently, there were no outstanding issues with the neighbors.**

**David McAdoo, Director of Operations and Construction at Menlo School, explained Phase III of the project. Some buildings would be renovated, others removed, and others relocated which would establish a new campus core. The activity would be focused and circulated to the center of campus. The buildings were designed to set up not only good circulation for the school campus but also good perimeter access for the college campus. The new athletic center would go a long way to serve both campuses' strong athletic programs, etc. Mr. McAdoo described the other new buildings, the landscape plan, the parcel map, and ordinance amendment. He noted the request to change the setback requirements was to keep the buildings toward the center of campus to contribute to the idea of containing all noise, activity, and circulation in the center of camps. He asked Council to adopt the Mitigated Negative Declaration, to approve the zoning ordinance amendment, and to approve the Tentative Parcel Map with the conditions specified. He responded to Council questions.**

**Mayor Carlson said the Town was interested in lower income housing, and Douglas Village had seven faculty homes. He queried whether they were counted in the Town's Housing Element.**

**Deputy Town Planner Costa Sanders stated the Housing Element was looking at net new construction. Menlo School's Master Plan did show that Douglas Village could be replaced with new housing units.**

**Mr. McAdoo said predicting requirements for faculty housing was difficult. The Douglas Village homes were a vestige of the school's residential institutional past. The requirement to have adults on the property was no longer relevant. The college, however, was a residential institution that had faculty and staff who lived on campus. In response to Mayor Carlson, Mr. McAdoo described the parking plan and programs to handle large crowds. The new athletic center was designed for the Menlo School population and was not rented to the general public.**

**Council Member Lewis had concerns regarding public safety and construction time.**

**Mr. McAdoo said each building had a construction cycle of 14 to 16 months. The original plan was to do it all at once; however, construction was based on fundraising. A**

**commitment from the college was that the gymnasium would be the first building constructed. If the economic reality was that construction had to be phased, the fact that the gymnasium would be first created a noise barrier for future construction.**

**Council Member Lewis was actually excited about the project and believed the team of experts had created the proper trust among the neighbors.**

**Vice Mayor McKeithen commended the applicants for the completeness of their documentation and efforts for community outreach. Mr. McAdoo responded to her concerns regarding the staging area during construction, described the parking plan, and noted Valparaiso Avenue would not be impacted. She suggested adding the following wording regarding side- and/or rear-yard setbacks not only to the ordinance amendment but also throughout the other documents, "...limited to that side or rear portion of the property where a PFS District property is adjacent to another side or rear portion." Additionally, in Item No. 32 of the Tentative Parcel Map, i.e., rezoning the R1A District for the president's house, did not include the parking lot rezoning of that portion of the east side of the Menlo School/Valparaiso parking lot, a one-acre parcel from R1A to PFS zoning, and need to be added. The language in the formal motion needed to be changed on Item No. 3 to say, "...as recommended in the Planning Commission's recommended Tentative Parcel Map." Regarding the building code compliance and Tentative Parcel Map work, she queried whether Menlo School was reimbursing the Town for CSG's work. Deputy Town Planner Costa Sanders said a deposit included CSG's time. She also noted the other environmental issues (other than Heritage trees) that were mitigated were listed on Page 34 of the Mitigated Negative Declaration and related to aesthetics for replacement planting, and traffic and transportation during construction time.**

**Louis Paponis, Atherton, said his home was 450 feet from Menlo School's property line. He had worked very closely with the school over the past 10 to 12 years and was part of the neighborhood committee. He spoke very highly of the courtesy of the staff and manner in which they followed through on recommendations. They did everything they could to mitigate any concerns, were very sincere, and straightforward. He urged Council to approve the project.**

**Mayor Carlson closed the public hearing.**

**MOTION – to make the findings outlined in the Staff Report, take the following actions and approve the Tentative Parcel Map with the conditions listed in the Draft Approval Certificate: 1) Adopt the Initial Study, Mitigated Negative Declaration and Mitigation Monitoring Program Dated November 14, 2008; 2) Introduce the Ordinance, the Zoning Ordinance Amendment providing for a 10-foot side- and rear-yard setback where two schools abut; and 3) Approve the Planning Commission Recommended Tentative Parcel Map for division of the property into four new parcels with conditions recommended in the Planning Commission Approved Certificate of Approval, with the changes suggested by Vice Mayor McKeithen**

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

**REGULAR AGENDA (Items 29-33)**

**29. CONSIDERATION AND ADOPTION OF A RESOLUTION APPROVING THE OUTSOURCING OF COLLECTION OF BUSINESS LICENSE TAX TO MUNISERVICES, LLC, AND ADD-ON A BUSINESS LICENSE PROCESSING FEE**

**Finance Director Louise Ho presented the staff report. Staff had recommended to the Finance Committee the outsourcing of the Town's business license administration/ collection to MuniServices, a firm specializing in government taxation. Finance Director Ho highly recommended MuniServices as she had first-hand experience with the firm in her former position. The outsourcing of the business license tax required an annual processing fee of \$25 per fiscal year. The processing fee was not a tax and could be passed on to the actual cost of issuing and administering the business license process. The taxpayer could always contact Town staff with questions or issues. Finance Director Ho responded to Council questions. Representatives from MuniServices were also present to answer Council questions.**

**Carol Flaherty, Atherton, said the first issue regarding the business license tax was not yet resolved, and she thought it was ill advised to hire MuniServices if it was the foundation for providing advice on the matter. She also noted due to the inability to get a construction loan, she doubted there would be much volume in business licenses. Additionally, she questioned the need to outsource the business license collection to a third party when the information could be administered through the computer system the Town recently acquired.**

**A discussion ensued regarding customer service-type issues surrounding the outsourcing of the business licenses.**

**City Manager Jerry Gruber said outsourcing the business license administration/ collection was an opportunity to consolidate and become more efficient and effective.**

**Vice Mayor McKeithen said the agreement referred to an addendum, and she thought it should refer to Exhibit A, Section 3A, as amended from time to time. Page 8 needed clarification on mailing notices to the Town, Compensation 3.1 needed to refer to Exhibit A, Section 3A, as amended from time to time, the fifth "Whereas" in the resolution the word "fee" needed to be changed to "fees."**

**Council Member Lewis queried how many fees did the Town actually need to manage and thought Ms. Flaherty made a good point. Construction activity was in decline.**

**Finance Director Ho said staff was compiling that number. MuniServices was taking a risk with the current economy because there was no minimum fee.**

**MOTION – to adopt Resolution No. 09-04 of the City Council of the Town of Atherton approving the consultant services agreement by and between the Town of Atherton and MuniServices, LLC, with changes noted by Vice Mayor McKeithen, and add on a business license processing fee**

**Council Member Marsala said he was concerned with the \$25 processing fee being passed on to the consumer.**

Vice Mayor McKeithen was hopeful for better recordkeeping and freeing up staff time to work on other issues.

M/S McKeithen/Marsala Ayes: 3 Noes: 1 (Lewis) Absent: 1 (Dobbie) Abstain: 0

**30. CONSIDERATION AND APPROVAL OF AN INVESTMENT ADVISORY AGREEMENT – NON-DISCRETIONARY WITH MBIA MUNICIPAL INVESTORS SERVICE CORPORATION; AND AUTHORIZE THE CITY MANAGER TO SIGN THE AGREEMENT**

City Manager Jerry Gruber said the item was discussed at length at a Finance Committee meeting and was the next step in the Town's revised Investment Policy.

Finance Director Louise Ho presented the staff report. Currently, the Town's Investment Policy was being managed by the City Manager and the Finance Director. With the current economic conditions and financial climate, staff was trying to determine how to best invest the Town's funds and, at the same time, achieve safety, liquidity, and yield. Finance Director Ho explained the process and reasons by which MBIA was selected, as well as the services to be provided.

Gay Eishoff, MBIA representing the West Coast, said the customized asset management system was designed specifically for public agencies. Over the years, MBIA had written hundreds of investment policies. Reports were designed specifically for public agencies. Compliance reporting was in compliance with State code and various governmental accounting standards. The portfolios MBIA had been managing for several years were in good shape and poised to weather a downturn. As of November 30, 2008, performance returns were in the 3.9% to 4% range. Ms. Eishoff responded to Council questions.

Discussion ensued regarding the steps necessary to implement the program.

**MOTION – to approve the investment advisory agreement – non-discretionary with MBIA Municipal Investors Service Corporation and Authorize the City Manager to Sign the Agreement**

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

**31. REVIEW AND GIVE DIRECTION TO STAFF REGARDING A COMMENT LETTER ON THE SCOPE OF STUDY FOR THE CALIFORNIA HIGH SPEED TRAIN PROJECT LEVEL EIR/EIS FROM SAN FRANCISCO TO SAN JOSE**

Public Works Director Duncan Jones presented the staff report. Last week, the High-Speed Rail Authority (CHSRA) met and set out a schedule. Two scoping sessions would be held the next day, one designed for municipal people in the afternoon, and one for residents in the evening. Comments on the scope of the EIR/EIS were due March 6, 2009. A draft letter was prepared with the help of Jack Ringham that was reviewed at the Rail Committee meeting. The Rail Committee suggested the Town should prepare comments to the responses to comments that were received from the CHSRA on original comments to the program-level EIR. The next step was to

incorporate the Town's comments, responses, why the responses were inadequate, and what the Town wanted CHSRA to do to address the inadequacies. The Rail Committee wanted to know whether the Council had any other hot buttons to get into the comments. The next three weeks would be spent compiling the information into the letter.

Council Member Marsala said the letter was very comprehensive. He noted Prop 98 said that 39% of the State budget went to education and was indexed at 45%. He queried whether the \$10 billion needed for CHSRA would have a set-aside component for Prop 98.

Public Works Director Jones said the Rail Committee discussed issues like that and thought they were out of the scope of an EIR. He said there would be an opportunity to make any kind of comments to the CHSRA at the public hearings.

Discussion continued regarding various aspects of CHSRA including mitigation costs, alignment alternatives, etc.

No action taken.

32. **ADOPTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE FREIGHT CHECKERS, CLERICAL EMPLOYEES AND HELPERS, LOCAL UNION NO. 856 (TEAMSTERS REPRESENTING MISCELLANEOUS TOWN EMPLOYEES) AND THE TOWN OF ATHERTON FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2009** *(Continued from the City Council meeting of December 17, 2008.)*

City Manager Jerry Gruber said the previous Memorandum of Understanding (MOU) covered the period of July 1, 2005 through June 30, 2008. The Town's Management Team met and conferred with the union representatives and reached agreement. The attached MOU reflected the proposed agreement and would be retroactive. The MOU would be effective from July 1, 2008 through June 30, 2009.

Vice Mayor McKeithen said she had asked for Item No. 32 and Item No. 33 to be continued in order to provide for public comment. None was received.

**MOTION – to adopt the MOU for the period of July 1, 2008 through June 30, 2009**

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

**33. ADOPTION OF A RESOLUTION ADOPTING SALARIES AND BENEFITS FOR MANAGEMENT STAFF FOR FISCAL YEAR 2008-09 THROUGH June 30, 2009 (Continued from the City Council meeting of December 17, 2008.)**

City Manager Jerry Gruber said the previous resolution covered the period from July 1, 2005 through June 30, 2008. The Town's Management Negotiating Team met with mid-management representatives regarding a new agreement. The new resolution reflected the proposed agreement and would be effective from July 1, 2008 through June 30, 2009, and was retroactive.

**MOTION – to adopt Resolution No. 09-05 adopting salaries and benefits for Management Staff for Fiscal Years 2008-09 through June 30, 2009**

**M/S McKeithen/Lewis                      Ayes: 4    Noes: 0    Absent: 1 (Dobbie)    Abstain: 0**

**8. APPROVAL OF MINUTES OF THE SPECIAL CLOSED SESSION MEETING OF DECEMBER 8, 2008, AND SPECIAL CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF DECEMBER 17, 2008 (Removed from the Consent Agenda and placed on the Regular Agenda for discussion.)**

Council Member Marsala thought the report of action taken out of Closed Session on December 17, 2008, was not as he remembered it regarding subcontractors. It stated, "Refunds would be offset by the annual amount of \$250 per general contractor and \$150 for subcontractors and those contractors must be identified by the claimant."

City Attorney Marc Hynes recalled part of the issue was making sure that subcontractors were identified. Anyone filing a claim for a tax refund was obliged to provide the information.

A discussion centered on whether or not to revisit the item in Closed Session. The minutes would not change since they accurately reflected what was reported out of the December 17, 2008, Closed Session. Council could discuss the issue in a subsequent Closed Session.

**MOTION – to approve the Special City Council Closed Session minutes of December 17, 2008**

**M/S Carlson/McKeithen    Ayes: 2    Noes: 1 (Marsala)    Absent: 1 (Dobbie)    Abstain: 1 (Lewis)**

The minutes were approved since an abstention went along with the ayes.

**MOTION – to approve the Special City Council Closed Session minutes of December 8, 2008, and the Regular City Council minutes of December 17, 2008**

**M/S McKeithen/Lewis                      Ayes: 4    Noes: 0    Absent: 1 (Dobbie)    Abstain: 0**



**12. APPROVAL OF A PROFESSIONAL/CONSULTING SERVICES AGREEMENT WITH NBS FOR A COST ALLOCATION PLAN, FULL COST RECOVERY STAFF HOURLY LABOR RATES, AND COMPREHENSIVE FEE STUDY**

Council Member Marsala asked whether the scope of services included using a valuation method of determining building permit fees as opposed to the \$350 per square foot currently charged.

Building Official Mike Wasmann indicated it would be addressed in the Master Fee Study. The \$350 per square foot currently in the resolution pertained to new construction. The valuation method was for remodels.

Finance Director Louise Ho clarified the fee study was to look at all the fees the Town was currently charging including the building fees. The consultant was fully apprised of the issues. The cost allocation plan would be brought back to Council in 60 days for approval, which was the first step in setting the fees and hourly rate. Thirty days later the fee study would be returned to Council.

Council Member Lewis noted more and more money was being appropriated for unbudgeted expenses. The mid-year adjustments seemed to grow and grow. She noted a need to proceed cautiously and to ask whether the item was absolutely necessary.

Council concurred the studies were needed and would ultimately cost the Town more in loss of credibility and legal expenses if they were not done.

**MOTION – to approve the professional/consulting services agreement with NBS for a cost allocation plan, full cost recovery staff hourly labor rates, and comprehensive fee study; and authorize the City Manager to execute the agreement**

**15. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS**

Vice Mayor McKeithen asked whether there was a way to recover more funds from past projects than had been collected.

Public Works Director Duncan Jones said CSG looked at what their actual costs were for the fees they charged and reported the Town was not sufficiently recovering on each project. Staff considered implementing CSG's recommended fees. However, with the upcoming fee study, staff thought having an independent party review the fees would be a better way to go. Staff discussed the issue with the potential consultant who suggested using a graduated fee based on project size.

Vice Mayor McKeithen was concerned that the additional \$97,000 would not be recoverable without an appropriate fee.

**MOTION – to approve an Amendment to the Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$97,000 for the remainder of Fiscal Year 2008-09**

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

**18.    AWARD OF CONTRACT TO J. J. NGUYEN, INC. FOR THE HOLBROOK PALMER PARK FOUNTAIN PROJECT NUMBER 08-006**

**Council Member Lewis was concerned about another huge expense for the Town and suggested moving the money to the tennis court project.**

**Public Works Director Duncan Jones said the fountain was a historic fountain that had been located in front of the Main House at Holbrook-Palmer Park. The fountain was in disrepair, had been restored, and was waiting to be reinstalled. The money was in the budget for 2008-09.**

**MOTION – to award the contract for the Holbrook Palmer Park Fountain Project, Project No. 08-006 to J. J. Nguyen, Inc., the low bidder on the January 8, 2009, bids, for \$68,637.70, with a 10% construction contingency of \$6,863.70, for a total authorization of \$75,501.47; and to authorize the City Manager to sign the contract on behalf of the Town**

**M/S Lewis/Carlson                      Ayes: 4    Noes: 0    Absent: 1 (Dobbie)    Abstain: 0**

**20.    APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR STREET RECONSTRUCTION FINAL DESIGN SERVICES FOR THE FLETCHER-RIDGEVIEW PROJECT**

**Council Member Lewis said \$1.5 million from Measure A and road impact funds had been budgeted for street reconstruction work in fiscal year 2007-08. She queried what would happen if funds from the road impact fee would need to be refunded.**

**Public Works Director said the fiscal year was actually 2008-09. He noted the project was the highest priority project currently and would use approximately \$500,000. Other projects would be delayed if revenues were inadequate.**

**MOTION – to accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide street reconstruction final design services for the Fletcher-Ridgeview Project in an amount not exceed \$37,596, plus a 10% contingency, for a total authorization of \$41,345.**

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

**22. APPROVAL OF CITY COUNCIL COMMITTEE ASSIGNMENTS**

**Council Member Marsala wanted to discuss changing the role of the Screening Committee.**

**Mayor Carlson thought the issue should be discussed at the upcoming Study Session. He thought the Screening Committee should do all the interviewing or be eliminated.**

**Council Member Marsala noted the Mayor had listed alternates for the Council standing committees, which had actually been voted down in 2006. The issue should be revisited. He also believed there was a need to rotate representatives on the Finance Committee. A fresh set of eyes might be a good idea. The committees could be ranked as to their importance and power and all Council Members should have an opportunity to serve. Additionally, Council Member Marsala noted he was on the agenda to give a presentation as Atherton's JPA representative at the next Library JPA meeting.**

**Mayor Carlson agreed further discussion was needed on assignments; however, he did not want to postpone the item.**

**MOTION – to approve City Council Committee Assignments**

**M/S/ Carlson/McKeithen Ayes: 2 Noes: 2 (Marsala/Lewis) Absent: 1 (Dobbie) Abstain: 0**

**Motion failed.**

**The issue would be placed on a Special City Council meeting for discussion on January 30, 2009.**

**25. REVIEW OF PROPOSAL FROM PMC FOR EXPANDED BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE**

**Council Member Lewis queried how the process could be concluded as she thought there was a lot of redundancy between the General Plan Committee's review and the Planning Commission's review.**

**Council Member Marsala was in favor of approving the item. However, at some point, he would like to see a spreadsheet on all the additional appropriations for consultants, etc.**

**MOTION – to authorize PMC's expanded budget for the zoning code update**

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

**34. COUNCIL REPORTS**

**Council Member Lewis was attending the League of Cities Boot Camp for newly elected Mayors and Council Members and was finding it informative. She was happy to be on the Council.**

**Council Member Marsala suggested, regarding the recent off-leash dog attack, adding the Police Department Dispatch phone number to the signs to report off-leash dogs. He said the Blue Ribbon Task Force met and recommended transferring the excess funds from the general reserves to the Town Center project. Additionally, he wanted the Phase I, II, III audits reviewed by an independent investigator and placed on the agenda for discussion. He would attend the League of Cities Boot Camp the next day as a moderator for city finances. He suggested Council needed an update to the proposed changes to the Heritage ordinance.**

**Vice Mayor McKeithen said the Transportation Committee met and discussed red light cameras, no determination was made, and direction was given to Chief Nielsen to pursue various vendors, etc. She attended the Rail Committee meeting.**

**Mayor Carlson did not have a report**

**35. PUBLIC COMMENTS**

**There were no public comments.**

**36. ADJOURN TO A CONTINUED CLOSED SESSION**

**Mayor Carlson adjourned the meeting to a continued Closed Session at 11:15 p.m.**

**RECONVENE TO CLOSED SESSION**

**Mayor Carlson called the Continued Closed Session to order at 11:20 p.m.**

**RECONVENE TO OPEN SESSION**

**City Attorney Marc Hynes reported out of the Continued Closed Session as follows:**

**Item C, CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9: Four (4) potential cases: On one potential case, the Town will update the 2005 Kimley Horn Road Impact Fee Study. There was no reportable action on the other three potential cases.**

**FINAL ADJOURNMENT**

**Mayor Carlson adjourned the Continued Closed Session at 12:40 a.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**