



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**February 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 7:01 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

None

4. COUNCIL REPORTS

- Council Member Jerry Carlson attended two meetings of the Finance Committee where billing matters for contract services were discussed including clarification of formats and a better explanation of costs. The Building Department would need more funds for contract services. The committee requested that the City Manager provide an update on the progress of the Building Department audit at each Finance Committee meeting and proposed including funding for audits in next year's budget. The committee suggested that its members sit in on the last rounds of department budget discussions with the City Manager. He sought clarification regarding disaster preparedness and suggested that the operating roles between the Town and the Menlo Park Fire Protection District needed to be further defined. He noted there was confusion between the two emergency preparedness committees and clarified that the

citizens committee was not an arm of the Atherton Civil Interest League. The duties of the Town's Emergency Preparedness Committee needed to be defined. Council Member Carlson said representatives from the International Baccalaureate Program would be visiting Selby Lane School on March 12. If all went well, the program would become accredited this fall.

- Vice Mayor Janz updated the Council regarding Caltrain service. He and Council Member Carlson met with representatives from other cities on the Peninsula, mostly along the Caltrain line, with the intent and desire to obtain increased service on the Peninsula. They finally succeeded in getting a meeting with the representatives to the Joint Powers Board that administered Caltrain. A frank and helpful discussion took place and there was a possibility of getting some local weekday service restored.
- Council Member Marsala attended the Conference of Mayors in Washington, D.C., where he attended sessions on Climate Protection. The Parks for the Future met to review the status of Measure A, the ballot measure that failed in November. The measure could be put on the ballot in June 2008. He had dinner with the Sisters of the Sacred Heart where work on Valparaiso Avenue was discussed. He took a tour of the Menlo-Atherton High School radio station. He took a second tour of the Menlo Park Fire Protection District (MPFPD) Emergency Command Center with 25 residents, and they were working on the chain of command for CERT teams. He proposed a joint meeting with MPFPD and Council. The Environmental Programs Committee met twice, one meeting was a joint meeting with the General Plan Committee. A recommendation that the Council reduce solar fees to zero was proposed as an incentive for solar. A large Earth Day event was planned for April 21. He would be attending a Peninsula Division of the League of California Cities meeting the next evening to report on his subcommittee assignment to the State Pension Committee.
- Council Member McKeithen also attended the Finance Committee meetings. The question of upgrading the Menlo-Atherton High School radio station for announcements during emergencies was referred to the Emergency Preparedness Committee for further clarification. The Emergency Preparedness Committee meeting scheduled for that morning was cancelled due to the fact that Council Member McKeithen had jury duty. The County Operations of Emergency Services met. Stanford Linear Accelerator was hosting a "Hydrogen, Fueling the Future" seminar on February 27, 2007, from 7:30 to 8:30 p.m., at 2575 Sandhill Road.
- Mayor Alan Carlson attended the San Francisco Airport Roundtable meeting.

## 5. PUBLIC COMMENTS

Susan Goetz, Branch Manager for the Woodside, Portola Valley, and Atherton Libraries, distributed the 2005/2006 Annual Report for the San Mateo County Library System to Council and noted she would give City Manager Jim Robinson the Annual Reports for the other 12 libraries in the County. She announced some of the upcoming events at the Atherton Library.

**John Ruggeiro, Stockbridge Avenue, asked for clarification regarding Council Member Marsala's attendance at the U.S. Conference of Mayors.**

**Council Member Marsala responded he attended the conference as an individual and used personal funds.**

**Council Member McKeithen reported that H.T. Harvey completed a study of the Phase I Upper Atherton Channel Reconstruction and determined the Red-legged frogs were alive and well and in the pool.**

## **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:**

**Seven (7) potential cases**

**Three cases were discussed. In two matters, action was directed by unanimous vote of the City Council: 1) Regarding 94 Tallwood Court, the Town would commence abatement action relative to a Zoning Code violation; and 2) Regarding 55 Belbrook Way, the Town would commence abatement action relative to a Zoning Code violation.**

**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.**

**There was not reportable action.**

**C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95**

**Claimant: Albert Feaster**

**Agency Claimed Against: Town of Atherton**

**The claim was denied.**

**Claimant: Kerry Enzensperger**

**Agency Claimed Against: Town of Atherton**

**The claim was denied.**



12. **ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF PAVILION WINDOWS AND DOORS PROJECT, PROJECT NO. 05-001**

Accepted work, authorized recording of a Notice of Completion and approved contract change orders in the amount of \$25,829.00 for the Holbrook-Palmer Park Pavilion Door and Window Replacement Project, Project No. 05-001.

13. **ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF STREET RECONSTRUCTION PHASE II PROJECT, PROJECT NO. 04-002**

Accepted work, authorized recording of a Notice of Completion and approved contract change orders in the amount of \$32,138.8 for the Street Reconstruction Phase 2 Project, Project No. 04-002.

14. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE VALPARAISO AVENUE OVERLAY PROJECT, PROJECT NO. 06-001**

Approved the plans and specifications and authorized advertisement for bids for the Valparaiso Avenue Overlay Project, Project No. 06-001.

15. ~~**APPROVAL OF AGREEMENT--RAPID ENFORCEMENT ALLIED COMPUTER TEAM REACT TASK FORCE**~~ *(Removed and placed on the Regular agenda for discussion.)*

~~**Recommendation: City Council authorize the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.**~~

16. **CONTRACT ENGINEERING SERVICES FOR THE PURPOSE OF GRADING AND DRAINAGE PLANS**

Considered revisions to the Professional Services Agreement for consultant municipal engineering services to assist in the Town of Atherton review of plan check of development applications related to grading, drainage and other possible engineering fields and authorized Request for Proposals

17. ~~**CONSTRUCTION, OPERATION PARKING PLANS--STATUS OF IMPLEMENTATION AND ENFORCEMENT**~~ *(Removed and placed on the Regular agenda for discussion.)*

~~**Recommendation: Review and accept the report.**~~

18. ~~APPROVAL FOR THE TOWN OF ATHERTON TO JOIN ICLEI, LOCAL GOVERNMENTS FOR SUSTAINABILITY, AS RECOMMENDED BY THE ENVIRONMENTAL PROGRAMS COMMITTEE~~ *(Removed and placed on the Regular agenda for discussion.)*

~~Recommendation: City Council approve the Town of Atherton's membership in ICLEI as recommended by the Atherton Environmental Programs Committee.~~

19. APPROVAL TO CONTINUE CONTRACT SERVICES PROVIDED BY CSG CONSULTANTS, INC., FOR INTERIM SR. BUILDING INSPECTION SERVICES

Retained the services of CSG, specifically to provide contract Sr. Building Inspector services in the Building Department and approved the expenditure of funds for this purpose.

20. ~~ADOPTION OF A RESOLUTION SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE~~ *(Removed and placed on the Regular agenda for discussion.)*

~~Recommendation: City Council adopt a Resolution Supporting Expansion and Safety Enhancements to Transit Service.~~

21. APPROVE A CONTRACT EXTENSION FOR JENSEN LANDSCAPE FOR PARK LANDSCAPING SERVICES FOR THREE YEARS AT \$26,700 PER YEAR

Approved a three-year contract extension to Jensen Landscape for weekly park maintenance.

PUBLIC HEARINGS (Item 22)

22. APPEAL OF THE BUILDING OFFICIAL'S DECISION REGARDING 233 PARK LANE – (APN 070-343-010)

Interim Senior Building Inspector Mike Cully summarized the staff report. The appellants, Mr. and Mrs. Ruehle, submitted plans to the Building Department for a new residence at 233 Park Lane. The Ruehles were notified in writing that the plans, as submitted, were in violation of the Town's regulations. The proposed project had a basement that extended beyond the footprint of the building underneath some patio areas. The appellants had met with the former Building Official and various staff members and received approval under design concept. Subsequently, then Interim Building Official Cully reviewed the ordinances and found the project not in compliance with regulations regarding basements. The Ruehles requested a meeting with the City Attorney, the City Manager, and the Deputy Town Planner, who upheld the Interim Building Official's decision, and were appealing the decision to the City Council. In the interim, the General Plan Committee had meetings regarding basements; however, the Ruehles decided to appeal at the current time. Staff's opinion was that the proposed basement located under the raised patio areas was not consistent with Atherton Municipal Code section 17.36.190. Alternatives were suggested and

listed in the staff report. Staff requested that the Council deny the appeal and uphold the decision of the Building Official. Mr. Cully responded to Council questions.

Mayor Alan Carlson opened the public hearing.

Bill Ruehle, appellant and property owner at 233 Park Lane, gave a short history of the construction process. Original construction began on the property in December 2003. Work stopped in February 2005 due to structural concerns and the property was torn down. The new design process began in March 2006. He and the architect were in frequent contact with the former Building Official. In October, he was informed that the rules were being interpreted differently and a redesign would be necessary. Up to that time, over \$700,000 had been spent in design fees and \$82,000 for fees to the Town. Mr. Ruehle submitted a petition from his neighbors in support of the appeal. He requested that the City Council grant an appeal and allow completion of the project based on the rules as they were interpreted in 2003.

Karin Payson, Architect, clarified the square footage of various structures and patios. The project was the fourth project she had worked on in Atherton. On March 24, 2006, she met with the former Building Official and went through the plans in great detail. She was informed that changes in basement regulations were forthcoming and she should get the plans submitted. The building permit application was submitted on May 19, 2006. In July, she received a call regarding the basements extending beyond the footprint of the house. She gave a timeline of events and discussions with various members of the Building Department including formal comments that did not mention an issue with the basement. Plans were resubmitted in October based on the comments. Ms. Payson responded to Council questions.

Paul Woollomes, Park Lane, said many neighbors found the construction to be an eyesore for many years. Additionally, another home on the street was refused a basement. He urged the Council to deny the appeal.

Richard Zukin, Park Lane, said drainage on his property was perfect. He would like to see the construction continue in the spirit of fairness. He was in support of the appeal.

Herman Christensen, Park Lane, said Council had received a letter from the Huttons who voiced opposition to project. He also urged Council to deny the appeal.

Scott Feamster, Park Lane, spoke regarding a previous discussion with Council regarding drainage, did not believe the Ruehle property would cause drainage issues, thanked Council for not regulating aesthetics, and was in support of the appeal. Additionally, he spoke in support of underground basements.

Gary Lauder, Park Lane, agreed with the previous speaker regarding underground garages, believed drainage could be addressed by requiring all residences with underground structures to ensure all water drained within the property, and supported the appeal.

**Melinda Teves, Tallwood Court, referred to the Zoning Code, which specified that dereliction or oversight of an employee of the Town of Atherton with the authority to issue permits or licenses was prohibited from legalizing, waiving, or authorizing the violation of any provisions of the ordinance. Whatever the former Building Official might have promised was irrelevant.**

**Mayor Carlson closed the public hearing.**

**Vice Mayor Janz thought the appellant should wait for the underground basement ordinance to be enacted which would solve 80% of the problem. Someone always had the right to level off the ground, excavate a lot of the ground, come in from the side, and put the ground level 12 or 14 feet below grade and build a three-story house; it was a way to get around the height limit in Atherton. He believed, by looking at the drawings at the elevations from the front, there was a three-story house and was something Council might want to address in the future.**

**Council Member Marsala was in favor of granting the appeal and believed Council justified the former appeal regarding 172 Austin Avenue based on information given by the previous Building Official. Over the past year, he received numerous calls regarding the basement ordinance questioning why basements were limited to the footprint of the building itself. The Ruehle's were far along in the process and followed the same pattern as 172 Austin Avenue.**

**Council Member McKeithen differed with Council Member Marsala regarding 172 Austin Avenue. The encroachment already existed. The Council removed the "legal fiction" because the foundation would not be as strong, it would add cost and impede construction, and the encroachment would be decreased by the new construction. Additionally, no neighbors complained. The current appeal was not an existing nonconforming use but was an enlargement of the Floor Area Ratio (FAR); in essence, the Council would be granting a variance. She sympathized with the appellants; however, she believed Council needed to uphold the Town's ordinances. She was in favor of denying the appeal.**

**Mayor Carlson said he was satisfied that the plans violated the ordinance and, currently, basements needed to be within the building footprint. He agreed with Vice Mayor Janz that there was a chance the ordinance would be changed. Clearly, the plans did not comply with the Zoning Codes. The important issue was if the City Council began to issue exceptions to the ordinances, the whole Zoning Code would become arbitrary and capricious. He was in favor of upholding the Interim Building Official's decision.**

**Council Member Jerry Carlson said Council had been faced with the realization of past interpretations of the ordinances. He knew \$700,000 was a lot of money and the property was very impressive; however, it did not meet the current rules. Staff recommended that the Council deny the appeal, and he believed the Council needed to**

go along with the denial. The Council needed to uphold its ordinances. If they needed to be changed, the proper processes needed to be followed.

**MOTION – uphold the decision of the Building Official and deny the appeal of 233 Park Lane**

**M/S J.Carlson/Jans**

**Ayes 4 Noes 1 (Marsala) Absent: 0 Abstain: 0**

City Attorney Marc Hynes stated in accordance with the Atherton Municipal Code, he would prepare findings for denying the appeal and return the item to the City Council for approval at its meeting of March 21, 2007.

**REGULAR AGENDA (Items 23-31)**

**23. CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF A MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD(CHAPTER 8.14 OF THE MUNICIPAL CODE)**

City Attorney Marc Hynes presented the staff report. In accordance with Atherton Municipal Code Chapter 17.64.060, he prepared written findings in the form of a resolution regarding a Major Alteration Permit for 51 Laburnum Road. He recommended the following revisions to the resolution: 1) Add the date of November 3, 2006, in Item No. 1; 2) on the second page, third line, add that the "...winding roads in Lindenwood, in many cases, track the original garden paths"; 3) on the fourth line from the bottom of that paragraph, change "feelings" to "feeling"; and 4) Item C, add a specific statement that "the Town of Atherton has jurisdiction over these artifacts in ."

Timothy Hopkins, attorney for the Lambs, commented on proposed Finding No. 3 and clarified he did not concede the artifacts themselves subject to the Historic Artifact Ordinance but that the Council had jurisdiction over the appeal. The Lambs filed the application because they believed they had no choice because the urns were listed on the Urgency Ordinance without their consent and without due process. The Lambs did not concede, and never conceded, the urns were subject to the jurisdiction of the Town.

Mayor Alan Carlson noted the record would reflect what was said in the public hearing of February 21, 2007.

Jay Ross, attorney with Hopkins and Carley in San Jose representing the Lambs, said his colleague, Joan Gallo, wrote two letters to the Council dated February 13, 2007, and February 20, 2007, which were distributed to the Council prior to the meeting. The key issue was that the resolution had to be supported by the record. Based upon the record, he did not believe Council had the facts in evidence to support the findings that were in the resolution. He encouraged Council not to adopt the resolution but to simply take the action that the matter was not properly before the Council.

Mayor Carlson clarified the only matter before the Council that evening was the adoption of the findings. There was no ability of the Council to take additional evidence because the public hearing was closed.

**MOTION - to adopt Resolution No. 07-01, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF A MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD, ATHERTON," supporting the findings and as modified by the City Attorney**

**M/S Janz/McKeithn Ayes: 4 Noes: 1 (Marsala) Absent: 0 Abstain: 0**

**24. CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 172 AUSTIN AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**

City Attorney Marc Hynes presented the staff report. In accordance with Atherton Municipal Code Chapter 17.64.060, he prepared written findings in the form of a resolution regarding the appeal of the property owners at 172 Austin Avenue.

Mayor Carlson clarified the only matter before the Council that evening was the adoption of the findings. There was no ability of the Council to take additional evidence because the public hearing was closed.

Council Member McKeithen said regarding Item No. 4B, she suggested language be added to the last sentence, "...the proposed structure actually diminished the encroachment into the setback area." Additionally, add that in as much as there was a legal fiction that the wall could be suspended in midair, due to cost and time that would be incur to enforce and foundation would not be as strong.

**MOTION - to adopt Resolution No. 07-02, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF THE BUILDING OFFICIAL'S DETERMINATION FOR 172 AUSTIN AVENUE, ATHERTON," as amended**

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

**25. CONSIDERATION AND DIRECTION TO STAFF REGARDING THE CIVIL GRAND JURY REPORT RELATING TO THE CALIFORNIA HEALTH & SAFETY CODE AND THE 2001 CALIFORNIA BUILDING CODE (TITLE 24, CALIFORNIA CODE OF REGULATIONS, PART 2)**

City Attorney Marc Hynes said the interim report issued by the Civil Grand Jury made recommendations relative to actions that the Town might consider regarding inspections of homes for fire safety and actions to be taken in connection with the Fire Sprinkler Ordinance. A response was due within 90 days from February 7, 2007. He

suggested advising the Civil Grand Jury that the Town was underway to consider responses to the report by the date of April 1, 2007.

Mayor Alan Carlson welcomed members of the Civil Grand Jury to the meeting. He had several concerns and clarified two items: 1) Provisions of the Health and Safety Code allowed for delegation of plan checking with respect to single-family homes to either the Town itself or to the Menlo Park Fire Protection District (MPFPD) (The Town had not delegated the responsibility to the MPFPD.); and 2) having passed a Sprinkler Ordinance, under the law, the plans regarding sprinklers needed to be submitted to the MPFPD and the structure inspected by the MPFPD. He noted the City of Menlo Park did not send any of its plans to the MPFPD. He read from a press release from the MPFPD which concluded there was mounting evidence that there were irregular and improperly issued building permits and the Town's Building Department did not follow standard practices used in other communities requiring MPFPD approval of building plans. He noted the statement was completely inaccurate. Mayor Carlson was extremely concerned with reports of the issue. He also raised concerns regarding a fire citation procedure initiated by the MPFPD, responded to by the Town, yet nothing further had been done. MPFPD requested access to and regulation of water flow from hydrants in December 2006, which had never been an issue previously. He found the reporting on these matters very disturbing. He suggested that the Council meet with MPFPD to clarify issues of responsibility.

Discussion ensued regarding the Civil Grand Jury recommendations, such as clarification of jurisdiction, whether the MPFPD needed to examine all substantial construction projects with open building permits and what other jurisdictions with adopted sprinkler ordinances did, whether the MPFPD needed to review all projects constructed during the former Building Official's tenure for fire and safety, finalize and adopt an ordinance that defined approval of building constructions plans prior to issuance of permit, reconsideration of the current policy that exempted all alterations of existing structures from the sprinkler requirement, continued implementation of the Finance Department recommendations in the Phase I, II, and III Building Department audit, etc.

Mayor Carlson addressed inaccuracies regarding the editorial in the *Almanac*. The allegation that the Town's Building Department failed to submit hundreds of plans to the MPFPD for approval was based upon a false premise and was most disturbing. There was no requirement for the MPFPD to sign off on plans. He did not believe the Town of Atherton had a legal obligation to submit hundreds of plans to the MPFPD when the responsibility was never given to the MPFPD. Additionally, he did not have confidence in whether the MPFPD had anyone qualified to review the plans.

Council Member Jerry Carlson believed sending all the plans to the MPFPD would give the Building Department's new team a fresh start in terms of the expectations that health and safety was being done well under the old administration. If some real health and safety issues were discovered, the homeowners could be notified.

**City Manager Jim Robinson clarified that staff met with the MPFPD the prior week to review the issues raised by the Civil Grand Jury and the MPFPD indicated it would contract with a fire protection engineer who would actually review the plans. He was concerned, if there were a review, to allow original documents out of the Town and suggested the review should occur in Town offices. There were a number of procedural issues, a number of policy issues, identified. Staff took the report seriously, had begun a review, but believed some of the information provided by the MPFPD to the Grand Jury needed some amendment.**

**Mayor Carlson proposed a meeting between the City Council and the MPFPD Board, preceded by staff discussions, to decide who would take jurisdiction for plan checking for health and safety issues. Discussion was needed for issues related to outside of the buildings, e.g., fire truck access and issues of water flow.**

**Jeff Wise, Linden Avenue, had experience in other jurisdictions where plans were submitted to the fire department, which resulted in an additional fee and a month to turn the plans around. He believed the MPFPD wanted the extra fees. He thought the Town did good job of checking health and safety issues and did not need to go to the MPFPD.**

**Vice Mayor Janz said the letter received that evening from the MPFPD made an assumption that there was no process in place to address infrastructure issues, which was not the case. If a project required sprinklers, steps were taken that triggered actions to be taken to ensure health and safety issues were met.**

**Members of the Council concurred that a meeting between the City Council and the MPFPD Board was in order. Discussion continued on the merit of notifying residents regarding new health and safety requirements they might want to implement on their own. Since November of 2004, Building Department records indicated all plans that required sprinklers were sent to the MPFPD for review.**

**City Attorney Marc Hynes clarified the Town was obligated to respond to the Civil Grand Jury report within 90 days of the date of the letter. With respect to the recommendations, the response was to be determined by the Town.**

**Mayor Carlson said staff should return to City Council meeting of March 21, 2007, with a proposed response. The big issue was whether to send all the plans to MPFPD for review. His view was no.**

**Council Member Jerry Carlson said the City Manager recommended that any review of plans be done in the Town. He believed there were legitimate issues raised regarding questions of facts. Additionally, he believed there might be value in having an expert in MPFPD take a look at records that were available to determine what would make sense in terms of a review.**

**Council Member McKeithen agreed the records should remain in the Building Department to be reviewed, perhaps a cross section of some of files, by an engineer hired at MPFPD expense.**

**MOTION – to propose a joint meeting between the Menlo Park Fire Protection District Board and the Town of Atherton City Council, to be preceded by Town staff and Fire District staff meeting within the next 30 days to identify issues that each body sees as germane, to establish an agenda, including but not limited to the recommendations of the Civil Grand Jury report, as well as a response to the Civil Grand Jury report.**

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

**Mayor Carlson called for a recess at 10:03 p.m. The meeting was reconvened at 10:10 p.m.**

**26. LANDSCAPE MAINTENANCE AGREEMENT – 12 SELBY LANE**

**City Attorney Marc Hynes presented the staff report. Heritage trees were damaged at 12 Selby Lane when a wall was being installed and tree roots were cut. Litigation was authorized by the City Council and filed in Superior Court on September 12, 2006. The case was settled in November 2006; and as a result, the property owner agreed to plant five 15-gallon trees to be selected from a list provided by the Town Arborist and seven evergreen shrubs to be selected by the property owner. Additionally, they agreed to enter into an agreement to maintain the plantings. The agreement was before the Council that evening.**

**Council Member McKeithen saw the Heritage Tree Ordinance as serving two purposes: as restorative, and as a deterrent. She said entering into the \$20,000 agreement that basically went into a kitty for the beautification of El Camino Real was not furthering either goal. She believed if the property owners were required to put in significantly larger trees, equivalent value in terms of aesthetic, environmental, size, height, and appearance of the unlawfully removed trees would be achieved. Requiring considerably larger trees in accordance with the statute and the filing of the security deposit was the only way to be fair to the neighbors and act as a deterrent as well.**

**Town Arborist Kathy Hughes Anderson agreed with the concept. The situation was complicated by the fact there was an absentee property owner. She did not believe there was malicious intent on the part of the property owner; she thought the contractor was negligent. Additionally, the Town had some responsibility since the plans were approved without tree protection being required.**

**Council Member McKeithen thought the Town should try to negotiate with the resident for larger trees.**

**City Attorney Hynes clarified that the case had been settled, the settlement agreement had been signed, and the money had been received. What was before the Council that evening was the landscape maintenance agreement, which was purely ministerial.**

**John Thomas, Atherton, believed the money from the settlement should be restricted to the area in which the damage was done. The neighboring properties needed to be taken into consideration.**

**City Attorney Hynes said Council had the ability to determine what to do with the funds.**

**A short discussion ensued regarding whether there was merit in replacing the trees planted by the property owner with larger trees. A suggestion was made to meet with the neighbors in the area to try to make an accommodation that satisfied the neighbors as well as protecting some of the funds for the Tree Committee's project.**

**MOTION - to authorize the Mayor to sign the agreement with direction to staff to evaluate the neighborhood around the offending property to determine whether there were projects that would be feasible to spend the funds on before spending the funds elsewhere in Town**

**M/S A.Carlson/Janz**

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

**27. DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE (*Continued from the City Council meeting of January 17, 2007*)**

**Valerie Gardner, Environmental Programs Committee Member, said the original Waste Reduction Committee was formed in 1998 as a response to a state-mandated requirement to improve recycling levels (AB 939). Presently, concerns about environmental issues were at an all-time high including energy consumption, air pollution, global warming, drought, etc. There was work to be done to improve the environmental performance of the Town. Rather than waiting to be put on a compliance order, the current Environmental Programs Committee (EPC) wanted to put Atherton ahead of the curve. Currently, there were three resident members. The committee changed its name to the EPC and increased meetings from quarterly to monthly. The EPC was moving beyond recycling and solid waste issues to address issues of global warming and CO2 emissions, green building standards and environmental improvements, energy efficiency, etc. The EPC wanted to improve and expand Earth Day activities to be held at Holbrook-Palmer Park. The EPC recommended extending the terms of its members to 4-year terms, increasing the number of resident members up to ten, and by including a mission statement that sought to improve the overall environmental performance of the Town in those areas related to energy efficiency, reduction in the usage of the electric grid, reduction of CO2, etc.**

**Council Member Marsala commended Ms. Gardner for her efforts on the committee. Other communities were creating Green Ribbon Task Forces to deal with the issues. The EPC served a dual purpose.**

City Attorney Hynes clarified that the number of members authorized to serve on the committee determined a quorum. If the membership dropped below that, new members needed to be appointed.

Council Member McKeithen was not opposed to the recommended changes. She suggested speaking with the County on several of the issues, e.g., e-waste and Earth Day events, since the County had established programs.

Council Member Jerry Carlson asked what types of Town resources would be needed in the way of funds or staff time.

Ms. Gardner believed the activities would be self-sufficient by using sponsorships and not requiring a great deal of staff support.

City Manager Jim Robinson clarified there was some staff time incurred in the preparation of agendas, etc, and believed there would be some impact.

Council Member Carlson believed the EPC needed to think through what its goals and objectives were and to be realistic in what areas it could make a difference. He thought staggered terms would be more beneficial.

Vice Mayor Janz suggested the EPC develop a mission statement, goals and objectives, and a plan for the City Council to consider at the next meeting.

**MOTION – that the City Council formally approves the name change from the Waste Reduction Committee to the Environmental Programs Committee, to increase membership to 10 resident advisors, and to increase the initial term limits for half the members to two-year terms and half to four-year terms**

M/S J.Carlson/Marsala

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

A discussion ensued regarding Earth Day activities.

**28. RECOMMENDATION FROM THE ENVIRONMENTAL PROGRAMS COMMITTEE TO ADOPT A RESOLUTION APPROVING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT**

Council Member Marsala gave a PowerPoint presentation regarding the U.S. Mayors' Climate Protection Agreement updating the Council on climate protection. There were three parts to the agreement: 1) to urge federal and state governments to enact policies to reduce global warming; 2) to urge Congress to pass legislation to reduce greenhouse gas emissions; and 3) for local cities and towns to strive to reduce their own by taking action. One of the ways in which the Town could take action was to conduct a survey through ICLEI to establish a target to lower emissions, develop a plan, implement a plan, and measure to determine whether the goals have been met. The Mayors' Climate

**Protection Agreement contained 12 action items. Council Member Marsala urged Council to approve the resolution.**

**Council Member McKeithen was in favor of looking at ways to compost and recycle, etc., but believed some of the items were totally inappropriate for Atherton and beyond the purview of the City Council.**

**Mayor Alan Carlson was concerned over the very aggressive agenda and how much staff time and resources would be needed from the Town. He believed the Town could do many of the things within its existing structure and not make commitments that might not be fulfilled.**

**City Manager Jim Robinson said anytime a new program or committee was added, additional staff time would be required. Other small cities had become involved and it was a matter of whether the Town wanted to become involved and had the energy to do so.**

**Council Member Jerry Carlson reiterated the need for adopting measurable goals and objectives and his concern regarding staff time.**

**Vice Mayor Janz was strongly in favor of adopting the resolution. The Town already participated in many of the activities within the County. Signing on to the agreement indicated the Town acknowledged there was a serious issue and wanted to become involved.**

**Council Member Marsala said the Environmental Programs Committee, on a unanimous vote, recommended adoption of the resolution.**

**MOTION - to adopt Resolution No. 07-03, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ENDORSING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT," which did not incur any cost on behalf of the Town but was an ideology that the Town was in large part following**

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

- 18. APPROVAL FOR THE TOWN OF ATHERTON TO JOIN ICLEI, LOCAL GOVERNMENTS FOR SUSTAINABILITY, AS RECOMMENDED BY THE ENVIRONMENTAL PROGRAMS COMMITTEE** *(Removed from the Consent Calendar and placed on the Regular Agenda by the Mayor for discussion after Item No. 28.)*

**The Environmental Programs Committee recommended the Town join ICLEI (International Council for Local Environmental Initiatives), an international association of local governments, nations, and regional local government organizations that have made a commitment to sustainable development. ICLEI also provided technical consulting, training and information services to support local government in the implementation of sustainable development at the local level. Their premise was that locally designed initiatives could provide an effective and cost-efficient way to**

achieve local, national, and global sustainability objectives. ICLEI had also assisted local cities in the survey and methodology for measuring the CO2 emissions by providing software and software support.

Vice Mayor Janz said others cities that have joined ICLEI did so to follow the U.S. Mayors' protocol which envisioned a 7% reduction of greenhouse emissions below 1990 levels. Some cities were setting targets from current years. Most Contra Costa cities picked a 25% reduction from 2005 levels. He thought Atherton should pick a target that pertained to the Town as a whole. He described some of the proposed programs. ICLEI would work with the Town to do a baseline study, help determine what could be done to reduce greenhouse emissions, and implement methods to obtain results.

After a short discussion regarding the merits of joining ICLEI and the benefits for doing so, the Council concurred that the Town should join.

Valerie Gardner, Environmental Programs Committee, said by joining ICLEI, high-level expertise would be brought in to help accomplish the Town's goals easily and effectively without Town resources.

**MOTION - to approve the Town of Atherton's membership in ICLEI as recommended by the Atherton Environmental Programs Committee**

M/S McKeithen/Marsala

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

**29. MID-YEAR BUDGET PROPOSAL FOR MOBILE DATA COMPUTERS**

Police Chief Bob Brennan said there would be no additional cost associated for adding the computers to the network server. Recurring costs would be included in the upcoming budget. The computers were "read only" and would not contain confidential data. A brief discussion ensued regarding how the computers would be used.

**MOTION - to approve an expenditure of \$66,225.60 to purchase 10 laptop computers, necessary software and hardware, to fully implement a Mobile Data Computer (MDC) program**

M/S McKeithen/Marsala

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

**30. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE COMMITTEE/COMMISSION APPOINTMENT PROCESS *(Continued from the City Council meeting of January 17, 2007)***

**Recommendation: Council to review existing policies regarding the Committee-Commission appointment process and possibly give direction to staff on any changes the Council wishes to make regarding the recruitment process, selection/appointment process, terms of office, duties, membership, etc.**

By Consensus of the Council, the item was continued to the City Council meeting of March 21, 2007.

**31. DISCUSSION OF COUNCIL PROCEDURES (NO WRITTEN REPORT)**

By Consensus of the Council, the item was continued to the City Council meeting of March 21, 2007

**15. APPROVAL OF AGREEMENT - RAPID ENFORCEMENT ALLIED COMPUTER TEAM REACT TASK FORCE** *(Removed from the Consent Calendar and placed on the Regular agenda to be discussed after Item No. 31.)*

Police Chief Bob Brennan said the item before the Council was a renewal of the original agreement which had been updated to include other cities participation, e.g., Millbrae. The Town had one officer participating on a full-time basis who worked on approximately 12 cases per year. A short discussion ensued regarding the types of cases and whether they impacted Atherton residents, as well as the costs and benefits of the Town's participation.

**MOTION - to authorize the Mayor to execute the agreement entitled a Memorandum of Understanding among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force**

M/S McKeithen/J.Carlson

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

**17. CONSTRUCTION, OPERATION PARKING PLANS – STATUS OF IMPLEMENTATION AND ENFORCEMENT** *(Removed from the Consent Calendar and placed on the Regular agenda to be discussed after Item No. 31.)*

Police Chief Bob Brennan clarified an officer did a daily check of Park Lane and Ridgeview, before 8 a.m. and after 5 p.m.

Council Member Marsala suggested that the General Plan Committee review the COP Plan Guidelines to determine how they were working and what changes could be made to improve them.

Town Arborist Kathy Hughes Anderson noted a clerical error in the COP Plan Guidelines regarding placement of sanitary facilities and jobsite trailers and would make the correction.

No action required, report accepted. Direction to staff to incorporate any suggested changes to the Construction, Operation and Parking Plan Guidelines or enforcement of signs to improve the COP Plan Guidelines, including the location of the signs.

M/S Marsala/Janz

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

**20. ADOPTION OF A RESOLUTION SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE** (*Removed from the Consent Calendar and placed on the Regular agenda to be discussed after Item No. 31.*)

Council Member McKeithen suggested adding the name of the town, "Atherton," to the first whereas, made a correction to the date when weekday service was suspended from 2003 to 2005, and added the word "affected" to the second item under the "Now therefore be resolved" clause.

**MOTION - to adopt a Resolution No. 07-04, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE," as modified**

M/S McKeithen/Janz

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

**32. PUBLIC COMMENTS**

There were no public comments.

**33. ADJOURNMENT**

Mayor Alan Carlson adjourned the meeting to a *Continued* Closed Session at 12:10 a.m.

**D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

City Attorney  
City Manager

Mayor Carlson adjourned the *Continued* Closed Session, Item D, to the City Council Closed Session meeting of March 21, 2007, at 12:25 a.m.

Respectfully submitted,

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**Kathi Hamilton**  
Acting City Clerk