



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
December 13, 2006
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

SPECIAL MEETING

Mayor Marsala called the meeting to order at 7:04 p.m.

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

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

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

3. **INDUCTION / PRESENTATIONS / REORGANIZATION**

- A. **Induction of those Council Members Appointed In-Lieu of an Election – Council Members Alan Carlson, Jerry Carlson, and Charles Marsala – Oaths of Office**

Acting City Clerk Kathi Hamilton administered the Oaths of Office.

- B. **Presentation to Outgoing Mayor, Charles Marsala**

Vice Mayor Alan Carlson presented Outgoing Mayor Charles Marsala with a plaque and thanked him for his year of service.

Mayor Marsala thanked his colleagues, who brought a lot of expertise to the Council. Additionally, he thanked staff for their time, energy, and hard work. He thanked the residents of Atherton for volunteering to serve on Town committees and commissions and other organizations that supported the Town

and added to the reputation of leadership and philanthropy. He briefly described some of the accomplishments of the year.

C. City Council Reorganization - Selection of Mayor and Vice Mayor

Mayor Marsala opened nominations for Mayor. Council Member Janz nominated Vice Mayor Alan Carlson for Mayor, seconded by Council Member McKeithen. No other nominations were made, and the nominations were closed.

M/S Janz/McKeithen Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Marsala opened nominations for Vice Mayor. Council Member McKeithen nominated Council Member Janz for Vice Mayor, seconded by Council Member Jerry Carlson. No other nominations were made, and the nominations were closed.

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

4. COUNCIL REPORTS

- Council Member McKeithen attended the Finance Committee meeting on December 7 where the budget was discussed. An \$800,000 surplus was earmarked for Capital Improvement Program projects and road projects. Further discussions included recommendations for the Building Department’s selection of a permit tracking system, the possible purchase of laptop computers for each police car, and the possible acquisition of a street sweeper. She addressed the members of the audience who were interested in issues related to the proposed Menlo-Atherton High School Performing Arts Center (PAC). She was a longtime supporter of the high school and had been a dedicated volunteer over the years. She emphasized that the entire Council wanted to see a new PAC. The goal of the Council was to make sure that conditions such as drainage and traffic were not made worse, as well as to represent all members of the community.
- Council Member Marsala organized a “Cheryl Burke Day” at Menlo-Atherton High School, which was attended by 700 students. Ms. Burke graduated from M-A High School and recently won the competition, “Dancing with the Stars,” for the second time. He attended many meetings over the past month regarding the PAC to help resolve the issues. He had tried to get a facility like the PAC in Atherton for the Arts Committee in the past, and supported the PAC.
- Vice Mayor Janz announced the City/County Association of Governments (C/CAG) was not meeting until the next evening where the legislative program for the year would be discussed. The Atherton Rail Committee met and discussed the Dumbarton Rail Corridor Project, which would connect the East Bay to the West Bay as well as both north and south. Additionally, part of the project included adding a third track from Redwood City possibly as far as

Atherton. The Committee was trying to get representation on those committees that dealt with the project.

- Council Member Jerry Carlson attended the Police Department meeting held at St. Joseph's School and thanked Police Chief Bob Brennan for a good program. He noted that two members of the Grand Jury attended the Audit Committee meeting and would be issuing a report sometime in February. They were interested in improving efficiency of town government and would be reviewing the Building Department. The Finance Committee asked staff to go out to bid for street sweeping services in lieu of purchasing a sweeper at the present time. He attended the San Francisco Airport Roundtable where the Regional Airport Planning Committee was studying all three local airports and would perhaps make a recommendation for an institutional group to oversee all three to better manage future air traffic.
- Mayor Alan Carlson spoke regarding the Menlo-Atherton High School Performing Arts Center. He reiterated that the PAC would be built and that the City Council wanted it to be built. He believed there were many misunderstandings in the press and in various e-mails. The entire City Council supported local schools on a personal level as well as representatives of the Town. As usage of school facilities increased, the Council had been called upon to balance the interests of the school vs. those who lived in the neighborhood. The PAC represented an expansion of use. He clarified the nature of the lawsuit, which basically was a dispute over a difference of opinion as to whether the California Environmental Quality Act (CEQA) requirements applied to the Sequoia Union High School District, as well as the reasons Atherton ultimately filed the lawsuit. He believed the District should be asked the following questions: 1) Why did the District not involve Atherton earlier? 2) Why was it Atherton that had to initiate and propose three-party meetings between the District, Menlo Park, and Atherton? 3) Why were the legitimate concerns of both Menlo Park and Atherton not addressed earlier by the District? 4) Why did the District revoke the "tolling" agreement and force Atherton to file a lawsuit? 5) Where is the good news in all this? Three-party discussions had resumed, there was no delay because of the lawsuit, and all parties were anticipated to reach agreement resolving all concerns so as to not delay or interfere with the timeline. Atherton had no desire and was making no attempt to stop the construction of the PAC. He believed all concerns would be resolved in everyone's best interest.

Mayor Carlson announced that Item No. 18 was removed from the agenda.

5. PUBLIC COMMENTS

The following Atherton residents spoke in support of the Performing Arts Center:

Clint Ostrander, Rosewood Dr., past chairman of the Measure G bond campaign, and currently sat on the District's bond oversight committee, which monitored projects including the PAC

Kathy Jackson, Manzanita Road, lived in the Lindenwood neighborhood, was a member of the Lindenwood Homes Association, and was a close neighbor of M-A High School

Susan Moore, Heather Drive, lived in Lindenwood;

Kim Young, Santiago, attended M-A High School and had a son currently attending the school

Margaret Winters, Robleda Drive, had a daughter and son attending M-A High School.

Nancy Sterling, Lupin Lane, had three teenagers who were either at M-A High School or had attended the school.

Karen Canty, Walnut Avenue, served on the Menlo Park School Board for 12 years;

Terri Watters, Emily Avenue.

John L. De Russy, Housing Investment Project (HIP) board member, distributed a calendar that was produced annually to get the word out regarding housing for seniors and for those who were caught in between the crises of life.

John Sisson, Belleau Avenue, spoke regarding appropriate procedures for public participation in Council meetings.

Shirley Carlson, Mt. Vernon Lane, said the Holbrook-Palmer Park Foundation and the Atherton Dames sponsored a children's event at Holbrook-Palmer Park that was very successful with over 150 attendees. All the children brought toys that were donated to the Police Department for distribution.

John Ruggeiro, Stockbridge Avenue, suggested that Council institute the use of speaker cards for those members of the public who wished to address the Council.

6. STAFF REPORTS

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

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

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

- Six (6) potential cases**

- No reportable action was taken.**

B. 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.

No reportable action was taken.

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

No action was taken.

Mayor Carlson called for a 5-minute recess at 8:12 p.m. The meeting was reconvened at 8:19 p.m.

- **Assistant to the City Manager Wende Protzman said the Arts Committee held its 2nd Annual Artists' Reception that was very successful. The Committee would like to continue the Artists' Reception and add another event each year.**
- **Public Works Director Duncan Jones followed up on the Dumbarton Rail Corridor project. At the Dumbarton Development Team meeting the previous day, a recommendation was made that two Atherton residents could sit on the Citizens Advisory Panel. Vice Mayor Janz noted that the Citizens Advisory Panel was the third committee, along with the Technical Advisory Committee and the Policy Advisory Committee. Mayor Carlson suggested referring the item to the Atherton Rail Committee. Public Works Director Jones gave a brief update on Selby Lane and Valparaiso Avenue. In response to Council Member McKeithen, he said he responds to an e-mail group and the contractor alerts everyone through signs on the road. There was little left to be done that would affect the residents.**

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

None

CONSENT CALENDAR (Items 8 – 13)

Bob Jenkins, Irving Avenue, requested that Item No. 11 be removed from the Consent Calendar for discussion. Mayor Carlson placed the item at the end of the Regular Agenda.

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 MEETING AND THE REGULAR COUNCIL MEETING OF NOVEMBER 15, 2006, AND THE SPECIAL CLOSED SESSION OF DECEMBER 1, 2006
9. APPROVED BILLS AND CLAIMS FOR NOVEMBER 2006 IN THE AMOUNT OF \$ 1,125,277
10. ACCEPTED MONTHLY FINANCIAL REPORT FOR NOVEMBER 2006
11. ~~MID-YEAR BUDGET REPORT~~

~~Recommendation: Approve the schedule of budgetary adjustments contained within the body of the mid-year budget report. (Removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion.)~~

12. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF STREET PATCHING CONTRACT NO. 05-006

Accepted work, authorized recording the Notice of Completion, and approved payment of a retainer for a total contract amount of \$58,012.50.

13. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF PAVILION CARPETING PROJECT NO. 05-002

Accepted work, authorized recording the Notice of Completion, and approved contract change orders in the amount of 44,523.08.

PUBLIC HEARING

None

REGULAR AGENDA (Items 14 -18)

14. A DEFINED CODE ENFORCEMENT PROGRAM

City Manager Jim Robinson summarized the staff report. The Council requested that the complaint-based Code Enforcement Program be continued to the end of 2006. Additionally, staff was asked to return to the Council with a defined program. Through the assistance of Bob Cushing, CSG Consultants Inc., staff had provided an outline that was the basis for a defined Code Enforcement Program. Mr. Cushing also identified some policy issues that the Council needed to address. The report addressed a complaint-driven program, which was also a responsive program. Costs were identified for up to two days a week, which amounted to \$44,000. Staff provided alternatives for one day a week that would reduce the cost, as well as an alternative of providing code enforcement in-house. City Manager Robinson believed the Town

would be well served by having a person (contract employee or a staff person) specifically assigned to code enforcement. Priority issues for code enforcement were also identified. He recommended that the City Manager's office manage the program since the Assistant to the City Manager had experience dealing with code enforcement. His only concern was once the program was developed and became effective, it would be difficult to remove. Revenues were available through the contingency fund and could be used through the 2006-07 fiscal year. Some costs could be charged to the Building Department, others to other sources.

Staff responded to Council questions regarding the statistical chart, using clerical help for data input, utilizing a proactive approach for certain areas of code enforcement, such as with construction, as well as whether present staff could handle the program in the future. Staff suggested that prior to the end of the six-month trial, the program should be evaluated, with periodic reviews with the Council, and could include whether the program could be performed on a part-time basis by current staff, if Council so desired.

Council Member McKeithen heard many positive comments from residents regarding the program. She suggested that progress reports be made throughout the trial period and thereafter. She endorsed a complaint-based approach. However, those items identified in the report as priority issues, i.e., construction parking, accessory structures, permits, and health and safety issues, should be addressed proactively. The success of the program was dependent on someone from outside the Town being responsible for it.

John Ruggeiro, Stockbridge Avenue, commended Mr. Cushing for handling an ongoing barking dog issue in his neighborhood.

Herman Christensen, Park Lane, spoke regarding Town ordinances not being enforced. He supported the proposal before Council.

Gene Elsbree, Fletcher Drive, encouraged Council to approve the proposal and believed it had great merit.

Council Member Marsala believed the program was a benefit to residents and supported alternative No. 1 in the staff report, a one-day-a-week program.

Council Member Janz concurred. The program was working and he supported the six-month trial.

Council Member Jerry Carlson thought the idea of an active code enforcement program made sense. He asked everyone to keep an open mind about having current staff responsible for the program in the future. He was in favor of the six-month trial.

Mayor Alan Carlson was not convinced there was widespread support in the Town to spend \$44,000 on code enforcement. He was concerned that proactive code enforcement was not defined. As he reviewed the list of 60 complaints, 23 or 33% were

construction parking or construction hours. He queried why the Police Department could not handle those complaints. A part-time code enforcement officer could not address these types of “now” complaints.

Police Chief Bob Brennan compiled statistics from September 1, 2006 to December 11, 2006. There were 120 calls on Park Lane, 114 were checked “okay,” 2 warning citations were issued, 3 verbal warnings were settled at the scene, and 1 had no merit. Another 8 calls were received from that area resulting in 2 settled at the scene, 1 no merit, 1 quiet on arrival, 2 parking citations issued. He believed that the hours of construction and weekend construction should be functions of the Police Department. There was no law against parking on a public street, so the Police Department struggled for compliance.

Mayor Carlson said 16 out of the 60 complaints all related to Park Lane. He queried whether the Community Services Officer in the Police Department could be upgraded to include aspects of code enforcement.

Police Chief Brennan did not believe that was possible with the current workload.

Mayor Carlson was not sure he would vote in favor of the item. He hoped that a better-defined program would be developed and ultimately be an in-house function. Most of the complaints were police functions and the report did not define a program any better than previously defined.

Council Member McKeithen believed that the ongoing complaints on Park Lane were exactly why the Town needed a code enforcement officer. The residents were happy with Mr. Cushing’s results and believed the program was working.

MOTION – to continue the Code Enforcement Officer on a one-day-per-week basis using the same criteria outlined in the staff report that were utilized to address complaints, namely giving priority to construction issues, public nuisance health-safety issues, as well as zoning issues

M/S McKeithen/J. Carlson

AMENDMENT – during the six-month period, staff is to develop a policy on code enforcement for Council consideration that specifically addresses complaint basis vs. proactive, identifying the areas in which the Town would be proactive, with the goal of bringing the program in-house in the future

A/S A. Carlson/J. Carlson

Council Member Janz clarified that having an outside consultant who could specifically focus his/her attention on the duty was preferred to a staff person who had a myriad of other duties to perform.

In response to Council Member Janz, City Attorney Marc Hynes said the reason a stop work order was issued on a particular project was because a parking plan was never produced. Any projects coming under the current requirement of having to have a parking plan that was not adhered to would be a violation of the Building Code and a stop work order could be issued.

Police Chief Brennan understood that the Building Official could not shut down a job for not adhering to the parking plan. Staff was asked to come back at the next meeting to clarify the issue.

MOTION AS AMENDED

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

15. A PRESENTATION AND ADOPTION OF A RESOLUTION TO APPROVE SBWMA'S OFFER TO MANAGE THE COMPETITIVE CONTRACTOR SELECTION PROCESS ON BEHALF OF THE TOWN OF ATHERTON

Deputy Town Planner Lisa Costa Sanders introduced Mr. Robert Hilton, South Bayside Waste Management Authority's (SBWMA) business consultant for the contractor selection process, and Kevin McCarthy, recently appointed as SBWMA's first executive director.

Robert Hilton gave a presentation on the upcoming contract selection process for the Town's contract that would expire in 2010. One of the key needs of the member agencies of the SBWMA was to improve the diversion programs to achieve higher levels of recycling and diversion of materials from landfill disposal. The Ox Mountain landfill had limited capacity. The SBWMA was a joint powers authority and did not control the franchise agreement with the Town's collection company. For the past several months, work had been done through two committees, the Process and Contract Committee and the Programs and Facilities Committee. All meetings were public and noticed and public opinion surveys had been conducted. The next step, if the Town agreed to participate in the process, was to draft a Request for Proposal (RFP) and Franchise Agreement and to return with the agreement for approval. Proposals would be received around December 2007, and in 2008 presentations by proposers would be held. Proposals would be solicited on the basis of two collection areas, San Carlos south and Belmont north, with the idea of generating a competitive environment. The operation of the transfer station and the recyclery was a separate contract. Council was being asked to indicate its desire to participate in the process and to consider changes in programs such as all recyclables going into one container. Some customers might want side-yard or backyard service. SBWMA wanted to ensure that service was available; however, those customers who chose that higher level of service paid for that service. Likewise, those who took the containers to the curb might receive a reduction in rates. Optional programs were being considered that would allow people to properly dispose of household hazardous wastes, etc. Regarding the collection contract, an initial seven-year term was being sought with an option to extend if the Town was happy with the service. The rate-setting process would be similar, with Councils setting the rates for their communities.

Discussion ensued on whether the Town could continue offering side-yard and backyard service. Rate setting was a decision of the Council; therefore, there were options for setting the base rate at: 1) backyard service and offer a discount for bringing to the curb; 2) curbside service, with a surcharge for backyard service; or 3) backyard service. Staff's recommendation was to have SBWMA bid backyard service for Atherton and to bid alternates for comparison sake.

Additional discussion centered on the RFP process. Each member agency would enter into individual agreements for a seven-year term with the option, unilaterally, to extend the agreement on the same terms and conditions for another three years. Atherton could have the RFP defined beyond the core level of services for an additional consultant service charge.

Council Member Janz was in favor of moving forward with the process and believed working through the SBWMA was better than trying to negotiate the process alone. He was concerned over some language in the resolution.

In response to Council Member Jerry Carlson, Mr. Hilton said Daly City, San Bruno, Portola Valley, and Woodside had separate contracts for service.

Deputy Town Planner Costa Sanders said as a member of the SBWMA, the Town was obligated to take the waste and recyclables through the transfer station, so comparing costs would be difficult. In the rate review process, cost comparable rates of the 70th percentile were looked at for the Bay Area. Staff would make that data available to the Council.

City Manager Jim Robinson said one advantage of participation in the SBWMA was it owned the transfer station and costs could be contained.

Council Member Carlson queried why some cities/towns opted out of the SBWMA.

Mayor Alan Carlson believed Atherton would fare better within the SBWMA because he was unsure the Town had the expertise to negotiate the type of contract. However, he was interested in knowing why Portola Valley and Woodside were not part of the SBWMA.

Robert Hilton said in the 1970s, Browning Ferris Industries (BFI) acquired San Mateo Scavenger Company that had franchise agreements with the 12 member agencies of the SBWMA. The landfill on Marsh Road was closing and BFI came to the cities/towns asking for a commitment to bring the waste to them and they would build a facility to transfer the waste, open the Ox Mountain landfill, and dispose of the waste there. All of the cities/towns agreed. More recently when SBWMA acquired the transfer station/recyclery, the cities/towns agreed to commit the materials to those facilities in order to make the bond payments. Possibly, the reason Woodside and Portola Valley did not become a part of the SBWMA was because they did not have a contract with the San Mateo Scavenger Company in the 1970s. Every year, as part of the rate package, information was provided to the SBWMA on rates in the Bay Area.

The rates for the SBWMA service area were very competitive and he believed the rates were below Portola Valley and Woodside. Because of the commitment to take waste to the transfer station, it would be difficult to be more cost effective outside of the SBWMA.

Mayor Carlson was in favor of the proposal.

Council Member McKeithen supported the proposal. She viewed the proposal as a commitment to use SBWMA as a negotiating tool.

Council Member Marsala supported the proposal. The Town had worked for seven years on waste reduction and working with the other cities/towns helped Atherton be a leader in waste reduction.

Council Member McKeithen suggested language to amend Items 2 and 3 in the resolution. Item 2: “Commitment to future programs and contract terms and conditions *at this time*, the Town of Atherton believes that programs...” Item 3: “The Town of Atherton *commits* to the methods, schedule, and evaluation criteria for the contractor selection described in the staff report.

Council Member Carlson was bothered by the fact that the other towns were not involved in the program. He would have liked the answers before making a decision.

A brief discussion ensued regarding the transfer station agreement and the collection agreement. The transfer station was purchased and the member agencies were paying the bond by bringing their materials through the station. The collection company was charged for using the facilities, which covered the bond. If the Town were not part of the collection agreement, the Town would still have financial obligations under the bond issued for the transfer station.

MOTION – to accept SBWMA’s proposal and adopt Resolution No. 06-22, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON FOR COMMITMENT TO THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY CONTRACTOR SELECTION PROCESS,” as amended, to manage the competitive contractor selection process on behalf of the Town of Atherton

Council Member Janz added language to Item No. 2: “...meeting the future needs of the Town of Atherton with the addition of *the review and analysis of rear-yard collection, unlimited green waste collection, and universal waste collection.*”

M/S McKeithen/Marsala

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

16. CONSIDERATION OF THE STATUS OF THE BUILDING DEPARTMENT AUDIT RECOMMENDATIONS AND BUILDING DEPARTMENT ASSESSMENT BY INTERIM BUILDING/ PLANNING ADMINISTRATOR AND CONSIDERATION

OF STAFF RECOMMENDATIONS RELATING TO THE PROVISIONS OF BUILDING SERVICES

City Manager Jim Robinson presented the staff report. Within the Phase III Audit, there were four recommendations that staff had provided a response to as well as the status of each. Additionally, staff reviewed the list of recommendations prepared by the Interim Building and Planning Director, Gary Binger, for dealing with issues not only raised within the audit but also raised as an opportunity for him to evaluate the needs of the department. One of the issues discussed at the Audit Committee meeting was the development of a building permit tracking system. Staff would return in January with a more specific recommendation. Additionally, staff was producing a Policy, Procedures, and Interpretations (PPI) Manual that would address the daily activities of plan check procedures and permit issuance. The goal was to complete the majority of tasks within the first quarter of 2007. The recruitment for a Building Official was in process, with preliminary interviews scheduled that week. Staff was recommending that the Council authorize appropriating additional hours for the continuation of the Interim Building Official services provided through CSG Consultants, Inc., through January 2007. Additionally, staff was recommending that Council authorize staff to develop a Request for Proposals (RFP) for contract engineering services for grading and drainage review as well as for engineering calculations. With regard to the permit tracking system, staff reviewed a number of cities in San Mateo County that recently implemented a permit tracking system, i.e., Hillsborough, Belmont, Redwood City, and Saratoga, and discovered it would take approximately six months to implement the program. Regarding the PPI Manual, a number of areas were identified that needed interpretations. Staff had sent some interpretations to the City Attorney for his review that would ultimately come to the Council for its review. Council needed to provide direction to staff in the interim on whether to defer reviewing plans, or defer reviewing plans where there was a question of interpretation. Staff was recommending deferring appointment of a Permit Technician until a candidate was selected for the Building Official position. Additional forms were developed, as well as a Zoning Compliance Checklist and an automatic calculator for building fees to provide for proper accounting of the fees.

In response to Council Member Jerry Carlson, City Manager Robinson said candidates had been identified for the Building Official position that had the appropriate certificates. Additionally, he agreed with the Audit Committee's recommendation to separate the planning/building function. Several ways to accomplish that were being considered. He also recommended using an outside auditor on a periodic basis.

Council Member Carlson suggested engaging a professional outside auditor to set up an oversight mechanism and perform periodic audits. He suggested broadening the Audit Committee's role so the outside auditor of the Building Department reported findings to the Audit Committee much like the Finance Department. Additionally, one area that was not addressed was the personnel function where evaluations and management training, etc., had not taken place.

Mayor Alan Carlson asked staff to indicate to the Council any action that must be taken that evening and then return at the next City Council meeting with the other items clearly identified.

City Manager Robinson proceeded to provide Council with a summary of the findings and recommendations of the Phase III Audit, as well as the findings and recommendations of the Interim Planning and Building Official. The only items needing to be dealt with that evening were authorizing appropriation of additional hours for the Interim Building Official until a permanent Building Official was appointed and to authorize staff to develop an RFP for engineering services. Additionally, Council needed to provide direction to staff on interpretations relative to some issues in Mr. Binger's report.

Mayor Carlson also suggested that the zoning ordinances, in general, needed to be reviewed by an outside consultant; and as part of that process, the interpretations could be clarified.

Council Member McKeithen thought the PPI Manual should be finalized when a permanent Building Official was appointed. The Audit Committee recommended the zoning ordinance be reviewed in its entirety, not piecemeal. The Audit Committee was concerned about the timing of projects and asked for a prioritization and timing of the items returned to Council in January. She suggested that plan examiners not only be required to stamp and date and initial but rather to sign. She asked that the administrative requirements referred to in Item No. 1 on Page 2 be enumerated. She also requested that staff acknowledge that there were not any other issues with regard to ongoing and new projects. She supported a periodic review by an outside auditor. The Audit Committee recommended the separation of building and planning, a zoning review, as well as evaluating the present planning services by going out to bid for comparison and discussion. She wanted all interpretations to come to Council. She wanted to know what the estimated cost was for continuing the Interim Building Official through January. (City Manager Robinson responded the cost would be \$16,000. Additionally, he recommended when staff returned with the RFP for outside engineering services for drainage and grading review, that some oversight would be conducted by the Public Works Department.) With regarding to the drainage and grading review, Council Member McKeithen wanted an analysis of who would bare the cost and how the cost would be collected. She also wanted an analysis of what other jurisdictions did.

Council Member Marsala concurred with Council Member McKeithen. He said projects that were in progress and were subject to interpretations needed to be resolved quickly so residents could get on with their projects.

City Manager Robinson recognized there might be some inappropriate direction that was given in the past, but staff was ensuring that whatever plans came in reflected the zoning ordinances and building codes that were in place. An applicant had the right to appeal any decision to the Council.

Council Member Janz found the report difficult to follow and needed to be reorganized. He asked what an outside consultant should do with respect to reviewing the zoning ordinance.

City Manager Robinson said Mr. Binger recommended going through the zoning ordinance to correct inconsistencies or at least language that created differences in interpretations, e.g., building heights.

In response to Council Member Janz, Interim Building Official Mike Cully said the Town had always issued a Job Site Permit Card. An in-house paper copy had never been created in the past. Staff created a card/copy with a standard check-off list for the inspections that occurred and included a closure process for the building permit and the copy was kept on file.

Jeff Wise, Atherton, urged the City Manager to expedite the process of hiring a Building Official. The uncertainty in the Building Department was difficult for everyone. Interpretations needed to be resolved so plans could move through the process. He was puzzled by the need for an outside grading review and drainage review throughout the Town, especially in the flat areas.

MOTION - to authorize the continuance of the Interim Building Official services provided by CSG Consultants, Inc., in the amount of \$16,000 through January 2007

M/S Janz/J. Carlson

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

MOTION – to authorize staff to develop an RFP for contract engineering services for the purpose of reviewing grading and drainage plans to be returned to the City Council for its review and consideration

Council Member McKeithen wanted to know how it would be funded.

Council Member Janz noted the reason an outside engineer was not used in the past was because the former Building Official was a civil engineer and did the reviews himself.

City Manager Robinson said additionally in every building and planning department he had been involved with in California, an engineering review of grading and drainage plans took place regardless of whether it was flat or not. Because our engineering staff did not have available time, staff was recommending an outside consultant to perform the reviews.

M/S McKeithen/Janz

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

After a discussion regarding what should be included in the RFP for consultant services to review the Zoning Code, Council Member McKeithen made the following motion:

MOTION – to develop an RFP for consultant services to review the Zoning Code in terms of continuity, ambiguities, existing interpretations, and industry standards in accordance with the Town’s standards as exemplified in existing law (e.g., design review not to be included) in accordance with the General Plan, to be returned to the City Council meeting of January 17, 2007.

M/S McKeithen/Janz

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

Council Member McKeithen requested a timetable to be included in the RFP.

17. REFERRAL TO THE GENERAL PLAN COMMITTEE – A NONCONFORMING STRUCTURE ALLOWING CONTINUATION OF A NONCONFORMING SETBACK

Deputy Town Planner Lisa Costa Sanders noted there was no new information to add to the staff report.

Mayor Alan Carlson clarified that the current structure was 4 inches into the setback and the only option to continued use of the nonconforming setback was through a variance, which was very difficult to obtain. He did not believe the General Plan Committee would be able to solve the issue.

Deputy Town Planner Costa Sanders said many jurisdictions allowed continued use of a nonconforming setback. An existing house that encroached 4 inches or 2 feet into the setback, could be added on to so long as the degree of non-conformity was not increased. If the nonconforming wall was completely torn down, it could not be rebuilt under any scenario in those jurisdictions. The subject property owner wished to extend a bedroom back 6 to 8 feet which would encroach 4 inches into the required setback.

In response to Council Member McKeithen, City Attorney Marc Hynes stated a need could not be created to grant a variance, i.e., because the house had been built into the setback was not a reason to grant a variance. An amendment to the Zoning Code could allow for expanding a nonconforming use.

Council Member Janz recalled a similar situation several years ago where an ordinance was created that allowed a nonconforming area to be extended as long as a second story would not be added. He asked staff to research the issue.

David Lewis, property owner, said his home was built 50 years ago and the plans indicated conformance to the 48-1/2 foot setback; however, in actually did not. He would appreciate anything the Council could do resolve the issue.

Philip Lively, Hawthorne Avenue, believed the item should go directly to the Planning Commission where similar issues had been resolved without going to the General Plan Committee.

Mayor Carlson suggested that the General Plan Committee look at similar situations in other communities to find out how they were resolved. Additionally, he advised the

homeowner to have someone review the existing Zoning Code to find out if an exception procedure existed.

Council Member McKeithen encouraged the homeowner to use the exception review process through the Planning Commission.

MOTION - to refer the item to the General Plan Committee for consideration of allowing continuation of a nonconforming setback, with direction to research what other jurisdictions did to determine whether or not there was an exception, as well as to look at broadening the exception review process

Council Member Janz had a concern of sending the item to the General Plan Committee since the Committee dealt with more global issues than one particular issue.

With the consent of the maker and the seconder of the motion, the motion was amended to refer the item to the Planning Commission.

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

18. ~~CONSIDERATION OF A REQUEST FOR THE CITY COUNCIL TO REMAND THE DECISION OF THE PLANNING COMMISSION REGARDING THE RELOCATION OF TWO HISTORICAL ARTIFACTS FROM LABURNAM ROAD TO 224 PARK LANE IN ATHERTON~~ (Item removed from the agenda.)

11. MID-YEAR BUDGET REPORT (Removed from the Consent Calendar for discussion.)

Finance Director John Johns noted staff consulted with the Finance Committee, and the Finance Committee concurred with the recommendation.

MOTION - to approve the schedule of budgetary adjustments contained within the body of the mid-year budget report.

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

19. PUBLIC COMMENTS

There were no public comments.

20. **ADJOURNMENT**

Mayor Carlson adjourned the meeting at 11:53 p.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk