



MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JULY 21, 2010
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

PLEASE NOTE:

*Times listed on the Agenda are an approximation and not a time certain.
The Council may take up items out of order. Please arrive well in advance
of the time listed for any item in which you are interested.*

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL Lewis, Dobbie, Marsala, McKeithen, J. Carlson

3. PRESENTATIONS

2009 Green Building Awards

Council Member Marsala and Town Arborist Kathy-Hughes Anderson presented the 2009 green building awards to recognize Town residents and architects who built energy efficient buildings.

The following individuals were recognized with green building award plaques:

- Sacred Heart Schools, 150 Valparaiso
- Leddy Maytum Stacy Architects, DPR Construction
- 84 Lupin Way, Ellen and Marvin Mouchawar, owners
- Young and Borlik Architects, Trinity Development and Construction, Inc.

4. PUBLIC COMMENTS

Jon Buckheit, Atherton resident, suggested Council Member Jerry Carlson obtain an official ruling from the Fair Political Practices Commission (FPPC) on whether he has a conflict of interest when voting on High Speed Rail matters.

5. REPORT OUT OF CLOSED SESSION

June 16, 2010

July 20, 2010

City Attorney Furth said there is no reportable action from the June 16 or July 20 closed session.

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION: (Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9): Three potential cases:

- Claim of Kimberly Sweidy & Raymond Stata
- Claim of Pacific Peninsula Group
- Correspondence from John P. Johns

Furth said Council took action by directing staff to prepare a resolution for the August council meeting rejecting the claim of Pacific Peninsula Group and to provide a legal analysis to Pacific Peninsula Group.

No other action was taken.

B. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION (Subsection (b) of Government Code Section 54956.9):

Jonathan B. Buckheit v. Tony Dennis, Dean DeVlugt, Anthony Kockler, The Town of Atherton, The County of San Mateo, and Jerry Carlson U.S. District Court for the Northern District of California, San Francisco Division, Case No. CV 09-5000

No action taken.

6. CITY MANAGER’S REPORT

City Manager Gruber clarified the handouts that were given to each Council Member before the meeting. Gruber read a thank you letter from Congresswoman Anna Eshoo to the Atherton Police Department for the role they played in the campaign event on Atherton Avenue attended by U.S. Vice President Joe Biden.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

None.

CONSENT CALENDAR (Items 8-22)

Vice Mayor Dobbie removed items 16 and 17 and requested Council take up item 17 earlier on the regular agenda since there were several people who want to be heard.

Council Member Lewis requested removal of items 13, 15, and 21.

Mayor McKeithen had comments on items 8, 14, 16, 19 and 20.

Atherton resident Jon Buckheit requested removal of item 19.

Council Members Lewis and Marsala said they would recuse themselves from item 14 because they both live within 500 feet.

8. APPROVAL OF JUNE 16, 2010 REGULAR MEETING

Recommendation: Approve June 16, 2010 regular meeting minutes

Mayor McKeithen requested that staff begin keeping minutes of the public comments held during closed session.

9. APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY 2010 IN THE AMOUNT OF \$980,199

Recommendation: Approve Bills and Claims in the amount of \$980,199

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE TWELVE MONTHS ENDED JUNE 30, 2010

Recommendation: Receive the General Fund Financial Report for the twelve months ended June 30, 2010

11. ADOPTION OF THE APPROPRIATIONS LIMITS FOR FY 2010-2011

Report: Finance Director Louise Ho

Recommendation: Adopt Resolution 10-37 setting the Appropriation Limit for FY 2010-2011 at \$10,141,898

12. APPROVE 10-38 AMENDING FEES FOR TAPE DUPLICATION AND POLICE REPORTS

Report: City Manager Jerry Gruber

Recommendation: Approve Resolution 10-38 amending the fees for tape duplication and police reports

13. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC. FOR SURVEYING SERVICES FOR THE ATHERTON AVENUE RECONSTRUCTION PROJECT

Report: Public Works Director Duncan Jones

Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Mark Thomas & Associates, Inc. to provide Surveying services for the Atherton Avenue Reconstruction Project in an amount not to exceed \$59,890.00, plus a 10% contingency, for a total authorization of \$65,879.00

Council Member Lewis asked if there were other bids received and how much federal funding would the Town receive.

Public Works Director Duncan Jones said it is required by law to select surveyors dependant upon their qualifications and Mark Thomas was selected in an RFP process. Jones said the federal funding cycle has not yet been completed but it is approximately \$310,000 that would be applied towards the construction.

Mayor McKeithen said the same surveyor has been used since 2007 and wondered if the RFP process should be revised each year. Jones said Mark Thomas was selected as the Towns on-call surveyor and there is no requirement for how often you must do an RFP. McKeithen said she wants to make sure citizens know we are getting the best bid possible and suggested staff look into whether it is time to develop another RFP.

Vice Mayor Dobbie said he is still aghast at the ten percent contingency and in these economic times there should be no contingency.

14. AWARD OF CONTRACT FOR THE STREET RECONSTRUCTION PHASE 7 PROJECT NUMBER 56006

Report: Public Works Director Duncan Jones

Recommendation: Award the contract for Street Reconstruction Phase 7 Project, project number 56006 to JJ Albanese, Inc., the low bidder on the July 7, 2010 bids, for \$352,975.25, with a 10% construction contingency of \$35,297.53, for a total authorization of \$388,272.78; and to authorize the City Manager to sign the contract on behalf of the Town

Mayor McKeithen asked if this project includes any other streets besides Park Lane. Jones said it includes a small construction project on Alejandra for widening of the road.

MOTION by Carlson, second by Dobbie to Award the contract for Street Reconstruction Phase 7 Project, project number 56006 to JJ Albanese, Inc., the low bidder on the July 7, 2010 bids, for \$352,975.25, with a 10% construction contingency of \$35,297.53, for a total authorization of \$388,272.78; and to authorize the City Manager to sign the contract on behalf of the Town. The motion passed.

Ayes: 3 Nays: 0 Recused: 2 (Lewis, Marsala) Absent: 0

Council Members Lewis and Marsala recused themselves from the vote because they live within 500 feet of the project.

15. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC. FOR SURVEYING SERVICES FOR THE HOLBROOK-PALMER PARK SURVEY

Report: Public Works Director Duncan Jones

Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Mark Thomas & Company to provide surveying services for the Holbrook-Palmer Park Survey in an amount not to exceed \$29,965, plus a 10% contingency, for a total authorization of \$32,961.50

Council Member Lewis believed that a survey should wait until after the Town Center Task Force and the Library Steering Committee have completed their tasks because the library may end up in the park which means the survey may be paid through library donor funds.

Public Works Director Jones agreed and said since there is no hurry to complete the survey he would suggest pulling it until further notice.

MOTION by Carlson, second by Lewis to table item 15 until such time Council wishes to reconsider the item. The motion passed unanimously.

18. TOWN CENTER TASK FORCE UPDATE

Report: City Manager Jerry Gruber

Recommendation: Receive and accept update from Town Center Task Force

20. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH THE CITY OF REDWOOD CITY TO PROVIDE INFORMATION TECHNOLOGY SUPPORT

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Approve the agreement for information technology support between the City of Redwood City and the Town of Atherton; authorize the City Manager to execute the agreement

(Continued from June 16, 2010 Council meeting)

Mayor McKeithen said she was told that the Town used less than 200 hours under the past fiscal year contract, and asked if this is still true.

Assistant City Manager Wilkerson said the hours are still under the contracted 200 hours.

Mayor McKeithen suggested that “special project basis,” in the contract be defined. McKeithen asked how staff will monitor the hours and not go over. Wilkerson said the Town is fortunate to have Police Sergeant Sherman Hall to do a lot of the Town’s IT work which helps the Town keep the hours under budget. Wilkerson concluded that the special project basis and rates will be more clearly defined in the contract.

22. AMEND THE CENTERLINE MARKING LIST TO REVISE ATHERTON AVENUE AND FAIR OAKS LANE AT EL CAMINO REAL TO ONE THROUGH/LEFT LANE AND ONE RIGHT TURN LANE

Report: Public Works Director Duncan Jones

Recommendation: Amend the Centerline Marking List to revise Atherton Avenue and Fair Oaks Lane at El Camino Real to one through/left lane and one right turn lane

MOTION by Dobbie, second by Lewis to remove items 16, 17, 19 and 21 and add them to the regular agenda. The motion passed unanimously.

MOTION by Dobbie, second by Lewis to approve items 8, 9, 10, 11, 12, 13, 18, 20 and 22 with the provision to begin recording public comment from closed session on the minutes and clarification of the IT contract with regard to special projects. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

Mayor McKeithen said item 17 will be the first item on the regular agenda. Item 29 and 27 will follow.

PUBLIC HEARINGS (23-25)

23. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 3.16 (PURCHASING POLICY) AND ADDING CHAPTER 3.17 (PUBLIC WORKS CONTRACTING) TO THE ATHERTON MUNICIPAL CODE

Report: Finance Director Louise Ho

Recommendation: Introduce Ordinance amending Chapter 3.16 (Purchasing Policy) and adding Chapter 3.17 (Public Works Contracting) to the Atherton Municipal Code establishing Purchasing Policy for supplies, services and public works contracting. Three votes are required to introduce the Ordinance. A second vote, scheduled at least ten days from the date of this meeting, is required to pass the ordinance.

Finance Director Louise Ho said a revised chapter 3.16 is intended to replace the policy current in the municipal code which was last updated in 1994. Ho added that chapter 3.17 is for public works contracting. Staff is recommending that the Town adopt the State of California Uniform Public

Construction Cost Accounting Act limits for ease of implementation. Currently, the Act allows the use of negotiated contracts for up to \$30,000; written informal quote from \$30,000 to \$125,000; and formal bidding over \$125,000. Currently the bidding limit remains at \$25,000 for informal and \$100,000 for formal approved by the 2009 Finance committee.

Council Member Lewis believed the new Finance Committee should review the revised policy. Vice Mayor Dobbie and Council Member Marsala concurred.

Mayor McKeithen believed the Finance Committee had their hands full with the 5-year financial plan development and because the Auditors thought this was adopted the previous fiscal year Council should move forward quickly.

Finance Director Ho reminded Council that the Auditors are awaiting this policy and the Town should have it ready by mid-September.

MOTION by McKeithen, second by Lewis to approve introduction of ordinance amending Chapter 3.16 (Purchasing Policy) and adding Chapter 3.17 (Public Works Contracting) to the Atherton Municipal Code establishing Purchasing Policy for supplies, services and public works contracting with the condition that the Audit Committee review this before the September Council meeting. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

**24. 150 VALPARAISO AVENUE (APN 070-390-010)
CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR SACRED
HEART SCHOOLS MASTER PLAN**

Report: Town Planner Neal Martin

Recommendation: Adopt the Resolution 10-40 certifying the Final Environmental Impact Report for the Sacred Heart Schools Master Plan Project as adequate and prepared in accordance with the California Environmental Quality Act and adopting the Sacred Heart Schools Mitigation Monitoring Program

Council Members Lewis and Marsala stated they live within 500 feet and would recuse themselves from this item. Lewis and Marsala left the room.

Town Planner Neal Martin said the consulting firm of Christopher A. Joseph & Associates (CAJA) was retained by the City Council to prepare the EIR. A Draft EIR was prepared and released for public review on April 13, 2010.

Martin said the Draft EIR was circulated for a mandatory 45-day public review period for all residents within 500 feet to respond. Martin said there were comments received from Sacred Heart and the City of Menlo Park. The Final EIR was made available for public review on June 11, 2010 and a copy of each response was sent to the person or agency that made a comment. These actions were taken at least 10 days prior to the date when the City Council considers the adequacy of the Final EIR in accordance with the CEQA Guidelines.

Katrina Hardt-Holoch, Town's professional EIR consultant, said the EIR contains a project description and environmental impact analyses of aesthetics, air quality, biological resources, land use and planning, noise and transportation/traffic. Early in the process it was determined that there was no evidence that the project would cause significant environmental effects in certain environmental areas

(e.g. agricultural resources) and no further analysis of those topics was required. Hardt-Holoch said it has been determined that all environmental impacts studied will have no impact, less than significant impact or can be mitigated to a less than significant impact.

On June 23, 2010 the Planning Commission considered the Final EIR at a public hearing and recommended that the City Council certify that the Final EIR has been prepared in compliance with CEQA.

In addition a Mitigation Monitoring Program has been prepared pursuant to CEQA Guidelines Section 15097 that specifies the agency or person responsible for monitoring or reporting on implementation of the mitigation measures described in the EIR. The Mitigation Monitoring Program contains a list of the potential impacts, mitigation measures, the person or agency responsible for implementing the mitigation measures and the responsible monitoring party. It is recommended that the City Council adopt the “Sacred Heart Schools Mitigation Monitoring Program.”

Mayor McKeithen said it is always a pleasure working with Sacred Heart Schools because they are always so thorough in all of their analyses. Vice Mayor Dobbie concurred.

Council Member Carlson agreed. Carlson asked what percentage of students are local and could there be some sort of transportation system to alleviate the roadways.

Sandy Dubinsky, SHS, said the school has approximately 750 families with 150 families from Atherton. Dubinsky said the school currently sends vans to the Menlo Park Caltrain station to pick up students and the school staggers start times and dismissal times.

Mayor McKeithen gave several edits to the resolution. Council accepted all non-substantive edits.

MOTION by Dobbie, second by Carlson to Adopt the Resolution 10-40 certifying the Final Environmental Impact Report for the Sacred Heart Schools Master Plan Project as adequate and prepared in accordance with the California Environmental Quality Act and adopting the Sacred Heart Schools Mitigation Monitoring Program with the edits made to resolution 10-40. The motion passed.

Ayes: 3 Nays: 0 Abstain: 2 (Lewis, Marsala) Absent: 0

25. 150 VALPARAISO AVENUE (APN 070-390-010) CONDITIONAL USE PERMIT FOR WEST FIELDS PROJECT

Report: Town Planner Neal Martin

Recommendation: Make the required findings and approve the West Fields Conditional Use Permit with the conditions recommended in the draft Conditional Use Permit Certificate.

Mayor McKeithen stated for the record that Council Members Lewis and Marsala live within 500 feet and will remain recused until after this item.

Town Planner Neal Martin stated that Sacred Heart School will submit one or more applications for conditional use permits to the Town for approval of the development projects described in the master plan. However, SHS has applied for one conditional use permit to be considered simultaneously with the review of the EIR; that is the West Fields Project.

Martin said while no new facilities are proposed, the existing baseball, soccer and multi-purpose fields are proposed to be relocated and realigned in order to separate the baseball and soccer fields. A multi-purpose field (practice field) is proposed to be constructed southerly of the baseball field. Martin added that the existing Elena parking lot in the western most part of the campus is proposed to be extended towards Park Lane. The extension layout will match the existing lot.

Martin said all of the fields will be replaced using synthetic turf. There are no Heritage Trees impacted by this project and no lights are proposed on any of the fields. Martin concluded that noise impacts associated with the West Fields were analyzed in the Draft EIR and found to be less than significant

Mayor McKeithen asked if any Park Lane residents had any objections to the parking lot being so close. Martin said no objections were received.

McKeithen asked what the projected enrollment is. Martin said 1,196 is the maximum and is what has been projected.

McKeithen gave some non-substantive edits to the conditional use permit.

MOTION by Dobbie, second by Carlson to Make the required findings and approve the West Fields Conditional Use Permit with the conditions recommended in the draft Conditional Use Permit Certificate with the edits made. The motion passed.

Ayes: 3 Nays: 0 Abstain: 2 (Lewis, Marsala) Absent: 0

REGULAR AGENDA (Items 26-30)

17. ATHERTON LIBRARY TASK FORCE RECOMMENDATIONS

Report: City Manager Jerry Gruber

Recommendation: To Be Determined

City Manager Gruber thanked the Library Task Force and the Friends of the Library for working together on getting a list of potential Committee members. Gruber said he recommends Council approve the list and give staff further guidance on next steps.

Carine Risley, Atherton Library Branch Manager said the Library Task Force actively recruited for members of the Steering Committee. Risley said Council has a list of everyone who applied.

Joanne Sanders, Friends of the Library, gave a brief background on how the members were selected and said the Committee will allow anybody from the public who wants to participate at the meetings to do so.

Denise Kupperman said they were under the assumption that the Steering Committee is an advisory committee to the Council.

Council Member Carlson asked whether there are other concerns that need to be addressed further.

City Attorney Furth said the Town has a standard procedure on specifying committees including terms and memberships and all advisory committees are subject to the Brown Act. Furth recommended that Council direct staff to bring back language which would incorporate this new advisory committee into that procedure.

Council Member Lewis said the Town Center Task Force has had a library liaison at each meeting and she would like to continue that trend. Lewis said the TCTF will be more than happy to share their process documents with the steering committee as a model.

Council Member Lewis questioned what other sites will be looked at for the library. Risley said only the park and the current site at this time. Lewis said the current site could potentially be incorporated with the new town center in some shape or form in a new location and just wants to make sure that the Library Task Force considers all possibilities.

City Attorney Furth said that the project will be subject to an EIR which will require looking at a range of alternatives.

MOTION by Lewis, second by Marsala to approve the appointments and allow the Library Steering Committee to begin meetings and bring back a resolution for ratification at the August meeting. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

City Manager Gruber said he will brief Council on what transpires at the first meeting.

29. FINANCE COMMITTEE RECOMMENDATIONS FROM JULY 14, 2010 COMMITTEE MEETING

Report: City Manager Jerry Gruber

Recommendation: Approve Resolution 10-41 adopting the recommendation for direction from City Council to the Finance Committee

City Manager Gruber said the Finance Committee was unclear on what they are directed to discuss and review. Gruber said the 5-year financial plan is one of the highest priorities for Council..

Vice Mayor Dobbie said the Town has a very talented Finance Committee with a lot of experience in both the private and public sector.

Council Member Marsala said he has been advocating for years that the Finance Committee needed a broader range of study.

Mayor McKeithen said the Finance Committee wants to be able to look at anything such as issues raised regarding outsourcing, building fees and parcel tax distribution.

Council Member Carlson said the City Attorney's report addresses the issues he was concerned about and is ready to endorse the resolution.

Council Member Lewis said the Town has bright and capable minds on the Finance Committee and she feels that the Committee can handle any concerns Council has. Lewis added that Council has to be careful with how they move forward with committees so they don't jeopardize themselves and Council must engage in good faith labor negotiations.

Mayor McKeithen was thankful for the guidance but felt it should have been given a long time ago.

Bill Widmer, Audit Committee member, said the City is burning a substantial amount of reserves and allowing input from residents helps address this dire issue.

Jon Buckheit, Atherton resident, said Unions are a big part of financial problems. Buckheit added that in order to move forward the Town needs elected officials who know what the right thing is and not recreate their positions when there is public outcry.

Greg Conlon, Finance Committee member, supported the resolution. Conlon said the Finance Committee will focus on the five-year plan and find out what the impacts would be if we bury certain costs and that will drive certain recommendations.

Mike McPherson, Atherton resident, said he has attended every Finance committee meeting since it expanded and he supports the resolution.

City Attorney Furth stated that the letter written by Finance Committee member Alain Enthoven was very appropriate and does not conflict with any of the legal advice given by her firm.

MOTION by Carlson, second by Lewis to approve Resolution 10-41 adopting the recommendation for direction from City Council to the Finance Committee. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

27. DISCUSS MCDONOUGH HOLLAND & ALLEN PC (MHA) CESSATION OF OPERATIONS

Report: City Manager Jerry Gruber

Recommendation: To Be Determined

City Attorney Furth said McDonough Holland & Allen is ceasing operations, and within the next few weeks, she and the other members of the firm that work for Atherton will be joining new law firms in particular, Burke Williams & Sorensen which has its offices in Menlo Park. Furth recused herself due to a conflict of interest and left the room.

City Manager Gruber said the Town received a memo in early July stating that MHA will terminate on August 31, 2010 due to the closure of the law firm. Gruber added that it would be in the Town's best interest to retain the services of the Town's current attorneys for reasons of continuity and legal stability.

Vice Mayor Dobbie said that if the Town is going to have a recommendation that it retain the current legal services, it should either be brought by the Mayor or not at all. Dobbie said he has no idea who this new law firm is and law firms at the moment are very hungry. Dobbie concluded that the Town should open this up to competition from other law firms and allow the present City Attorney and whatever firm she's joining to participate in the process so that the Town can see if it can save money and have a better City Attorney, if appropriate. Dobbie said this is an ideal time to go out for bids so that we can have other law firms participate in this practice.

Council Member Carlson said it makes sense to begin a process to evaluate the new law firm that our attorney is associating with. Carlson questioned whether this should wait until January when the Town has a new Council.

Council Member Marsala said he agrees that it's a good opportunity to put this out to bid and see what's out there. Marsala added that the Town obviously needs legal representation and he is not familiar with what process the Town has that allows the continuation if the firm does not exist.

City Manager Gruber said that in some of the other jurisdictions that MHA represents, those governing bodies have just accepted the transition under a new law firm. The RFP process was a lengthy process which involved the City Council and the management staff. Gruber said there was a series of meetings and then the law firms were narrowed down based on the interviewing process, and a selection was made.

Vice Mayor Dobbie said the last time the Town selected a law firm, the atmosphere was quite different in the country, the financial atmosphere in the country was quite different, and the short list of firms that applied were not very impressive to him. Dobbie said today the Town has a whole different situation.

Council Member Carlson suggested potentially forming an ad hoc committee consisting of the Mayor and whoever she might select to negotiate the transition bill and the cost structure to help ensure that we do not see a big increase from the current level.

Council Member Lewis said she does not see this as a golden opportunity to get a much better deal. Lewis added that the last year and a half has been a tremendous learning curve with an untold amount of legal problems and that Atherton is a very complicated town. Lewis said Burk, Williams & Sorensen should send the Town a proposal and fee structure and the Town should look at other law firms and see what is out there. Lewis concluded that the level of legal services has been far better than what the Town had been getting in the past and it was evident. Lewis agreed that the Town should retain the legal services for the transition and start a bid process with the new firm and go out for an RFP when it is reasonably doable.

Mayor McKeithen said the Attorney serves at the direction of Council. McKeithen said the Town needs some retired lawyers and judges who live in Atherton to be able to assist in this process. McKeithen said several members of this council have the appearance if not a valid conflict of interest in the past because of certain personal issues and it is not proper for those Council Members to vote for continuation of that attorney as our representative. McKeithen added that the Town's litigation has escalated out of control.

McKeithen said she has concerns and issues with the Attorney's ethics and lack of transparency and responsiveness. McKeithen concluded that the current attorneys have done a far better job than past attorneys but it doesn't mean to say that they can not do better.

Jon Buckheit, Atherton resident, read a statement for the record from resident Kimberley Sweidy from Broadacres Avenue. Sweidy opposed keeping the current attorneys on board.

Buckheit added that there is an enormous amount of legal resources that the Town should tap into to help assist in the process of picking the best possible Attorney. Buckheit concluded that the residents of this Town are paying an enormous amount of taxes to live here and deserve a City Attorney who cares about the residents.

John Ruggeiro, Atherton resident, said the buck stops with the Council and it's up to the current five Council members to conduct Town business.

Greg Conlon, Atherton resident, said the Town needs to have the continuity and the expertise of the attorneys they have now. Conlon did not believe there was an issue of performance and said if Council is not satisfied with the relationship then it should have taken action earlier.

Vice Mayor Dobbie said he supports appointing the Mayor to set up an expert committee of three to four people to start the process of preparing RFPs for other law firms to compete for the Town.

Council Member Carlson felt that an ad-hoc committee was an interesting idea and felt the expertise of Town residents would be helpful in the assessment.

Mayor McKeithen clarified the process used when the Town hired the City Manager. McKeithen suggested setting up a special meeting to develop the process amongst the Council, and go from there.

Council agreed to set up a special meeting within the next two weeks.

26. RECONSIDERATION OF ROAD IMPACT FEE REFUNDS

Report: City Manager Jerry Gruber

Recommendation: To Be Determined

City Manager Gruber said staff summarized what they hope to accomplish including recommendations, a summary of everything that has taken place in the past, and specifies what Council can deliberate. Gruber suggested taking up each recommendation separately.

Recommendation #1: Pass a motion rescinding the motion passed 4-0 with 1 absent on February 17, 2010, to increase the balance of the Road Impact Fee Fund by \$1,113,000 to correct inappropriate charges made in the previous years.

Council Member Carlson said he understood that the amount to be corrected was not yet ascertained and felt the Finance Committee could be utilized to look at the inappropriate charges to the Road Impact Fee Fund, the indirect charges for labor from Public Works, and administrative overhead charges.

City Attorney Furth said the \$1,113,000 that was passed by Council actually represents those three areas that Mr. Carlson just referred to and the Finance Director has broken this down into a series of recommendations that should be taken in order. Furth concluded that at the end of the steps taken the idea would be that the \$432,713 would be back in the Road Impact Fee Fund and the Finance Committee would review the inappropriate charges.

Jon Buckheit, Atherton resident, opposed the Town refunding any Road Impact Fees.

Denise Kupperman, Atherton resident, said this is a difficult issue and thanked Council for taking the time to review it once again.

MOTION by Carlson, second by Marsala to rescind the motion passed on February 17, 2010, to increase the balance of the Road Impact Fee Fund by \$1,113,000 to correct inappropriate charges made in the previous years. The motion passed unanimously.

Recommendation #2: Pass a motion rescinding the motion passed 3-1 with 1 absent on February 17, 2010, to accept the citizens' group proposal to refund fees paid between July 1, 2006 through

December 18, 2009 for an amount not to exceed \$1,655,000 and to be prorated after ninety days if the total applicants' dollar value of the refunds exceed the fund.

Council Member Carlson commented that he originally voted for this but the five-year financial projection changed his mind. Carlson credited Mike McPherson for articulating his arguments against the refunds.

Mike McPherson, Atherton resident, thanked Carlson for bringing himself and Jeff Wise together to come to a compromise on the refunds.

Denise Kupperman, Atherton resident, said the refunds are a question of policy and should not be coupled with financial discussions.

Jon Buckheit, Atherton resident, agreed with Kupperman.

MOTION by Carlson, second by Marsala to rescind the motion passed on February 17, 2010, to accept the citizens' group proposal to refund fees paid between July 1, 2006 through December 18, 2009 for an amount not to exceed \$1,655,000 and to be prorated after ninety days if the total applicants' dollar value of the refunds exceed the fund. The motion passed unanimously.

Recommendation #3: Pass a motion to limit the Road Impact Fee refund to the additional 40% increment that went into effect on August 17, 2007, as proposed in the Colleagues Memorandum; direct staff to prepare a resolution authorizing the 40% Road Impact Fee increment refund for approval by the City Council at its next regular meeting.

Mayor McKeithen said the forty (40) percent increment automatically occurred because of the Building Department increase in fees and a nexus study was never completed to support that increase.

Council Member Marsala noted that the increase put the Town roughly forty percent higher than surrounding jurisdictions. He added that there are approximately forty cities statewide who charge a Road Impact Fee which affects schools, developers, and residents. Marsala concluded that this motion would put the Town back into a fair range.

Vice Mayor Dobbie said he has been a vocal proponent of a Road Impact Fee charge. Dobbie said it is a very fair fee for the damage that is done to Atherton roads.

Council Member Lewis said property taxes go up once a new home is developed and since Atherton's main source of revenue is property tax the Town should think twice about charging the fee so the Town doesn't lose developers. Lewis concluded that it would be a huge compromise to refund the forty percent over charge of Road Impact Fees.

Mayor McKeithen said she supports this because although she does not believe the Road Impact Fee is illegal she believes the Town did not fulfill the responsibility of completing a nexus study to legalize the increase.

Jon Buckheit, Atherton resident, questioned whether the whole fee is illegal, part of it or none of it. Buckheit concluded that the Town should consider reinstating the fee at the baseline fee without the forty percent increase.

Council Member Marsala said the biggest issue for Council to decide is when a fee is a fee and when it may be a tax.

MOTION by Marsala, second by Carlson to limit the Road Impact Fee refund to the additional 40% increment that went into effect on August 17, 2007, as proposed in the Colleagues Memorandum; and direct staff to prepare a resolution authorizing the 40% Road Impact Fee increment refund for approval by the City Council at its next regular meeting. The motion passed.

Ayes: 4 Nays: 1 (Dobbie) Abstain: 0 Absent: 0

Recommendation #4: Approve the use of General Fund undesignated reserve of \$432,713 to repay the Road Impact Fee Fund to correct a Fiscal Year 2003-2004 charge for corporation yard improvements; direct staff to bring back a budget amendment at its next regular meeting. Finance Director Ho said staff is in the process of closing the books for fiscal year 2009/10 and she hopes to have a number sometime next month. Ho said there might be excess reserves left over but definitely not enough to cover the refunds.

Mayor McKeithen said she has concerns with taking the money out of reserves because the Town needs to tighten their belts. McKeithen believes the refunds should be paid with reserves from fiscal years 09/10 and 10/11.

City Manager Gruber said there are other obligations that the Town has approved the excess funds to pay for, specifically the John Johns settlement.

MOTION by Lewis, second by Carlson to approve the use of General Fund undesignated reserve of \$432,713 to repay the Road Impact Fee Fund to correct a Fiscal Year 2003-2004 charge for corporation yard improvements; direct staff to bring back a budget amendment at its next regular meeting. The motion passed.

Ayes: 3 Nays: 2 (McKeithen, Dobbie) Abstain: 0 Absent: 0

Mayor McKeithen said she is opposed because she does not believe it should come out of undesignated reserves.

Recommendation #5: Direct the Finance Committee to review, determine, and report back to the City Council the proper amount of engineering and administrative overhead charges that should be allocated to the Road Impact Fee Fund.

Mayor McKeithen said she found a charge for eight hours of attorney work on the Road Impact Fee at the behest of someone besides the entire Council. McKeithen questioned who authorized the work.

City Manager Gruber said he authorized the work. McKeithen said attorney work is at the request of Council as noted in the Municipal Code.

Council Member Lewis questioned why a third party is not being considered to review the inappropriate charges that include the indirect costs and administrative costs.

MOTION by Carlson, second by Lewis to direct the Finance Committee to review, determine, and report back to the City Council the proper amount of engineering and administrative overhead charges that should be allocated to the Road Impact Fee Fund. The motion passed unanimously.

Recommendation #6: Approve an agreement with MuniServices for refund administration; authorize the City Manager to execute the contract.

Finance Director Ho said she is still negotiating with MuniServices and is confident it will be much lower since there is a considerable less amount of work then what was first proposed.

MOTION by Carlson, second by Lewis to approve an agreement with MuniServices for refund administration; authorize the City Manager to execute the contract conditioned upon the Finance Director seeking the lowest possible cost. The motion passed unanimously.

28. CODE ENFORCEMENT ALTERNATIVES

Report: City Manager Jerry Gruber

Recommendation: Continue to use CSG and the Towns current Code Enforcement Official until additional information can be obtained regarding cost and service

Council tabled item 28 to a future agenda.

30. RESOLUTION FOR DESIGNATION OF VOTING DELEGATES AND ALTERNATES – League of California Cities Annual Conference – September 17-19, 2010

Report: City Manager Jerry Gruber

Recommendation: Adopt Resolution 10-42 Designating voting delegate and alternate to the League of California Cities Annual Conference

City Manager Gruber informed Council that this conference takes place during the September Council meeting and Council has eliminated all funding from the Town's budget.

Deputy City Clerk DellaSanta clarified that the business meeting takes place on Friday and any Council Member can either attend the entire conference or just the day of the business meeting in order for the Town to vote.

Mayor McKeithen asked if there is a Council Member who wants to attend and self fund the trip.

No Council Members offered to attend.

No further action was taken.

Council took up item 16 next.

16. RECLASSIFICATION OF THE “TEMPORARY” ADMINISTRATIVE ASSISTANT TO THE POLICE CHIEF TO “REGULAR” EXECUTIVE ASSISTANT/POLICE DEPARTMENT

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Reclassify the employment status of the temporary Administrative Assistant to the Police Chief to regular employment status, approve designation to the job classification Executive Assistant, set full time equivalent to 1.0 FTE and Set the Bargaining Unit as Confidential

Mayor McKeithen felt it was necessary to hold off on this until Council discusses the classification study. McKeithen added that this position would make the Town the 4th highest paid position in the County.

Council Member Lewis said Council was informed that this would be forthcoming and it was included in the approved fiscal year 2010-11 budget. Lewis concluded that the Town approved a parcel tax for these services and the position should be approved.

Vice Mayor Dobbie said he has some concerns with the Town's current financial status and if the Town can save on expenses by not doing something that is already in the budget then they should.

Assistant City Manager Wilkerson said the current employee has been in this position for approximately ten years and has always been a temporary employee. Wilkerson said the incumbent maintains all police personnel files; and providing a temporary employee with complete access to safety personnel records and information that is subject to privacy issues is not best practices and could potentially harm the Town.

Mayor McKeithen said the issue could be resolved by designating the incumbent as a regular, part-time employee and the Town would still save money. McKeithen said the compensation needs to be considered by Council.

Vice Mayor Dobbie said the employee would be going from \$29 to more then \$51 per hour and the Town can not afford to do this at the present time.

Wilkerson reminded Council that any legal action taken as a result of having a temporary employee in this position would cost much more.

Chief Guerra added that the position is unique because the current employee takes care of all training documentation, copies personnel files for attorneys, prepares grant writings and occasionally appears in court.

MOTION by Carlson, second by Dobbie to table the item for at least thirty days or until Council has discussed and reviewed the classification study. The motion passed.

Ayes: 4 Nays: 1 (Lewis) Abstain: 0 Absent: 0

19. APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM FOR DAMAGES BY KIMBERLY SWEIDY AND RAYMOND STATA – RECOMMEND DENIAL

Report: City Manager Jerry Gruber

Recommendation: Adopt Resolution 10-39 rejecting the application of Kimberly Sweidy and Raymond Stata

Mayor McKeithen pointed out a typographical error in the resolution.

MOTION by Dobbie, second by Carlson to adopt Resolution 10-39 rejecting the application of Kimberly Sweidy and Raymond Stata. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

21. APPROVE CONSULTANT SERVICE AGREEMENT FOR HIGH SPEED RAIL GOVERNMENT AFFAIR SERVICE WITH CAPITOL ADVOCATES FOR AN AMOUNT NOT TO EXCEED \$60,000.00 (\$5,000 PER MONTH)

Report: City Manager Jerry Gruber

Recommendation: Approve Consultant Services Agreement for High Speed Rail Government Affair Services with Capitol Advocates

Council Member Lewis said Palo Alto has not renewed this contract and questioned whether Atherton should.

Council Member Carlson said Mr. Mehta has accomplished a lot since he was hired, specifically getting Curt Pringle to the area for a tour; and the next few weeks are critical in Sacramento with the budget. Carlson suggested directing the City Manager to talk with his colleagues in Palo Alto and Menlo Park to discuss a three-month extension.

Mayor McKeithen said the contract can be terminated at any time without or without cause.

City Manager Gruber said the Town is making major headway with Mr. Mehta and saying no to his services right now would be premature. Gruber said Mehta is causing activities at all levels in Sacramento.

Denise Kupperman, Atherton resident, opposed a lobbyist considering the current budget.

Mayor McKeithen noted that the Town does not oppose high speed rail. The Town wants environmental impacts and alternatives analyzed.

Mike McPherson, Atherton resident, said the Town's position is to "do it right, or don't do it at all."

MOTION by McKeithen, second by Dobbie to approve Consultant Services Agreement for High Speed Rail Government Affair Services with Capitol Advocates. The motion passed.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

31. COUNCIL REPORTS

Nothing further to add to written report.

32. FUTURE AGENDA ITEMS

None.

33. PUBLIC COMMENTS

None.

34. ADJOURN

MOTION by McKeithen, second by Dobbie to adjourn the meeting. The motion passed unanimously.

Mayor McKeithen adjourned the meeting at 11:10 p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**