



Minutes
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL DRAINAGE
DISTRICT
April 7, 2010
6:00 P.M.
Council Chambers
94 Ashfield Road
Atherton, California
Special Meeting

ROLL CALL **Lewis, Dobbie, Marsala, McKeithen, Carlson**

PUBLIC COMMENTS

Jim Massey, Atherton resident, stated the Town is in trouble and its finances are out of control. Massey said the City Attorney found no wrongdoing with Council Member Marsala and suggested Council move on to the real issues.

Mayor McKeithen read a statement, for the record, sent to her by former Atherton resident Carol Smith.

REGULAR AGENDA

A. ALLEGED IMPROPER OFFICIAL CONDUCT AND ALLEGATIONS
THAT COUNCIL MEMBER MARSALA IS NOT A RESIDENT OF THE
TOWN

City Attorney Furth summarized her staff report on the legal analysis of implications of Council Member Marsala requesting financial assistance from an individual who was suing the Town and residency requirements for Council Members.

Mayor McKeithen asked why Council was not given any summaries of the detailed confidential memorandum distributed on March 26, 2010 which was distributed to the public. Furth said she doesn't give staff reports to Council for review before distribution. Furth said she created, for the public, a summary of her confidential report to Council. Furth concluded she can not discuss anything that is in a confidential memorandum because it is attorney-client privileged but can speak about the summarized public version of the report.

Mayor McKeithen asked who else was interviewed besides Council Member Marsala in the preparation of the City Attorney confidential and public reports and particularly why was Jon Buckheit not interviewed. Furth said she worked with the City Clerk in retrieving records. Furth added that this was a limited scope analysis of a stipulated set of facts and since the Town is currently in litigation with Mr. Buckheit Furth is not allowed to speak with him.

Mayor McKeithen asked how much it has cost the Town so far for research and preparation of the City Attorney memorandums regarding Council Member Marsala and why aren't some of the costs being borne by Council Member Marsala. Furth said when she prepared the memorandum she did it at the City Manager's direction and as the Town's General Counsel. Furth added that if any members of this City Council engage in conduct that violates the Political Reform Act or Government Code Section 1090 then, as General Counsel, she feels that the Town has been placed in jeopardy because it could mean that decisions made or contracts entered into by City Council are not valid. Furth concluded that as General Counsel for the Town the City Manager felt that this should be investigated.

Mayor McKeithen questioned why the complete confidential analysis of Council Member Marsala's conduct was not distributed to the public. Furth said it is the City Council and various City employees who are entitled to her confidential advice and when she prepares a confidential memorandum for City Council she may mix discussion of information that may be confidential because it pertains to litigation.

Council Member Lewis called for a point of order because she felt the City Attorney was being interrogated.

Mayor McKeithen asked to what extent can an individual refer to the confidential memorandum if that individual believes it is inconsistent with the public summary. Furth said it can not be referred to unless the City Council votes to allow it.

Council Member Marsala said at a Council meeting held on January 11, 2010 Mayor McKeithen questioned his residency under public comment. Marsala said after the meeting he went to the Mayor and explained to her that he had made a short term rental on his house and was renting from a friend in Atherton who would be out of Town for an extended period. Marsala said that shortly afterwards he was contacted by two news reporters, one of which stopped by his temporary home and confirmed he was living in Atherton. Marsala added that City Attorney Furth concluded that he legally met residency requirement to be on City Council. Marsala said his renters ended up needing his home for a longer period of time due to health issues and two more reporters stopped by to talk to his renters who confirmed that Marsala was living in Atherton.

Council Member Marsala said he bears no ill will towards Jonathan Buckheit and his vote against the Police review board was obviously a disappointment to Mr. Buckheit. In expressing his disappointment comments were made by Mr. Buckheit concerning a loan. Marsala said it has become public debate that is personally hurtful to him and those who do not look favorable at him have used the comment to exploit and discredit him. Marsala reiterated that he has no animosity towards Buckheit and he believes his views concerning a police board are sincere, and even though they disagree on the issue, he respects Mr. Buckheit's opinions and the fact that he has stepped forward to engage in dialogue on the issue. Marsala said if he had to do it all over again he probably would not discuss the possibility of a loan with Jon Buckheit. Marsala said he can not change what he did and added that he did nothing to interfere with his responsibility as a Council Member. Marsala said given the state of the economy it was tough to get a loan for his small business and approached Mr. Buckheit, whom he had a social relationship with, for possibilities of a loan; Mr. Buckheit indicated it is not something he could do but he could

forward the request to an individual he knew who may be able to help. Marsala said that Mr. Buckheit never gave him a loan or intended to do so and throughout the time of the loan request he did not view Mr. Buckheit in a position to end up suing the Town as he subsequently did.

Marsala said that in order to make full disclosure of the issue he gave the City Attorney all emails, text messages and everything in writing concerning his communications with Mr. Buckheit. Marsala said he also made himself available to the City Attorney for any questions she had concerning the loan request. City Attorney Furth made a determination that Marsala made no violation of any conflict of interest rules. Marsala concluded that if he is guilty of anything it is perhaps poor judgment, something each of us on City Council has had and their conduct should not be called into question as his has been today.

Vice Mayor Dobbie said he believes public officials have a duty to their residents to obey the law and behave in an ethical manner. Dobbie said as a result of the publicity surrounding Marsala there have been serious questions raised about his ethical behaviors. Dobbie said asking someone who has an adverse relationship with the Town is a serious breach of normally accepted standards for all elected officials.

Council Member Carlson thanked the City Attorney for her work on the analysis. Carlson, in referring to the March 26 special meeting, said to his knowledge the City Council has never gone forward with a meeting knowing full well that a quorum would not be present. Carlson had replied within 30 minutes that he had a prior commitment. Standard practice has been that the City Clerk contacts all Council Members to find a date that works for all. Carlson said he felt his integrity was questioned. Carlson said he respects his fellow Council Members and it disturbs him when that respect is not shown in return. Carlson concluded that he takes his job as a public official very serious, puts in a lot of hours, and has never missed a scheduled meeting because of vacation. To imply that he wasn't performing his duties to the best of his abilities is insulting and shows a lack of respect.

Council Member Lewis thanked the City Attorney for her detailed analysis. Lewis echoed Carlson's comments regarding the March 26th meeting. Lewis said the March 26 meeting was called against the City Attorney's advice and felt it was irresponsible and a complete misuse of power by the Mayor. Lewis said she had notified City staff a month prior that she would be out of Town on March 26th. Lewis suggested the Town's Code of Conduct be updated. Lewis stated the integrity of Council was called into question; they were not defended by the Mayor as being excused and to insinuate that she and other Council Members "boycotted" the meeting is insulting. Lewis called for a motion to accept the City Attorney's legal opinion that Council Member Marsala did nothing wrong.

Mayor McKeithen said she is aware the meeting was called on short notice and chose to still hold it in the event some Council Members may have a change of plans. McKeithen clarified that she called the meeting six days earlier but was told to wait for the City Attorney to complete her legal analysis on the situation. McKeithen said she and Vice Mayor Dobbie stayed to allow residents to speak out on any concerns related to the Town or its staff.

Mayor McKeithen opened up the meeting for public comment.

Jan Simons, Atherton resident, concurred with the Mayor. Simons said she feels the public deserves the full City Attorney analysis.

Melinda Tevis, Atherton resident, questioned why the Town is paying for three separate legal analyses from the City Attorney when the Town has such financial troubles.

Jon Buckheit, Atherton resident, said he bares no ill will towards Council Member Marsala. Buckheit questioned whether the City Attorney could effectively determine the fault of a member of the body responsible for signing her checks. He questioned how a Council Member can accept donations from a Police Union and then decide there is no compelling reason for police oversight. Buckheit asked, could either situation be deemed a conflict of interest? Buckheit concluded that the City Attorney is paid by tax dollars and is in effect here to represent the residents and that he was never contacted or interviewed in regards to the loan and has no idea if the information given to the City Attorney by Council Member Marsala is true.

Lia Meyer, Atherton resident, said she has always viewed Council Member Marsala as honest, ethical and prompt with his advice.

John Ruggiero, Atherton resident, called for Council Member Marsala to update his residence address in the Town's roster.

John Johns said his lawsuit is widely publicized and he is grateful for the recognition of his service the Town Council is giving him. Johns said Furth's report was an analysis and not an investigation and it did not address any potential violations of Federal law. Johns said he believes Marsala has abused the public trust and Johns will give his written concerns to Council.

Gene Elsbrey, Atherton resident, said it is not 100% clear where Council Member Marsala resides. Elsbrey called for Council Member Marsala to resign.

Peter Gung, Burlingame resident, always thought good things about Marsala and said he was disappointed at all of the finger pointing. Gung asked that Council reconsider the thoughts and images that have been created as a result of the negative publicity.

Joan Solari, said regardless of whether Marsala broke the rules or not there are a huge number of Athertonians here tonight to let Council know they do not feel good about what has gone on. Solari requested that Marsala step down from Council.

Joe Lewis, Atherton resident and husband of Council Member Lewis, said he lives down the street from Charles Marsala and views him as an honorable and loyal citizen of Atherton. Lewis confirmed that Marsala lives in Atherton. Lewis said John Johns wrote attacking comments about how his home was built and as soon as Elizabeth Lewis decided to run for Council Johns began attacking them and he felt it was politically motivated.

Randy Lamb, Atherton resident, said this meeting is just Atherton politics as usual. Lamb felt the March 26 meeting was held inappropriately and wondered if it was really about politics or perceptions. Lamb concluded that Marsala has voted courageously several times when he was the stand alone vote and he respects Marsala for doing so.

Valerie Gardner, Atherton resident and EPC Committee member, said this is a very interesting time and several residents are here to express rage and disappointment for their concern about Council Member Marsala when he has spent years trying to do things for the benefit of the residents. Gardner concluded that there are serious environmental catastrophes for our community and we are wasting time worrying about Council Member Marsala.

Jean Schaaf, Atherton resident, said Council Member Marsala has spent several years on Council and at times has personally helped her and at other times has personally harmed her when she was Chair of the Arts Committee.

Gene Lense, Menlo Park resident, wondered if this is really all Council has to fret about. Lense said the politics has taken over and run amuck.

Jeff Wise, Atherton resident, agreed with residents who say this is an embarrassment. Wise said he has agreed and disagreed with all Council Members on different occasions but respects the amount of time each of them devote to the position. Wise said Council has done an “abysmal” job on interacting with each other and working for the common good. Wise said he accepts Marsala at his word and felt the Town should move on to more important issues.

Rex Dwyer, Palo Alto resident, thanked Council Member Marsala allowing the use of his home for a benefit which raised funds to help at-risk youth go to a summer camp.

Kathy Janz, Atherton resident, said while she respects the members of this Council she has never witnessed these problems in any other City she has lived. Janz urged bringing in a professional facilitator to help stop the divisiveness of Council.

Virginia Ruggeiro, Atherton resident, said she and her husband have attended meetings all their lives and in regards to the March 26th meeting people gave up their days and free time to attend and were spurned because a meeting was not held.

Frank Merrill, Atherton resident, echoed Valerie Gardner’s statements.

Mayor McKeithen closed the public comment.

Council Member Carlson said he believes Council Member Marsala created controversy. Carlson said he has questioned Marsala’s judgment in some cases and there have been times when Marsala was right and Carlson was wrong. Carlson suggested Council be more forthright in the future so the City Attorney is not blindsided by certain issues. Carlson believed City Attorney Furth has analyzed the situation satisfactorily. He added that he would like to see the same energy and passion towards issues like High Speed Rail. Carlson concluded that it is time to move on and he hopes Council will strive to be respectful to each and move forward in one direction in order to make progress this year.

Council Member Lewis said Council was blindsided at their very first meeting of the year when Mayor McKeithen publicly accused Council Member Marsala about not being an Atherton resident. Lewis felt it was done to discredit Marsala. Lewis added that if she were the Mayor, as

the leader of Council she would have spoke to Council Member Marsala privately to question if the rumor was accurate. Lewis stated that after the 4-1 vote against the proposal for police oversight Buckheit was upset and lashed out. Lewis said that although it was wrong for Marsala to ask Buckheit for a loan; it was obvious that if Marsala had been a “pawn” for Mr. Buckheit to vote yes for the police oversight then Marsala would have done so. Lewis stated that Marsala voted in good conscience and did not vote in retribution against Mr. Buckheit nor did he vote in favor to garner Mr. Buckheit’s silence about the loan. Lewis concluded that the issue should have been handled in a respectable way and she is embarrassed to sit on this Council.

Vice Mayor Dobbie said he received numerous phone calls and emails suggesting a special meeting on the unethical behavior of Council Member Marsala. Dobbie said the March 26th meeting was called in response to an outcry and felt he has a duty to the Town residents.

Council Member Marsala agreed with Carlson that the Town needs to become more engaged in the issue of High Speed Rail. Marsala felt as Council moves forward an Agenda item should be approved by a majority of Council. Marsala read a letter for the record from his current tenants. Marsala concluded that he hopes Council can move on and work together as a team.

Mayor McKeithen said she has been elected to Council three times and has a duty to serve the residents and will continue to do so and remain true. McKeithen said she believes this issue should be investigated further. McKeithen said she did not bring the issue up in January for any political purposes. It was clear the Town was engaged in active litigation when Council Member Marsala requested the loan and he should have known. McKeithen questioned how we know whether or not Marsala solicited loans from other individuals who were in litigations with the Town. McKeithen said there are laws that public officials have to obey and wondered what they mean to someone who passes off this issue.

MOTION by Lewis, second by Carlson to agree that Council Member Marsala is and has been a legal resident of Atherton and to accept the City Attorney’s report that Council Member Marsala did not violate any conflict of interest rules according to her report; not based on any additional information. The motion failed.

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

ADJOURN

MOTION by Carlson, second by Lewis to adjourn the meeting. The motion passed.

Mayor McKeithen adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk