



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON
CHANNEL DRAINAGE DISTRICT
March 15, 2006
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Marsala called the meeting to order at 7:03 p.m.

1. **PLEDGE OF ALLEGIANCE**

ROLL CALL

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

ABSENT Alan B. Carlson (excused)

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

3. **PRESENTATION**

Swearing in of new Police Officer Gordon Dere
Oath of Office Administered by Police Chief Bob Brennan

Police Chief Bob Brennan introduced Police Officer Gordon Dere and administered the Oath of Office.

Promotional Appointment - Sgt. Joe Wade
Oath of Office Administered by Police Chief Bob Brennan

Police Chief Bob Brennan introduced Sgt. Joe Wade and administered the Oath of Office.

4. **COUNCIL REPORTS**

- Council Member Jerry Carlson attended the March 3rd Finance Committee meeting where the evaluation of road impact fees was discussed. No action was taken to increase the fees. Staff was asked to look at the actual cost of

repairing/replacing the roads. The next meeting was scheduled for March 20th to discuss the budget and the Police Department services survey. Additionally, the Buildings and Facilities Committee seemed to be the appropriate venue to prepare a preliminary plan to replace Town facilities. Council Member Carlson suggested forming a Citizen Advisory Committee to help in the process. He attended the San Francisco Airport Roundtable workshop where noise issues were discussed. He met with Gail Ortega from Menlo College regarding student volunteers. The Selby Lane School fundraiser scheduled for March 17th was canceled. Phil Lively took him on a tour of the upper Atherton Drainage Channel. He suggested the Council consider setting two or three priorities for 2006/2007 to focus on in the Town.

- Council Member Janz attended the City/County Association of Governments (C/CAG) meeting last week. Jim Vreeland, Pacifica, was reelected Chair and Debora Gordon, Woodside, and Nick Jones, Menlo Park, Vice Chairs. Two weeks ago, members of the Atherton Rail Committee met with Supervisor Jerry Hill, new member of the Caltrain Joint Powers Board (JPB), to express the Town's concern regarding Caltrain issues. A letter was being prepared asking the JPB to put an item on the next agenda to approve the construction to cure the hold-out situation and reinstate Atherton train service on July 1. The Association of Bay Area Governments meeting was scheduled for the next evening. A report on the Blueprint for the Future would be presented. He asked staff to look into the San Mateo County Telecommunications Authority, composed of the County and most cities in the County, regarding wireless internet service. Atherton Menlo Park, Burlingame, and East Palo Alto were not involved.
- City Manager Jim Robinson said the Town belonged to an organization with Palo Alto since the Town's issues related more to Menlo Park and Palo Alto. Staff would look into the issue further.
- Council Member McKeithen also attended the Finance Committee meeting and noted the Road Impact Fee, at \$22 per cubic yard, accounted for approximately 75% of the wear and tear on the roads; however, 87% of the wear and tear was attributable to construction. The committee was analyzing the figures and would reassess the fees in six months. The March 20th meeting would also include a discussion on the Police Department attitudinal survey. The Town needed to develop a plan for new facilities, including the cost, before soliciting commitments from the community. She attended the Portola Valley Emergency Preparedness session on Saturday, an excellent course with good information regarding first aid, search and rescue, etc. The Towns of Woodside and Portola Valley partnered to map the towns into divisions with division chiefs, held regular meetings, and performed drills twice a year. The Atherton Civic Interest League would highlight emergency preparedness at its annual meeting in May and would merge with the citizens group to develop a plan for the Town.
- Mayor Marsala asked staff to add an item to next month's agenda regarding priority setting. The Building and Facilities Committee met two weeks ago to discuss soliciting grants for facility development, consultant assistance for facility needs, and citizen participation with the committee activities. Council had funds budgeting to begin the process. He attended the Grand Blvd. Task

Force meeting which included every city from Daly City to Santa Clara. Mike Scanlon headed up the task force formed to improve El Camino Real. At the League of Cities meeting, cable was discussed. The Park Foundation's "kick-off" on April 1st was a fundraising effort for the new walking bridge to be named in memory of Bill Conwell. The Easter Egg Hunt was back on and Betty Ogawa agreed to chair the event. Next week he would participate in Mayors on Wheels to deliver meals to seniors. Over 400 mayors nationwide would be participating in the event. He met with staff from Sacred Heart and reviewed their master plan. He attended the third anniversary of the Peninsula Conflict Resolution group. Additionally, he went to the Media Center and saw its new facility. With regard to the General Plan Committee's review of construction time limits, he thought a fourth level should be included for homes over 10,000 square feet. Mayor Marsala said the park budget was reduced last year; as the Town began to review the budget and projected surplus, he asked staff to consider how much money should be budgeted for the park.

5. PUBLIC COMMENTS

Marion Oster, Atherton, representing the Atherton Heritage Association, spoke regarding Farlap, an Australian racehorse that died in Atherton.

Rosemary Maulbetsch, Atherton, spoke regarding improving the landscaping in the center of Town; between the Lloyd Park gates and the reading park in front of the library.

Staff would review what the cost would be to have the gardeners maintain those areas and review it in the budget discussions.

Shirley Carlson, Atherton, reported on a meeting with Gail Ortega from Menlo College on March 2nd regarding bridging the college community and the Town of Atherton. Over 700 students attended Menlo College and were interested in participating in projects, internships, disaster preparedness, computer labs for seniors, website resources, etc. Additionally, she indicated she was taking the C.E.R.T. training along with five other Atherton residents.

Bob Jenkins, Atherton, reported on the progress of the Citizens Committee for Disaster Preparedness. The first meeting on February 11th was attended by 10 people. The committee was looking to include the 18 Atherton residents who were C.E.R.T. graduates and the 6 new C.E.R.T. participants, along with the Neighborhood Associations, the schools, and college. The next meeting was scheduled for 9:00 a.m. on March 18th in the Council Chambers.

John Sisson, Atherton, spoke regarding 1) former City Manager Richard Moore's Beautification and Creation of a Town Center plan; and 2) an open letter from Mr. Law in the *Almanac* regarding the proposed senior housing complex. He believed the Council needed an avenue to respond in a non-political manner to clarify misinformation/misrepresentations. In March 2002, the Town had done a synopsis

of Town objectives. He suggested using the document as a starting point for priorities and budget discussions.

6. STAFF REPORTS

- **City Manager Jim Robinson said the Finance Committee would begin the process of identifying goals for capital improvement. He met with a member of the Menlo Park Fire Protection District Board and chief commander to discuss the necessity for more training in disaster preparedness. Additionally, he asked for ideas/articles for the upcoming edition of the *Athertonian*.**
- **City Attorney Marc Hynes reported out of the Closed Session as follows:**

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

2 potential cases

City Attorney Hynes clarified there was only one potential case. No reportable action was taken.

B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

1 Potential Case

No reportable action was taken.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Mark E. Bandeen

Agency Claimed Against: Town of Atherton

No reportable action was taken.

Claimant: Tenley Baxter

Agency Claimed Against: Town of Atherton

No reportable action was taken.

- **Police Chief Bob Brennan reported on burglaries in Lindenwood. The City of Palo Alto made an arrest and found stolen property from the Lindenwood burglaries. The property was recovered and the burglaries were solved. The emergency radio system was operational and was tested on a regular basis.**

- Deputy Town Planner Lisa Costa Sanders reminded Council that the South Bayside Waste Management Authority (SBWMA) was hosting a meeting the next day at 8:00 a.m. for elected officials to be briefed on the contractor selection process.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

None

CONSENT CALENDAR (Items 8 - 14)

Staff clarified Council questions regarding Item Nos. 11 and 13. City Attorney Marc Hynes clarified a question by a member of the public on Item No. 12.

MOTION - to approve the Consent Calendar as presented

M/S McKeithen/J. Carlson

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

8. **APPROVED MINUTES OF THE SPECIAL CLOSED SESSION AND SPECIAL MEETING OF JANUARY 9, 2006, AND THE SPECIAL CLOSED SESSION AND REGULAR MEETING OF FEBRUARY 15, 2006**

9. **APPROVED BILLS AND CLAIMS FOR FEBRUARY 2006 IN THE AMOUNT OF \$ 628,708**

10. **ACCEPTED MONTHLY FINANCIAL REPORT FOR FEBRUARY 2006**

11. **APPROVED PURCHASE OF TWO PATROL VEHICLES**

Authorized the Town to participate in a bid with the City of Redwood City for the purchase of two marked police patrol vehicles for the Fiscal Year 2006-2007 budget cycle for a total cost of \$65,788.16 plus tax.

12. **ACCEPTED RESPONSE TO GRAND JURY REGARDING CITIES EXERCISE OF EMINENT DOMAIN**

Accepted the City Attorney's response to the Civil Grand Jury regarding exercise of eminent domain.

13. **AWARDED CONTRACT FOR HOLBROOK-PALMER PARK CARPETING, PROJECT NO. 05-002**

Awarded the contract for the Holbrook-Palmer Pavilion Carpeting Project, Project No. 05-002, to the low bidder, Gletzco Inc., dba The Floor Club, the low bidder on the March 9, 2006 bids, for \$44,523.08, with a 10% construction contingency of \$4,452.31, for a total authorization of \$48,975.39, and to authorized the Mayor to sign the contract on behalf of the Town.

14. AUTHORIZATION TO CHANGE THE NAME OF THE CALTRAIN CORRIDOR AD HOC SUBCOMMITTEE TO THE ATHERTON RAIL COMMITTEE

Authorized a name change from the existing Caltrain Corridor Ad Hoc Subcommittee to the Atherton Rail Committee.

PUBLIC HEARINGS NONE

REGULAR AGENDA (Items 15 - 18)

15. PARK LANE COMMUNITY POLICING REPORT

Recommendation: Continue proactive enforcement and educational efforts using S.A.R.A. problem-solving model directed at maintaining compliance in relation to municipal code ordinances involving construction parking and related activities.

Police Chief Bob Brennan noted that responses to each of the nine areas contained in the S.A.R.A. problem-solving model were contained in the staff report. Officer Tony Dennis, assigned to the Park Lane area, was present to answer questions.

Officer Dennis clarified that the procedure was to issue a written warning if the particular site had not been warned previously. If a warning had been issued previously, a citation would be given.

City Attorney Marc Hynes explained that the Council had approved, with regard to construction violations, that the first instance was a warning followed by a citation on the second event. Council could certainly change the procedure if desired.

Police Chief Brennan said the goal was to get compliance. A verbal warning could be successful in obtaining continuing compliance.

McKeithen noted the cost to the Police Department since March 9, 2006, was \$2,657 in overtime funds. Officer Dennis was also assigned during regular hours which she believed pointed to the need for a Code Enforcement Officer.

Jerry Carlson requested a “score card” of warnings/citations for each of the 11 construction sites in the Park Lane area.

Discussion took place regarding Officer Dennis’ schedule. His time was divided between looking for Municipal Code violations and working traffic related issues, which was the bigger issue. Only three contractors had been cited; most infractions were from residents, students, and neighboring communities.

John Ruggeiro, Atherton, spoke regarding catering trucks.

Police Chief Brennan said in the future, surveillance of the area would be diminished to observe whether compliance continued. Officer Dennis would discontinue his overtime and patrol the area on his regular working schedule.

Council Member Janz was concerned about a similar situation occurring again in another neighborhood and asked whether the Town could limit or stop issuing building permits.

Building Official Mike Hood said it was his ministerial duty to issue a building permit if the contractor met the criteria and filed a COP Plan. He could not refuse to issue one on the basis of too much construction in the area.

City Attorney Marc Hynes clarified building permits were governed by a uniform code and if the requirements were met, the building permit must be issued. An urgency ordinance for a building moratorium might be implemented based upon a certain number of applications.

Council Member McKeithen was concerned with imposing that type of restriction as it seemed like violating a Constitutional right.

Bob Huber, Atherton, spoke regarding the need for exceptions when parking was not possible in front of a site.

Jim Dobbie, Atherton, spoke regarding the use of shuttle services when the parking situation became an issue.

Mayor Marsala said that one of the homes on Park Lane was interested in using the Sacred Heart parking lot during the landscape phase. Shuttles could be a solution; however, there were still issues to resolve.

City Manager Robinson stated staff would continue enforcement based on the process outlined by Chief Brennan. If Council desired something different, direction to staff was needed.

Direction to staff to return to the April 19, 2006, City Council meeting with a written report containing a “score card” of warnings/citations that was site specific, as well as by week or month.

16. REVISION TO GUIDELINES: CONSTRUCTION, OPERATIONS AND PARKING PLANS (COP Plans)

Recommendation: Consider revisions to Guidelines and provide direction to staff.

Marc Hynes presented the staff report. Included in the revisions to the Construction, Operations and Parking Plan Guidelines were remarks by Council Member Jerry Carlson. Additional comments were received subsequent to the Agenda Packet and Council received a copy. If any of those comments needed to be incorporated, the

Guidelines could be returned at the next meeting and needed to be adopted by resolution.

Building Official Mike Hood noted the discussion needed to take into consideration the effect of the guidelines on flag lots, cul-de-sac lots, and small lots.

Council Member McKeithen proposed the following changes and/or observations: 1) if the requirement that lights on construction trailers should only be lit during construction hours was too restrictive, then the lights should be down shielded if they were lit beyond construction hours; 2) requirements were needed for debris boxes and locations; 3) regarding deliveries and truck traffic, language should be added to ...”installation of temporary construction back fencing to prevent additional access points, *and to detract from an attractive nuisance*”; 4) location of sanitary facilities needed to be enforced: 40 feet from front property line or 20 feet in a R1A zone; 5) regarding the cleanup process and Regional Quality Control Board requirements, clarification was needed as well as how enforcement would be handled; 6) requirements were needed for construction material storage; 7) holidays should be delineated; 8) regarding parking spaces, how were the required number of construction parking places determined and by whom; 9) regarding reports by the Chief of Police, information was needed on the how/where/to whom; 10) if COP Plans were violated, each and every owner should be given a ticket after the first warning for violation of any of the guidelines; and 11) regarding placement of construction signs, placement needed to be close to the road so people could see them.

Mayor Marsala was concerned with burdening staff and thought the review by the City Manager regarding Item No. 11 was unnecessary. Additionally, he wanted to know how much time was needed to generate the reports by the Police Department. He wanted signs posted (bilingual) at the front of the site noting a COP Plan was in place. Another concern was that 25 to 30% of homes could not comply and he suggested excluding neighborhoods with smaller lots.

Herman Christensen, Atherton, said Municipal Code Section 15.40.040 governed the situation, not the parking plan. The problem with the existing guidelines was that they were not specific. He suggested specifying that onsite parking was preferred, onsite parking spaces be delineated, and a reasonable number of spaces be designated.

City Manager Jim Robinson said there were great differences in size of projects and in the area for frontage parking. What might work in one area of Town might not work in another. Staff welcomed whatever changes to improve the situation. Council should also be aware that there would be a fiscal impact for staff to monitor 100 sites. Shuttles could be an alternative to providing extra parking. One of the dilemmas was contractors carried their equipment on their trucks which made it a logistics problem. The Caltrain parking lot would lend itself to a shuttle/parking service.

Council Member Jerry Carlson asked staff to consider the comments of Council Member McKeithen and suggested that staff confer with Herman Christensen. Additionally, he suggested the shuttle alternative should be explored further.

A discussion took place regarding flag lots and their particular parking issues.

Council Member Janz concurred with Mr. Christensen's suggestions that if a wall, fence, or hedge was scheduled for removal, that it be removed at the start of construction to maximize the number of perpendicular parking spaces. He agreed with the two additions of "c" and "d" for Item No. 9.

A discussion regarding the placement of debris boxes, portable bathrooms, material boxes, etc. ensued. As much as practicable, placement needed to comply with the 40 foot setback. "Best Management Practices," for example, meant having a specific wash-down area where concrete or paint was dumped to protect trees, etc.

Council Member McKeithen suggested that the Best Management Practices be attached to the guidelines.

Council Member Janz asked staff to find out how shuttles worked in those communities that utilized them, who pays, etc.

Jim Dobbie, Atherton, believed contractors did not plan very well. The Town's role was to make the rules and enforce them. Installing equipment boxes onsite would eliminate the need of carrying tools in every day and enable a shuttle system to work.

Direction was given to staff to incorporate the comments by Council Member McKeithen and Herman Christensen into the next draft of the Guidelines, to be returned to the City Council meeting of April 19, 2006.

17. DISCUSSION AND POSSIBLE ACTION – CREATION OF CODE ENFORCEMENT OFFICER POSITION

Recommendation: Provide direction to staff regarding the creation of a Code Enforcement Officer position or other alternatives to provide code enforcement services.

City Manager Jim Robinson presented the staff report. Options were identified on various methods of providing code enforcement for Council consideration. A number of issues related to code enforcement were handled by the Building Official and Building Inspectors who were required to ensure perspective construction complied with certain codes, others were handled by the Police Department, and some were related to public right-of-way issues and heritage trees. Various staff members were involved in code enforcement. The question was to what level and to what extent Council desired code enforcement, i.e., expectations for compliance, code enforcement, and code issues. If Council considered adding some type of code enforcement position, he suggested the evaluation could be done in relationship with the budget process. Staff said current practice was enforcement on a complaint basis. If the desire was for more strict enforcement, staff would spend the time on what the priorities were.

Eighty percent of the people complied when sent a code enforcement letter, and another 10 percent complied when sent a nuisance abatement letter.

Council Member Janz believed a full-time Code Enforcement Officer was not necessary. The issue could be addressed with a part-time person, someone on staff, or purchasing time from another city's code enforcement officer. A discussion continued on various ways in which to handle code enforcement, etc.

Mayor Marsala believed contracting for a code enforcement officer would eliminate the need for benefit/retirement costs. He was concerned about increasing the workload for staff. He was interested in learning about the companies that provided code enforcement services.

Council Member McKeithen said violations included construction runoff, construction noise, and growth. Whoever provided code enforcement services (a contract person, a part-time person, or existing staff) should assist the other people in Town and ensure the laws were enforced. She did not think it was up to the Arborist, Police Department, or other staff to provide code enforcement. Residents should be able to go to someone who was independent and understood what needed to be enforced. She wanted a breakdown of the cost for each option including the advantages and disadvantages.

Council Member Jerry Carlson said ordinances were enacted to improve/protect the quality of life in Town and believed there was a problem with selective enforcement. The Town needed to be consistent and fair, and Council needed to set the tone. There were advantages to having an expert regarding ordinances. Perhaps a trial period was appropriate to evaluate the situation.

Bob Huber, Atherton, said if laws were not going to be enforced, don't have the law or change the code.

Jim Dobbie, Atherton, spoke in favor of a Code Enforcement Officer.

John Ruggiero, Atherton, spoke regarding a new problem created by BFI arbitrarily changing pickup days; garbage containers were seen all week. He spoke in favor of a Code Enforcement Officer.

Marion Oster, Atherton, spoke in favor of a Code Enforcement Officer in the Town.

City Manager Jim Robinson said the Town should look at what abatement processes or procedures were needed and evaluate how the Code Enforcement Officer would handle the abatement in Town.

Mayor Marsala also said the Town needed to make a decision as to the level of enforcement.

Direction was given to staff to prepare a follow-up report based upon a half-time position with a cost analysis of the various options for a Code Enforcement Officer, including the advantages and disadvantages, violations, and what to enforce, to be returned at the City Council meeting of April 19, 2006.

18. REFERRAL TO THE PLANNING COMMISSION TO AMEND ATHERTON MUNICIPAL CODE SECTION 17.36.195 REGARDING FENCE HEIGHT, HEIGHT OF GRADING, AND AMOUNT OF GRADING

Recommendation: Consider recommendations from staff for modification to Atherton Municipal Code Section 15.40.157 (screening) and Section 17.36.195 (retaining walls) and refer to the Planning Commission.

Deputy Town Planner Lisa Costa Sanders said the City Attorney prepared draft language relating to screening of construction sites and retaining walls. Since the retaining wall modifications pertained to the Zoning Code, the item was noticed to be heard at the March Planning Commission meeting. Staff was seeking input from Council on the proposed language. Both items would be returned to Council for formal consideration.

Council Member McKeithen wanted clarification that construction screening should be installed prior to commencement of construction. Additionally, all retaining walls, including the successive 20 feet retaining walls, should be off the natural grade.

A discussion regarding the exception for basements and underground driveways ensued. The language “*except for*” would be eliminated.

Council Member Janz suggested the item be referred to the General Plan Committee first and then on to the Planning Commission.

Language regarding “*construction screening on fences shall be installed first*” would be added.

The City Council referred the recommended amendments to Municipal Code Section 15.40.157 (screening) and Section 17.36.195 (retaining walls) to the General Plan Committee meeting of April 5, 2006, the Planning Commission Meeting of April 26, 2006, to be returned to the City Council Meeting of May 17, 2006.

19. PUBLIC COMMENTS

There were no public comments.

20. ADJOURNMENT

Mayor Marsala adjourned the meeting at 10:50 p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**