



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

March 21, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 7:05 p.m.

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

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

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

3. **PRESENTATIONS**

Police Department Presentation to Walker Barnum

Police Chief Bob Brennan introduced Walker Barnum, whose mother was injured when she fell from a ladder and Walker called 9-1-1. Chief Brennan presented Walker with a letter of commendation.

4. **COUNCIL REPORTS**

- **Vice Mayor Janz thought it appropriate for the Town to participate in the San Mateo County Jobs for Youth program and requested the item be scheduled on the next Council agenda to approve a contribution. He updated the Council regarding the Coalition to Expand Transit Service (CETS) activities. CETS had been encouraging other cities in San Mateo County to pass a resolution similar to the one Atherton passed urging Caltrain to hire a consultant to analyze the schedule to see whether a better mix of service between local and express could be developed; involve the cities in a process to review and**

- comment on whatever alternative schedule might be developed, encourage Caltrain to implement, with all due diligence, the safety programs that had already been planned for the County for which there was funding; and to encourage the cities, SamTrans, and Caltrain to work together to improve connectivity between the various transit systems. City Manager Jim Robinson noted the resolution was discussed at the past City Managers' meeting.
- Council Member Marsala attended a League of California Cities meeting. He served on the Board of the Employee Relations Subcommittee for the State and would be attending the quarterly meeting in Los Angeles the next week. The League had formed a Climate Protection Subcommittee for the Peninsula. The Environmental Programs Committee planned an extensive Earth Week with many activities. The past week, the Sierra Club and the State Senate presented Atherton with a certificate for signing the Climate Protection Agreement. The citizen Emergency Preparedness Committee met the past Saturday and discussed the chain of command for CERT-trained residents. He announced a Ham Radio class was scheduled for April 17, and Ham Radio operators would be part of a neighborhood response team. Menlo College scheduled a CERT training for September and had been asked for use of its facilities in the event of an emergency.
 - Council Member McKeithen attended the Town's Emergency Preparedness Subcommittee meeting where several issues were discussed including the chain of command in case of an emergency. The Menlo Park Fire Protection District (MPFPD) was first in the chain of command. She noted the MPFPD's Emergency Command Center, located in Menlo Park, would be utilized as part of the Town's Emergency Operations Center (EOC). Laptop computers in each police car would be mobile command centers in the event of emergencies. Item No. 16 on the Consent Calendar was a request for a generator for the new retrofitted Public Works Building, which was designated as the Town's EOC. She reported on other items discussed related to emergency preparedness. The Finance Committee would be meeting the next day at 10:00 a.m. to discuss, an update on the three phases of the implementation of the Grand Jury report, the needs of the Emergency Preparedness Subcommittee, the update on the well and generator projects, a report on the cost of hiring an independent Building Department auditor, and a review of the contract planner invoice format. Additionally, the Finance Committee would be discussing solar panel installation and purchase whereby services were "bundled" to lower the cost for residents.
 - Council Member Jerry Carlson reported that the International Baccalaureate Committee visited Selby Lane School as part of the accreditation process and the results would be known in June or July. An acceleration of requests to attend Selby Lane School from out of the school's boundaries had occurred. YES reading had 55 volunteer tutors and would be expanding the program from 2 to 4 days a week.
 - Mayor Alan Carlson attended the San Francisco Airport Roundtable meeting. Noise seemed to be less of a problem than in the past due to changes in flight altitudes and improved equipment. He met with the president of the MPFPD

Board, attended the MPFPD Board meeting the previous evening, and met with people within the Town regarding issues related to the Grand Jury report.

5. PUBLIC COMMENTS

Steve Ackley, Belbrook Way, spoke regarding an Abatement and Nuisance Notice received on March 9, 2007, with respect to a basement under an accessory structure. The Ackley's filed an appeal with the Town. He encouraged the Council to hear the appeal to avoid being dragged into the court system.

Maryann Ackley, Belbrook Way, reviewed the Draft Minutes of the Special Closed Session of February 21, 2007, and thought it discouraging that the Town "anticipated" litigation before an Abatement Notice was served. Litigation would be pursued if the appeal process did not resolve the matter. She urged Council to use reasonable efforts to resolve the dispute.

Bill Ross, Palo Alto, represented Charles and Leslie King, and spoke regarding a March 9, 2007, Abatement and Nuisance Notice received by the Kings. An appeal was filed on March 19, 2007. He raised the following issues: 1) the appeal process was not clear as to whether the issue came under the appeal procedures of Chapter 17 of the Atherton Municipal Code; if it did, he wanted to know what the complete application was referenced in that chapter; 2) compliance was literally impossible; therefore, there was a procedural due process issue because it indicated that once the appeal was filed, the matter needed to be set for the next regularly scheduled City Council meeting; 3) a reference was made that an application was supposed to accompany the appeal; the Town Attorney indicated all that was necessary was to file the appeal, which raised the question of what's the burden of proof. The matter of real concern was a matter of case law from Clark vs. City of Hermosa Beach and Nighttime Limited vs. City of Beverly Hills. Comparable issues dealing with enforcement of both Zoning and Building Code provisions that the City Council or city officials could not both be a prosecutor or an advocate and also a decision maker. He respectfully suggested that both Building Official Mike Wasmann and City Attorney Marc Hynes had an issue with that authority. They pursued and advocated the audit with respect to the Building Official. The Building Official, with respect to the Kings, was one of the individuals who approved, incrementally, portions of the building permit for their almost completely constructed residence. He was also the individual who signed the Abatement Notice. We believe the issue merits direction from the City Council to staff to meet and immediately confer so the deficiencies could be addressed and resolved. One method of resolution for the Kings would be an agreement on some type of temporary occupancy. Additionally, he queried, "how can there be an alleged violation in a Notice of Abatement letter signed by one of the very Building Officials that incrementally approved the project?" "If the Kings could not rely on that official and expended substantial sums of money, whom could they rely on?" Additionally, he asked whether the City Attorney had reported out of Closed Session.

Mayor Alan Carlson said the City Attorney would report out of the Closed Session later in the agenda. Further he asked direction from the City Attorney on the issue.

City Attorney Marc Hynes said the appeal which had been filed would be heard at a subsequent meeting. He would review the “Nighttime” case to determine whether it might be necessary to have independent legal counsel advise the City Council at the time of the hearing.

Leslie King, Tallwood Court, spoke regarding the Abatement Notice that prevented her family from moving into their new residence. Her three children were present and she believed the issue was one of principle. She did not believe they had been treated fairly, and prohibiting the family from temporarily occupying their home until the matter was resolved served no purpose. She believed all the processes were followed, plans were approved, and the home was built according to those plans. She also believed the Council left them no choice but to file a lawsuit to occupy their home.

Brian Kerwin, Sergeant Lane, neighbor to the Ackleys and Kings, spoke in support of his neighbors’ plight. He did not believe either homeowner should be penalized because of issues raised within the Building Department.

Mary Kerwin, Sergeant Lane, sold the Kings their property and concurred with the previous speakers. Additionally, she was the agent who sold the Kings’ residence in San Carlos, which left them nowhere to live. She believed the residence on Tallwood Court did not interfere with another property, and the Council should allow them to occupy their home until the matter was resolved.

Charles King, property owner on Tallwood Court, wanted to set the record straight regarding the alleged possibility that the Kings had received preferential treatment from the previous Building Official. He presented a timeline to refute the allegation. He believed he was a victim of the Building Department investigation. Additionally, he had a hard time understanding why the Council chose to fight an unfixable issue instead of directing the funds toward public safety issues.

Kevin Mulcher, Atherton, recently went through the building process and spent approximately \$100,000 in engineering fees to make sure his home was built correctly. He believed the foregoing issues should be “grandfathered” in, and he did not want to spend the Town’s funds on law suits.

John Sisson, Belleau Avenue, asked Council Member Jerry Carlson: 1) how many Atherton residents attended Selby Lane School; and 2) what proportion of the Town was zoned to attend the Redwood City Elementary School District.

Council Member Jerry Carlson responded that 20% of the Town was within the Redwood City Elementary School District and within the Selby Lane School attendance area. No Atherton residents were attending Selby Lane School.

John Ruggeiro, Stockbridge Avenue, spoke regarding the length of the agenda and suggested additional meetings might be necessary.

Mayor Alan Carlson noted Council intended to schedule a Special meeting for some items on the agenda.

6. **STAFF REPORTS**

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

A. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION** *(Continued from the City Council Closed Session meeting of February 21, 2007.)*

City Attorney
City Manager

Continued the a Special Closed Session Meeting, date to be determined.

B. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

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

Three (3) potential cases

One potential case was discussed and there was no reportable action.

C. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:

One (1) potential case

Regarding the Lambs, outside counsel, Todd Williams of Morgan, Miller, and Blair, was retained by the Town to defend this case.

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

Town of Atherton vs. Sequoia Union High School District, et al.

The item was discussed, and there was no reportable action.

Town of Atherton v. Johnson Trust, et.al. Superior Court of California, County of San Mateo, CLJ 460946

The item was discussed, and there was no reportable action.

Charles W. King III and Leslie King v. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461513

Outside counsel, Brian Wenter of Morgan, Miller, and Blair, was retained by the Town to defend this case.

- **City Manager Jim Robinson said the Menlo Park School District met in a public meeting to provide an overview of the improvements planned at Encinal and Laurel Schools. Concerns were expressed by the Lindenwood Homes Association Board to agendize the matter at the Town's Transportation Committee meeting of April 10 to review the parking and traffic issues. Use of a parking lot and existing tennis court would require an encroachment permit from the Town. The school district would meet on April 4th, to adopt the plan.**

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Atherton Tree Committee

Denise Kupperman, Chairperson for the Atherton Tree Committee, said they were a small group of dedicated people devoted to the development and preservation of the Town's unique and urban forest. The Committee educated the community through workshops, newsletters, and tree planting events. She updated the Council on various activities of the Committee.

Friends of the Atherton Library

Joan Sanders, President, thanked the Tree Committee for planting Camellias in the Library garden. She invited those present to attend the Ice Cream Social on Saturday, March, 24, from 1 to 3 p.m. Additionally, Ms. Sanders said the membership was thriving. She explained an idea the Library was promoting called, "The Third Place," a project to expand Library services for the community to make it the third place after home and work. She updated the Council on upcoming activities.

Mayor Alan Carlson said Item No. 21, 22, and 28, would be continued to a Special City Council Meeting, date to be determined.

CONSENT CALENDAR (Items 8 – 18)

MOTION – to approve Item Nos. 9, 10, 12, 14, 15, 16, and 18 on the Consent Calendar as presented. Item Nos. 8 and 13 were continued to the City Council meeting of April 18, 2007. Item Nos. 11 and 17 were placed at the end of the Regular Agenda for discussion.

M/S McKeithen/J.Carson

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

8. **APPROVAL MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR MEETINGS OF FEBRUARY 21, 2007** (*Continued to the meeting of April 18, 2007.*)

9. **APPROVED BILLS AND CLAIMS FOR FEBRUARY 2007 IN THE AMOUNT OF \$ 743,205**

10. **ACCEPTED MONTHLY FINANCIAL REPORT FOR FEBRUARY 2007**

~~11. **ADOPTION OF 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**~~

~~**Recommendation: Adopt a Resolution 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%. (Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.)**~~

12. **APPROVED A PURCHASE ORDER WITH NOR CAL COATING TO PAINT THE MAIN HOUSE, KNOX PRESCHOOL, AND ENTRANCE GATES AT HOLBROOK-PALMER PARK**

Awarded a purchase order to Nor Cal Coatings for \$17, 300.00 for painting the exterior of the Main House, the Knox Pre-school (old section) and the park entrance gates (3).

13. **ADOPTION OF A RESOLUTION APPROVING PERMIT TECHNICIAN JOB DESCRIPTION AND SALARY SCHEDULE** (*Continued to the meeting of April 18, 2007.*)

14. **APPROVED PARTICIPATION IN MENLO PARK FIRE PROTECTION DISTRICT EMERGENCY COMMAND CENTER (ECC)**

Approved the participation and cooperation in the Menlo Park Fire Protection District Emergency Command Center (ECC).

15. **ADOPTED A RESOLUTION SUPPORTING VIRGIN AMERICA AIRLINES' APPLICATION TO PROVIDE DOMESTIC AIRLINE SERVICE OUT OF SAN FRANCISCO INTERNATIONAL AIRPORT**

Adopted Resolution No. 07-05 Supporting Virgin America Airlines seeking regulatory approval from the Federal Aviation Administration

16. **THE TOWN'S EMERGENCY OPERATIONS CENTER – GENERATOR REQUIREMENTS**

Approved Public Works to proceed with an advertisement for bid for a 40Kw diesel generator with a 10Kw load bank and automatic transfer switch.

~~17. ADOPTION OF A RESOLUTION APPROVING MEMBERSHIP IN ICLEI—
LOCAL GOVERNMENTS FOR SUSTAINABILITY—FOR PARTICIPATION IN
THE CITIES FOR CLIMATE PROTECTION CAMPAIGN~~

~~Recommendation: Adopt the Resolution approving membership in ICLEI. (Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.)~~

18. ADOPTION OF 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 SOUTH
MEADOW REHABILITATION PROJECT

Adopted Resolution No. 07-06 of the City Council of the Town of Atherton approving the application for Land and Water Conservation Fund (LWCF) for the Holbrook-Palmer Park South Meadow Rehabilitation project, and committing the required local match of 50%.

PUBLIC HEARINGS (Items 19 & 20)

19. INTRODUCTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL
CODE CHAPTER 17.44 REGULATING NONCONFORMING USES WITHIN THE
TOWN OF ATHERTON

Deputy Town Planner Lisa Costa Sanders stated the item was initiated by an Atherton resident wishing to construct a minor addition to a portion of his home that was considered legally nonconforming. The item was referred to the General Plan Committee for consideration. The General Plan Committee reviewed several ordinances from other communities relating to nonconforming structures and voted to recommend that the Atherton Municipal Code be amended to add language for nonconforming structures in the R1-A zoning district similar to what was already in the R1-B zoning district. Section F was added to allow some additions as long as the addition did not increase the degree of nonconformity and did not encroach more than 20% into any required setback. Additionally, a change was made to eliminate the requirement of obtaining a Conditional Use Permit for changes to external openings. The addition of Section G regulated additions or alterations involving more than 50% of the floor area and would require the entire building to be brought up to current code requirements. The Planning Commission reviewed and approved the ordinance.

Council Member McKeithen, after a short discussion regarding Subsection G of the ordinance, suggested the following changes: “Alterations or additions to nonconforming main building shall be limited to not more than fifty (50%) of the floor area and not more than fifty (50%) of the nonconforming exterior walls are rebuilt,

either as a single project or ~~cumulatively over time~~, within a 5-year period, which means a series of projects beginning with the first alteration...”

Vice Mayor Janz wanted Subsection G rewritten. He did not think it fit the parallel structure of other sections. He believed the intent was that “Alterations or additions to nonconforming main buildings shall be permitted under this section so long as...”

Mayor Carlson opened the public hearing.

David Lewis, Atherton, noted that Section G of the ordinance did not apply to his situation. He urged Council to introduce the ordinance that evening so his project could move forward.

City Attorney Marc Hynes clarified that the Council could recommend language changes and introduce the ordinance that evening since the ordinance would be brought back for a second reading.

Mayor Carlson closed the public hearing.

MOTION – to introduce the ordinance for first reading based on the finding that the proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan with the understanding the following suggested language changes will be incorporated into Subsection G: “Alterations or additions to nonconforming main building shall be limited to not more than fifty (50%) of the floor area and not more than fifty (50%) of the nonconforming exterior walls are rebuilt, either as a single project or ~~cumulatively over time~~, within a 5-year period, which means a series of project beginning with the first alteration...” Further, Vice Mayor Janz to work with City Attorney Marc Hynes to clarify language in Subsection G.

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

20. APPEAL OF THE BUILDING OFFICIAL’S DECISION RELATING TO THE PROPERTY AT 84 WALNUT AVENUE – A NONCONFORMING STRUCTURE (ASSESSOR’S PARCEL NUMBER 060-332-230)

Deputy Town Planner Lisa Costa Sanders said the property owners at 84 Walnut Avenue had appealed the decision of the Building Official regarding a nonconforming structure. The property was located in an R1-B zoning district, and the original residence was built around 1921. Currently, the property was considered legally nonconforming because it was located 7 feet 1 inch from the front property line where the current code required a 23-foot 7-inch front setback. The left side was also nonconforming, located 8 feet 8 inches where 10 feet were required. In 2004, the Planning Commission denied a Conditional Use Permit to convert a nonconforming part of the original residence into a garage based on the fact that the request was for a new structure and not a modification to an existing structure. In working with the previous Building Official, the property owners were advised they could use the nonconforming area as long as the degree of nonconforming was not increased and the

nonconforming walls were to be kept until the new foundation was poured, at which time the nonconforming walls could be replaced. A building permit was approved in 2006, and the approved plans clearly indicated original walls and nonconforming area were to be kept. The property owners' deconstruction contractor accidentally knocked down the nonconforming walls. Acting Building Official Mike Cully advised the property owners the walls should not have been removed. Since the structure had been removed, a nonconforming status no longer existed and the structure could not be rebuilt to nonconforming setbacks. The appellant was requesting the City Council to allow alterations that reduced the nonconformity of the structure. Additionally, the appellant was offering to further reduce the degree of nonconformity by moving the wall 3 feet closer, which would increase the current front-yard setback, proposed at 7 feet, to 10 feet 1 inch but still did not meet the minimum 23-feet 7-inch requirement. Staff believed there was no longer a nonconforming structure; therefore, the Council could not permit alterations of a structure that did not exist. Staff advised the appellant to redesign the home to meet current setback requirements. Staff recommended that the Council conduct the public hearing and deny the appeal.

Mayor Alan Carlson opened the public hearing.

Amanda Miller, Walnut Avenue, had been working on the project since 2002. She acknowledged that plans indicated that the nonconforming walls needed to remain. The contractor had removed the walls (some of the wall framing remained) in August of 2006; however, she did not learn until November that the new foundation could not be poured. She tried to redesign a conforming plan (the basement had already been dug, all the engineering had been done, windows purchased, etc.) but had not succeeded. She did not dispute the facts as presented by staff.

Building Official Mike Wasmann clarified that the part of the walls that remained were wall stud framing. Walls were considered to be walls when the siding and stucco remained intact. Only a portion of the original walls remained in the stud framing left standing.

Council Member Marsala stated the ordinance allowed reconstruction of nonconforming structures that were damaged or destroyed by fire, explosion, earthquake or other accidental occurrence and queried why the appellant could not rebuild.

Deputy Town Planner Costa Sanders said staff interpreted that to mean natural disasters outside the control of the appellant.

Lauren Gruner, Walnut Avenue, spoke in favor of the appellant. She, as well as other neighbors, had reviewed the plans and did not object to them.

Mayor Carlson closed the public hearing.

Council Member McKeithen, although sympathetic to the appellant, said the fact that the walls were removed made it a non-existing, nonconforming use. The statute was clear. The Council had to uphold the laws of the Town of Atherton.

Mayor Alan Carlson said the situation was unfortunate in that if the Council granted the appeal and tried to enforce the ordinance at a later time, the Town became subject to the legal challenge of being arbitrary and capricious. The building plans were specific. He believed the remedy was elsewhere. If the Council denied the appeal, he wanted the findings to be specific: 1) the building plans approved by the Town had a specific requirement for a nonconforming use that the walls on the plans be retained; 2) the agent of the owner removed the walls thereby violating the conditions of the approval of the plans; and 3) for that reason and that reason only, the City Council denied the appeal.

Council Member Jerry Carlson had a great deal of compassion for the appellant; however, he agreed with his colleagues that the ordinance had been violated.

Vice Mayor Janz asked staff to explain a previous appeal before the Council regarding 172 Austin Avenue.

Deputy Town Planner Costa Sanders said the property owners wanted to remove the walls and rebuild them exactly as they previously existed. Staff advised Council at that time that it did not meet the Town's code requirements. Council granted the appeal. She further clarified the new Subsection G of the ordinance.

Council Member Marsala asked whether the house would need to be redesigned if Council denied the appeal and whether the project was under the new time limits for construction.

Building Official Mike Wasmann said the project did not come under the new timelines. The property owners would need to do some redesign in the entry area.

Council Member Marsala queried whether approving the appeal would set a precedent.

City Attorney Marc Hynes clarified each case should be looked at on a case-by-case basis; however, each time the Council avoided enforcing the code, an appearance of being arbitrary was possible. He clarified that the term "accident" within the ordinance was designed to handle acts of God, fire, vandalism, etc.

Council Member Marsala was more tolerant and would support the appeal, especially since the neighbors did not object.

Vice Mayor Janz believed the issue was whether the framing constituted a wall; however, the framing that remained did not cover the area where the wall previously existed. He reiterated the concept that anything could be rebuilt so long as a wall is left standing was a "legal fiction" that should not be allowed to continue to persist in

the code. Whether the walls remained standing or not made no difference to the neighborhood or the Town. The ordinance should be revised. He was not prepared to tell the appellant that she was out of luck and pursue the contractor for recourse.

Mayor Carlson did not disagree the code was in need of revision; however, the code that was in effect was the code the Council had to enforce.

Mayor Carlson made the following motion, seconded by Council Member McKeithen:

MOTION – to deny the appeal with direction to the City Attorney to draft specific findings including: 1) the building plans approved by the Town had a specific requirement for a nonconforming use that the walls on the plans be retained; 2) the agent of the owner removed the walls thereby violating the conditions of the approval of the plans; and 3) for that reason and that reason only, the City Council denied the appeal

A discussion ensued regarding whether the appellant could revisit the appeal after the code was amended, or whether the appellant should continue the appeal until the ordinance was amended. Additionally, a discussion of 172 Austin Avenue took place regarding how that appeal differed from the current issue.

A further discussion ensued regarding whether the appellant wanted to continue the appeal to a future meeting when the revisions to the ordinance were completed. Vice Mayor Janz made the following motion, seconded by Council Member Marsala:

MOTION – to continue the appeal to a future City Council meeting

Mayor Carlson withdrew the previous motion.

Amanda Miller, Walnut Avenue, said she had experienced a 6-month delay in construction and believed the final approval of the revised ordinance would take another 3 or 4 months. Her preference was to resolve the appeal that evening whatever way the Council decided the issue.

Vice Mayor Janz said the choices were to enforce the code as it was or wait for the revision. Based on the appellant's preference, Vice Mayor Janz withdrew his motion.

Mayor Carlson moved for his motion to be reinstated, seconded by Council Member McKeithen.

Vice Mayor Janz reiterated that the fact that there was no doubt where the old wall was, the corner was still standing, and whether it was called a wall or not, he did not believe it went to the substance of what the law tried to maintain. He did not have a problem with approving the appeal.

MOTION – to deny the appeal with direction to the City Attorney to draft specific findings including: 1) the building plans approved by the Town had a specific

requirement for a nonconforming use that the walls on the plans be retained; 2) the agent of the owner removed the walls thereby violating the conditions of the approval of the plans; and 3) for that reason and that reason only, the City Council denied the appeal

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

REGULAR AGENDA (Items No. 21 - 29)

21. **DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE COMMITTEE/COMMISSION APPOINTMENT PROCESS** (*Continued to a Special Meeting, date to be determined.*)
22. **DISCUSSION OF COUNCIL PROCEDURES (NO WRITTEN REPORT)** (*Continued to a Special Meeting, date to be determined.*)

Mayor Carlson moved Item No. 25 forward to be heard before Item No. 23.

25. **DISCUSSION AND POSSIBLE ACTION REGARDING A JOINT MEETING OF THE ATHERTON CITY COUNCIL AND THE MENLO PARK FIRE PROTECTION DISTRICT BOARD TO DISCUSS ISSUES RELATED TO THE FINDINGS AND RECOMMENDATIONS CONTAINED WITHIN THE CIVIL GRAND JURY REPORT**

DISCUSSION AND POSSIBLE ACTION REGARDING INTERIM CIVIL GRAND JURY REPORT REGARDING THE ATHERTON BUILDING DEPARTMENT

Mayor Carlson called for a recess at 9:21 p.m. The meeting was reconvened at 9:27 p.m.

Mayor Carlson presented a report. Since the last City Council meeting, he had studied the relationship, present and past, between the Building Department and the Menlo Park Fire Protection District (MPFPD). He personally met with the president of the MPFPD Board, Ollie Brown, and attended the MPFPD Board meeting the previous evening. All parties were interested in resolving the issues, and he believed a new relationship between the MPFPD and the Town's Building Department would result; one where the responsibilities and the procedures were clear. Mayor Carlson continued with a discussion of the Grand Jury's report and its ambiguities. He focused his comments on life-safety issues, hydrant water flow, and fire apparatus access to building locations. There were two codes that were pertinent to the Grand Jury's report: 1) The California Building Standards Code; and 2) The California Fire Code. The Council adopted the California Building Standards Code; and under Section 13146, the California Health and Safety Code, the Town had the option to either delegate the authority to enforce and plan check to the Building Official or the MPFPD. In Atherton, the authority had been delegated to the Building Official. The MPFPD adopted the California Fire Code, thereby delegating authority for enforcement purposes to the fire chief and his personnel. Mayor Carlson continued

with an explanation of and differences between the codes, most importantly that the California Fire Code did not include any life-safety building standards for residential construction, with one exception: Article 9 dealt with fire hydrant, water flow, and apparatus access to building locations including single-family residential locations. The Town was not required to send any building plans for single-family construction to the MPFPD regarding life-safety issues such as smoke detectors. The MPFPD never requested a delegation of authority under Section 13146 of the California Health and Safety Code to either assume or share the responsibility for plans checks and reviews for single-family residences. Additionally, the intent of the code was to give primary authority to the MPFPD, under Article 9, regarding fire hydrant, water flow, and apparatus access to building locations including single-family residential locations. He took exception to the Grand Jury's report that plans were not being checked in Atherton for health and safety issues, if it fact it was referring to anything within the building that dealt with fire safety. Fire safety was being checked and had always been checked. The California Fire Code dealt exclusively with commercial construction and structures with the exception of Article 9. One area or issue that could be equally shared between the Building Department and the MPFPD was that the relationship had not been formalized with respect to Article 9 requirements. Mayor Carlson continued with a discussion of water flow issues, which he believed to be the responsibility of the MPFPD. Atherton had been unaware of the water flow problem and was an issue that needed to be resolved. The MPFPD fire chief acknowledged the issue and would move forward to solve it by putting together a group of stakeholders. Mayor Carlson believed that fire apparatus access to building locations was primarily an issue with flag lots. Informal communication between the Building Department and the MPFPD had occurred. The MPFPD, historically, required a 14-foot width on gates. A requirement in Article 9 required that access be 20 feet. In December 2006, MPFPD came to the Building Department and indicated it wanted the 14-foot width on the gates, a 16-foot width driveway that could support a 40,000-pound vehicle, and requested that gates be 40 feet back from the street (a flag lot issue). An informal relationship between the Town and the MPFPD regarding fire access existed prior to the adoption of the sprinkler ordinance. Mayor Carlson believed the reason there were plans that were not sent to the MPFPD regarding site access was because the plans that were sent were for sites the Building Department knew access issues existed, i.e., flag lots. Plans began to go to the MPFPD after the sprinkler ordinance was enacted in October 2004. The MPFPD would determine whether there was a need for a sprinkler plan. The homeowner would submit the plan to the MPFPD for approval. The MPFPD would approve or deny the plan in a letter to the homeowner. There was confusion regarding whether the Town received copies from the homeowner or the MPFPD, which indicated the process needed to be formalized. Mayor Carlson concluded by stating did not believe the MPFPD wanted to inspect smoke detector locations, how many doors and windows there were and whether they were in the right location for ingress and egress, and basement exits. However, there were some issues in which the MPFPD wanted input, i.e., the basement issue in terms of firefighter safety. The MPFPD fire chief said that heat rises; however, when a firefighter entered a basement, he/she had to go through the heat barrier to enter the basement. Mayor Carlson thought, at some point, the sprinkler ordinance should be revisited regarding that issue. He recommended a meeting between the MPFPD Board and the Atherton

City Council. Staff from both organizations had worked together to develop an agenda. Mayor Carlson outlined the issues: 1) what, if any, life-safety code requirements of the California Building Code did the MPFPD want input on and/or review of building plans to include a formal procedure; 2) fire hydrant flow and apparatus access needed clarification; 3) the Civil Grand Jury Report contained assumptions that were erroneous and lacked factual and legal support; therefore, a response should identify those erroneous assumptions of fact and law; 4) a review of plans for fire violations during the tenure of the former Building Official was unclear because neither agency had knowledge that violations existed; and 5) notification to the Grand Jury that a new relationship between the Town's Building Department and the MPFPD was developing regarding the issues and a process to solve them.

Bart Spencer, MPFPD Board, said that President Brown of the MPFPD Board concurred with the Mayor regarding their meeting, i.e., that it was positive, and he looked forward to moving into a positive direction. President Brown looked forward to the Joint meeting in order to work out a more formalized relationship between the Town and the MPFPD. He encouraged members of the Council to attend a demonstration regarding "flashovers" to observe the time lapse and temperature rise in a normal size room that might occur during the holiday season with decorations, which would be meaningful in order to observe how quickly a fire could engulf a room. The MPFPD would schedule such an event.

Harold Shapelhouman, MPFPD Fire Chief, said he was the first chief to be promoted from the inside in the past 21 years and brought 25 years of experience to the position. He spoke about the role of a firefighter in that it was not political but to protect the residents of Atherton, Menlo Park and East Palo Alto. Most of his tenure was spent in disaster management response. Communication, collaboration, and coordination were the root of working together. Regarding water flow issues, there was not a mitigation process in place. Regarding the sprinkler ordinance, he was very passionate about basements because it was one of the major hazards for firefighters to be injured or killed and presented huge issues tactically. The MPFPD needed to make improvements, and he looked forward to the opportunity to meet with the Council to develop ways in which both organizations could work better together at a policy level. His job was the protection of life and property, and he stated that the people who performed those tasks every day were not impacted in the way they performed their job. His goal was to address the issues so that the community had a sense of security and there was an understanding that life-safety was a key issue.

Mayor Carlson said the Council needed to formally approve both agendas from the MPFPD and Town staff with the proviso that any items could be added. Additionally he suggested that a subcommittee be formed to prepare a response, with the City Attorney and the City Manager, to the Civil Grand Jury Report.

MOTION – to approve the agendas developed by both the Menlo Fire Protection District staff and the Town of Atherton staff for discussion at a Joint meeting

M/S Janz/J.Carlson

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

MOTION – to appoint a subcommittee consisting of Council Member McKeithen and Mayor Alan Carlson to work with the City Attorney and the City Manager to prepare a timely response to the Civil Grand Jury

M/S J.Carlson/Marsala

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

By consensus, the City Council set May 21, 2007, at 5:00 p.m., at Holbrook Palmer Park, for a Joint meeting between the Menlo Park Fire Protection District Board and the City Council.

23. CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON THE APPEAL AT 233 PARK LANE

City Attorney Marc Hynes presented the staff report. The proposed findings relative to the action the Council took at the previous meeting on the appeal by the property owner of 233 Park Lane was before the Council. He noted that Council Member McKeithen clarified that Number 5 and 6 of the findings indicated that both Mr. and Mrs. Ruehle were present and participated in the meeting, while in actuality only Mr. Ruehle was present.

Council Member McKeithen indicated that with respect to Number 3, second line, should have said “extended”

Mayor Alan Carlson opened the public hearing. No one came forward to speak and Mayor Carlson closed the public hearing.

MOTION – to adopt Resolution No. 07-07, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DENYING APPEAL OF A DETERMINATION BY THE BUILDING OFFICIAL REGARDING CONSTRUCTION OF BASEMENT AT 233 PARK LANE, ATHERTON, CALIFORNIA

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

24. UPDATE ON DRAINAGE CRITERIA FOR NEW DEVELOPMENT – BKF ENGINEERS

Ed Bosccaci, BKF Engineers, gave a PowerPoint presentation to update the Council regarding drainage criteria for future new development within the Town. He emphasized that it was not a drainage study, since one had been done several years prior. The Town had very minimal control over existing lots. The only time the Town could become involved was when someone came in with substantial redevelopment. Mr. Boscacci reviewed those tasks completed and acknowledged those that had not been completed. A big issue in the near future was the requirement of a Municipal Regional Permit (MRP) that would regulate single-family residences and would have an impact on Atherton to require supervising water quality and performing building

review. Workshops would inform residents of the new rules. There were two ways in which to treat runoff: 1) a landscape base that breaks down pollutants; and 2) rain gardens. Mr. Boscacci described other methods and requirements, e.g. FEMA. Additionally, he described the Town's flooding storage requirements, i.e., 2 inches of rainfall had to be stored onsite; an MRP may soon be required. A short discussion ensued regarding percolation. Mr. Boscacci said that the current plan was that all the water had to be retained on the property and later pumped off, which caused problems. To the extent that percolation could be done, it should be encouraged; however, if percolation was just going into a downstream neighbor's property, the issue needed to be solved, e.g., by flowing into the street. Water rights were based on Spanish law as far as the right to use water. The right to have water leave your property was based on English law. In California, drainage law was extremely vague, i.e., one must act reasonably in having water leave your site. The definition of reasonable was what 12 reasonable jurors would decide. He continued with a description of mechanical treatments, hydrograph modification, and surface ponding. In summary, 1) the 2 inches of rainfall volume was working; 2) percolation should only be allowed if the geotechnical engineer certified there was no offsite impact, 3) runoff to leave storage devices within 48 hours; 4) storm water treatment would soon be required, 5) under drains on landscape base treatment to keep water from ponding on the surface; 6) impermeable liners required unless the geotechnical engineer said it would not affect downstream properties.

Council Member McKeithen said she wanted to know: 1) how French drains were working; 2) whether the 2 inch volume was working uniformly throughout the Town; and 3) where problems with percolation existed. She wanted to know where Atherton was doing things right or where the Town needed to reassess.

Mr. Boscacci noted he had a presentation for the first workshop to be held in the Town that would address the issues. He further clarified questions of Council.

A discussion ensued as to the timeline for the workshops and the possibility of advertising the dates in the upcoming issue of the *Athertonian*.

Melinda Teves, Tallwood Court, clarified that the property owner would hire a geotechnical engineer on an individual basis.

Council indicated a desire for more in-depth presentations at the upcoming workshops.

26. CONSIDERATION AND DIRECTION TO STAFF REGARDING THE RESULTS OF SOLICITATION OF PROPOSALS FOR THE TOWN OF ATHERTON ZONING ORDINANCE UPDATE

A brief discussion ensued regarding the amount of time allowed for companies to respond to the Request for Proposals. Council indicated the desire for more than one bid and to allow more time for companies to respond. Additionally, a suggestion was made that Town staff might have the expertise to perform part of the analysis and then use an outside party to act as an auditor.

City Manager Jim Robinson spoke with one firm that did not respond that said the project was relatively small and would take a lot of effort to prepare a proposal. Another firm indicated a budgeted number had not been included. He also spoke to the city managers of Rancho Cordova and Elk Groove who used PMC (the lone proposal) and highly recommended PMC.

Direction to staff (prior to sending out another Request for Proposals) to review the RFP, contact companies that were solicited but did not submit a proposal to determine why, and ask what might be changed or clarified in the RFP to change their decision.

27. STATUS REPORT ON SAN MATEO COUNTY SUB-REGIONAL HOUSING NEEDS ALLOCATION

Recommendation: Provide direction to Vice Mayor Janz on Atherton’s position regarding the San Mateo County Sub-Regional Housing Needs Allocation. The Sub-Regional Technical Advisory Committee recommends adoption of the “ABAG Methodology.”

Vice Mayor Janz said two committees had been meeting regarding the housing allocation process: the Policy Advisory Committee (PAC) and the Technical Advisory Committee (TAC). San Mateo County was the only County in the State that had formed a sub-region and every city in the County was participating. The only benefit was a slight reduction in the overall housing number units allocated to the County than if the city/town were a separate entity. The TAC estimated that 18,400 units would be required for San Mateo County based on the number of units the Bay Area would be required to have (250,00). In the 1999-2006 housing allocation process, there were a total of 16,305 housing units allocated to San Mateo County; 166 units were allocated to Atherton. Under the new allocation, Atherton would receive 187. Of all the methodologies being suggested, ABAG was focusing on, which they would use for every other jurisdiction that did not have a sub-region, would produce a 123 units for Atherton. The TAC was supporting the ABAG methodology because any other methodology helped some jurisdictions and hurt others. The benefit of having a sub-region, if there was one, was to have the ability with jurisdictions within the sub-region to negotiate.

Mayor Alan Carlson clarified whatever methodology was used fixed a number and then bargaining would begin; however, the original number could not be changed arbitrarily.

A short discussion ensued regarding other jurisdictions methods for raising fees which could be used for bargaining.

Council Direction to Vice Mayor Janz was concurrent with the Technical Advisory Committee’s recommendation to adopt the “ABAG Methodology.”

28. **EMERGENCY PREPAREDNESS - INCIDENT COMMAND SYSTEM (ICS) 1 & 2 TRAINING** *(Continued to a Special Meeting, date to be determined.)*
29. **INTRODUCTION OF AN ORDINANCE AMENDING TITLE 12 AND 13 OF THE ATHERTON MUNICIPAL CODE RELATIVE TO REQUIREMENTS FOR VIDEO SERVICE PROVIDERS**

Recommendation: Consider proposed revisions to Title 12 and 13 of the Atherton Municipal Code in order to conform Town regulations to the California Digital Infrastructure and Video Competition Act of 2006.

City Attorney Marc Hynes said the ordinance was designed to keep the Town in the “game” to retain the 5% Franchise fee.

MOTION – to introduce an ordinance, “ORDINANCE OF THE COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTIONS 12.06.030 – 12.06.050 AND ADDING CHAPTERS 12.07 AND 12.09 TO TITLE 12 OF THE ATHERTON MUNICIPAL CODE; ADDING SECTION 13.08.600 TO CHAPTER 13.08 AND CHAPTER 13.10 VIDEO SERVICE PROVIDERS – APPLICABLE REQUIREMENTS TO TITLE 13 OF THE ATHERTON MUNICIPAL CODE TO CONFORM TO THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006”

M/S McKeithen/Janz

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

11. **ADOPTION OF 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** *(Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.)*

Mayor Alan Carlson stated the Council had refused to spend the amount of money required in the past. The tennis group was supposed to raise money for the project, which it had not done. He had difficulty supporting the motion.

Council Member McKeithen clarified the grant could be refused if the funds were not secured. She approved of going forward with the grant with the understanding that the Town did not have to secure the matching funds.

Council Member Jerry Carlson said his impressions was approving the resolution was a process to apply for the grant but did not obligate the Council.

Mayor Carlson withdrew his objection.

Council Member Marsala did not believe the tennis group committed to raising the money.

MOTION – to adopt Resolution No. 07-08, “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”

M/S McKeithen/J.Carlson

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

- 17. ADOPTION OF A RESOLUTION APPROVING MEMBERSHIP IN ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY – FOR PARTICIPATION IN THE CITIES FOR CLIMATE PROTECTION CAMPAIGN *Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.***

City Attorney Marc Hynes suggested two language changes: 1) the word “undertake” to “will consider,” and 2) the word “specifically” to “which may include the following actions.”

MOTION – to adopt Resolution No. 07-09, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING MEMBERSHIP IN ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY TO PARTICIPATE IN THE CITIES FOR CLIMATE PROTECTION CAMPAIGN”

M/S Marsala/Janz

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

Mayor Carlson noted that Item A on the City Council Closed Session Agenda of March 21, 2007, should be continued to a Closed Session preceding the Special meeting, date to be determined.

Council Member McKeithen gave direction to the City Manager to provide a tape of Mr. Ross’ comments under Public Comments to the attorneys in Walnut Creek.

30. PUBLIC COMMENTS

There were no public comments.

31. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 11:50 p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**