



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

April 18, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 7:03 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

A. Proclamation proclaiming April 21, 2007, as Earth Day in Atherton

Mayor Carlson presented the proclamation to Council Member Marsala who accepted it on behalf of the Environmental Programs Committee.

B. Proclamation proclaiming April 23 through April 29, 2007, as Mosquito Awareness, West Nile Virus Prevention Week

Chindi Peavey, Biologist, Mosquito Abatement District, reported there were no human cases of West Nile Virus in San Mateo County; however, there were infected birds. She advised residents to call the District if a dead bird were found or mosquito problems existed on their property.

4. PUBLIC COMMENTS

Shirley Carlson, Mt. Vernon Lane, said the Atherton Dames held their annual Easter Egg Hunt, which was a huge success with over 1,100 attendees. She thanked

Holbrook-Palmer Park staff; Richard Moore and members of the Atherton Civic Interest League (ACIL); the Atherton Police Department; and Council Members Charles Marsala and Jerry Carlson for all their help on the event. Additionally, she announced the Town Barbeque would be held on September 9, 2007.

Bob Jenkins, Irving Avenue, commented that Atherton's Earth Week events, sponsored by the Environmental Programs Committee, was mostly the work of member Valerie Gardner. Regarding disaster preparedness, Mr. Jenkins noted there was a Community Alert Network through San Mateo County that Atherton residents could sign up for which would inform them of emergencies in the area, such as last week's fire in Redwood City that produced some toxins in the air.

5. STAFF REPORTS

- City Attorney Marc Hynes reported out of 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:

One (1) potential case

There was no discussion on the item.

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.
Superior Court of California, San Mateo County, CIV 458899

No reportable action was taken.

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

No reportable action was taken.

The Council adjourned to open session to consider a request by the City Attorney to add the following item to the Closed Session agenda.

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

No reportable action was taken.

Adopted Ordinance 569, “AN ORDINANCE OF THE COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTIONS 12.06.030 – 12.06.050 AND ADDING CHAPTERS 12.07 AND 12.09 TO TITLE 12 OF THE ATHERTON MUNICIPAL CODE; ADDING SECTION 13.08.600 TO CHAPTER 13.08 AND CHAPTER 13.10 [VIDEO SERVICE PROVIDERS – APPLICABLE REQUIREMENTS] TO TITLE 13 OF THE ATHERTON MUNICIPAL CODE TO CONFORM TO THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006”; This ordinance was introduced at the regular City Council meeting on March 21, 2007.

11. PERFORMANCE OF TOWN LANDSCAPING CONTRACT WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE

Approved retaining the services of Commercial Environmental Landscape (CEL) to perform landscaping duties in various locations in the Town of Atherton.

12. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION, AND APPROVAL OF CONTRACT CHANGE ORDERS FOR THE SELBY LANE RECONSTRUCTION PROJECT, PROJECT NO. 04-004

Accepted the work, authorized recording of a Notice of Completion, and approved contract Change Orders in the amount of \$164,523.79 for the Selby Lane Reconstruction Project, Project No. 04-004.

13. AWARD OF CONTRACT FOR THE CAPE SEAL AND SLURRY SEAL PROJECT, PROJECT NO. 06-003

Awarded the contract for the 2007 Street Microsurfacing Project, Project No. 06-003, to Valley Slurry Seal, Inc., the low bidder on the March 9, 2007, bids, for \$68,863.43, with a 10% construction contingency of \$6,886.34, for a total authorization of \$75,749.77; and to authorize the Mayor to sign the contract on behalf of the Town.

**14. ADOPTION OF A RESOLUTION ADDING THE POSITION OF PERMIT TECHNICIAN TO THE TOWN’S JOB CLASSIFICATION LISTING
(Continued from the City Council meeting of March 21, 2007.)**

Adopted Resolution No. 07-11, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING THE POSITION OF PERMIT TECHNICIAN TO THE TOWN’S CLASSIFICATION LISTING AND SETTING SALARY AND BENEFITS FOR THE POSITION.”

15. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS, IN AN AMOUNT NOT TO EXCEED \$30,000.

Accepted the proposal and authorized the Mayor to sign a Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$30,000.

16. APPROVAL OF A CONTRACT WITH EL DORADO TOWING TO BE ADDED TO THE ATHERTON POLICE DEPARTMENT TOW ROTATION LIST

Approved the contract for El Dorado Towing to add this company to the tow rotation list for the Atherton Police Department.

17. ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR APPOINTMENTS TO THE PLANNING COMMISSION

Accepted and approved the recommendation of the City Council Screening Committee to appoint Mr. Phil Lively and Mr. Herman Christensen as members of the Atherton Planning Commission and to serve four-year terms effective May 1, 2007.

18. CONSIDERATION AND POSSIBLE APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RE-NAMING THE WASTE REDUCTION COMMITTEE TO THE ENVIRONMENTAL PROGRAMS COMMITTEE, INCREASING MEMBERSHIP TO TEN RESIDENT ADVISORS, INCREASING TERM LIMITS, AND DESIGNATING ITS FUNCTIONS

Approved Resolution No. 07-10, "RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RE-NAMING THE WASTE REDUCTION COMMITTEE TO THE ENVIRONMENTAL PROGRAMS COMMITTEE, INCREASING MEMBERSHIP TO TEN RESIDENT ADVISORS, INCREASING TERM LIMITS AND DESIGNATING ITS FUNCTIONS."

19. AWARD OF CONTRACT FOR HOLBROOK-PALMER PARK EMERGENCY WATER WELL PROJECT NUMBER 06-004

Awarded the contract for the Holbrook-Palmer Park Emergency Water Well Project, Project No. 06-004, to the low bidder to be determined by informal bids to be received on or before April 18, 2007, for an amount to be determined by Council based on the bid results, to authorize the use of an informal bid process, to authorize the Mayor to sign the contract, and to authorize the City Manager to execute the contract on behalf of the Town.

PUBLIC HEARINGS (Items 20 - 24)

Due to voice problems, Mayor Alan Carlson asked Vice Mayor Janz to temporarily preside over the meeting.

20. APPEAL REGARDING 370 AND 384 ATHERTON AVENUE

Former Acting Building Official Mike Cully presented the staff report. Michael McGregor, the appellant, was appealing the decision of the former Acting Building Official regarding a final approval of a building permit issued to an adjacent property at 384 Atherton Avenue for landscape structures. Mr. McGregor asserted there were

various violations of the zoning regulations and the grading and drainage criteria that caused storm runoff onto his property. Mr. Cully presented a timeline and background of the project at 384 Atherton Avenue. Mr. McGregor had visited the Building Department on numerous occasions to discuss various concerns regarding the neighboring property. In December of 2006, Acting Building Official Cully and the Senior Building Inspector visited the site and determined the project did not violate provisions of any of the Town's adopted regulations and final approval was granted. Mr. McGregor was sent notification and an explanation of the findings regarding his complaints. Mr. Cully summarized the five Municipal Code violations asserted by Mr. McGregor as outlined in the staff report. Staff's professional opinion was the permit that was issued for the work at 384 Atherton Avenue was completed to the satisfaction of the plans and in compliance with the zoning regulations of the Town. Mr. Cully responded to Council's questions.

In response to Mayor Alan Carlson, City Attorney Marc Hynes clarified that the any action taken by the Building Official. The appeal was filed within the time limit of 10 days as set out in Municipal Code Section 17.64.

Vice Mayor Janz opened the public hearing.

Michael McGregor, 370 Atherton Avenue, appellant, said the landscape structure had a direct physical impact on his property; water ran across the driveway which presented potential damage. His attorney advised him he would have to disclose the code violations if he ever wanted to sell his property. Mr. McGregor worked to try to resolve the issues with the property owner. He distributed a packet of information refuting statements in the staff report. His first point of contention was that the property owners should not have been granted an exemption. All seven criteria listed in the Municipal Code Section 8.54 had to be met for an exemption to be granted. The first criterion was the amount of landfill that could be placed could not exceed $\frac{1}{4}$ of an acre: at least .9 of an acre was used at 384 Atherton Avenue. Mr. McGregor, through pictures, demonstrated the succession of attempts by the contractor that failed to keep water from seeping onto his property that began as a well and ultimately led to the vertical retention pit. The manner in which the pipes were laid resulted in water still reaching the sump outside the sealed collection box that then drained onto Mr. McGregor's property. He believed a dye test needed to be made into the sump that would demonstrate the water leaking onto his property. Further, he contended that the rockery wall was really a retaining wall and, as such, needed to be outside the 5-foot setback. The steep slope would not hold up over time. Rockery walls were not intended to hold back fill.

In response to Council Member Jerry Carlson, Mr. McGregor said he suggested a dye test be performed in February. The dye needed to be injected into the sump, under the collection box.

Council Member Marsala believed only the part of the lot being worked on should be counted in the calculation for the landfill limit, i.e., the area where the rockery wall was located as opposed to the entire lot. There was a difference of opinion as to how

that calculation was applied under the code. Council Member Marsala was in favor of performing the dye test.

Mayor Carlson asked if there was any evidence that the water ran across Mr. McGregor's driveway in a like amount prior to the work performed at 384 Atherton Avenue.

Mr. McGregor explained from 1989 to 1992, there was a problem with water draining across his driveway due to faulty construction for the driveway at 384 Atherton Avenue. In 1992, the problem was corrected by re-grading the driveway and water no longer drained unto his property. The current problem was worse because there was a continuous flow.

Council Member McKeithen said given the fact there was a continuous flow that was worse than before, and the only change was the construction of the vertical absorption pit, the problem seemed to be the vertical pit.

Mr. McGregor believed the problem was the sump. All the water theoretically went into the concrete box and was pumped out and flowed to the street. In actuality, a great deal of water still went into the sump because the pipes were not sealed. Even though the pipes entered the sealed concrete box, they dumped water into the sump. Only solution was to remove the sump.

Vice Mayor Janz clarified that Mr. McGregor's solution was to eliminate the small retention pit, or sump.

Mr. McGregor believed both pits needed to be removed and filled which would solve the immediate problem. What would be replaced would come down to grading and drainage criteria. With regard to the rockery wall, he said the angle of repose of the materials would eventually go downhill toward his property.

Vice Mayor Janz closed the public hearing.

Council Member Jerry Carlson said at the very least, a dye test should be completed before taking any action on the pit or the vertical retention device.

Council Member Marsala agreed a dye test should be conducted. He queried whether the deeper retention pit was actually working as a well and hit an underground stream that was seeping up. He thought both pits should have a dye test. He was unsure what to do about the rockery wall and what legal options would exist over time.

City Attorney Hynes said over time, additional rules or regulations could be put into place relative to retaining walls. If the decision that evening were that the wall was or should be a retaining wall and must be engineered like a retaining wall, the direction would be for the Town to tell the property owner to build retaining wall. Since the wall had been approved, findings would need to be made to justify the reason Council was reversing the decision of the Building Official.

Former Acting Building Official Cully clarified based on the information shown on the plans, the areas identified for fill were the area of the rockeries. He did not take into consideration the fill on the entire lot and did not believe it was the intent of the code. The areas were small and isolated and met all seven criteria.

Council Member McKeithen said there was no harm in doing dye tests in both the vertical absorption pit as well as the sump pump. Given the assumption that the water was found to be coming from at least the sump pump, she thought Council should direct the Building Department to have the property owner remove both features and develop a system to retain water on the property. If that were not feasible, the features should be removed without adversely affecting any neighboring properties. She believed the rockery wall was intended to resist lateral movement of soil and believed it was truly a retaining wall and should be engineered as such.

Mayor Carlson believed the findings should be based on the evidence. And the evidence showed that prior to the most recent work at 384 Atherton Avenue, water did not drain across Mr. McGregor's driveway. Consequently, the appeal should be granted and the property owner at 384 Atherton Avenue should be required to restore the condition as it existed before, i.e., no water drainage across the driveway. He thought the retaining wall was a matter of interpretation. He did not believe the interpretation of the Building Official was unreasonable; therefore, the appeal with respect to the wall should be denied.

Vice Mayor Janz shared the concern that the problem with the retention pits should be corrected. He queried whether to do a dye test first. With respect to the retaining wall/rockery, he agreed with Mayor Carlson that the interpretation that the wall was a landscape feature was a reasonable interpretation by the Building Official.

Council Member Jerry Carlson thought the property owner should decide whether a dye test should be done or not.

Council Member Marsala was still in favor of the tests so all parties were convinced that retention pits were the culprit.

Mayor Carlson believed the dye test was not warranted based on the evidence in the record.

Council Member McKeithen was concerned about the retaining wall and disagreed with her colleagues. The record spoke for itself, i.e., that the rocks and boulders were not just up the side of a slope but up the side of fill.

MOTION – to grant the appeal of the Building Official's final approval of a building permit at 384 Atherton Avenue based on the fact that before construction took place, there was no drainage on Mr. McGregor's property; further, the property owner at 384 Atherton Avenue is to resolve/restore to the existing state prior to construction with the remedy left to the property owner at 384 Atherton Avenue

M/S A.Carlson/J.Carlosn

Ayes 5 Noes 0 Absent: 0 Abstain: 0

MOTION – to uphold the decision of the Building Official in regard to the rockery/retaining wall because sufficient evidence existed in the record that the Building Official’s decision was not unreasonable, thereby denying the appeal

Council Member Jerry Carlson was disturbed by the rockery wall. If the rocks were removed what would happen to the soil. Clearly, the soil needed to be retained by something. The encroachment into the 5-foot setback was also bothersome. He could not support motion.

Council Member Marsala believed the rockery functioned as a retaining wall; however, it was allowed within the code.

M/S A. Carlson/Marsala Ayes 3 Noes 2 (J. Carlson/McKeithen) Absent: 0 Abstain: 0

Mayor Carlson resumed presiding over the meeting.

21. APPEAL REGARDING 70 BARRY LANE

Mayor Alan Carlson stated the appeal was continued to the City Council meeting of May 16, 2007.

22. APPEAL REGARDING 55 BELBROOK WAY

Mayor Alan Carlson stated the appeal was continued to the City Council meeting of May 16, 2007.

23. APPEAL REGARDING 94 TALLWOOD

Mayor Alan Carlson stated the appeal was continued to the City Council meeting of May 16, 2007.

24. DISCUSSION, POSSIBLE DECISION TO RECONSIDER THE DENIAL OF AN APPEAL REGARDING THE ALTERATION OF A NONCONFORMING STRUCTURE AT 84 WALNUT AVENUE (ASSESSOR’S PARCEL NUMBER 060-332-230)

Mayor Alan Carlson noted at the Special City Council meeting of April 9, 2007, the City Council decided to suspend its rules and reconsider the appeal of 84 Walnut Avenue.

Vice Mayor Janz initially suggested reconsideration of the item because he received some information during the City Council meeting that he was unable to review until after the meeting. In particular, he found a great similarity in what the owner at 172 Austin Avenue had done and which Council addressed at its January meeting. He acknowledged that actions taken by Council were not precedent setting for the future, however, he believed the project on 84 Walnut had more merit and should be approved. He pointed out similarities between the two. He said the “historical fiction”

being used was that if a piece of a nonconforming building was kept, the property owner could build around it and not lose the benefit of the nonconforming portion of the structure. In recent years, property owners were allowed to build a new wall where the nonconforming wall was and place a new foundation under it because that was a better method, which was the case on Austin Avenue. The only difference on 84 Walnut Avenue was the property owner was told to keep the walls as a placeholder; however, building a new foundation was contemplated and new walls would be built where the nonconforming walls were. In terms of impact on neighbors and impact on the standards of setbacks, he believed what took place on Austin Avenue was much greater than what was proposed for 84 Walnut Avenue. He believed the appeal should be granted based on: 1) general fairness issues; 2) that Municipal Code Section 17.44 justified that the walls being knocked down were “or other” accidental occurrence; and 3) applying a strict interpretation of an ambiguous law was a travesty of justice for the owner.

Council Member Marsala would have approved the appeal at the previous meeting. He agreed with Vice Mayor Janz that the project met the test of accidental occurrences. Additionally, the neighbors were in favor of the project. He was in favor of granting the appeal.

Council Member McKeithen said the supreme premise was that every case had to be judged on its own merits. She would disregard a comparison with 172 Austin Avenue, initially; judge 84 Walnut Avenue on its own and determine what she would do in the case of 84 Walnut Avenue; and determine whether she would have done anything different on 172 Austin. She believed “accidental” referred to act of God. A contractor mistake was not an act of God and not provable and could not be applied in the current case. Additionally, she did not believe whatever the former Building Official said or did not say really made a difference because the fact was the provisions of the permit were not met. There was nothing to discuss as a nonconforming structure because one no longer existed. The bigger issue was Paragraph D in the findings relative to 172 Austin Avenue that said there were no objections from adjacent neighbors which allowed the conclusion that there were no adverse impacts from development of the property in accordance with the approved plans, which meant the community was not going to suffer. The side setback allowed for adequate screening from adjacent property owners that would blend in perfectly with the neighborhood. She described what she believed were adverse effects, as well as safety concerns regarding 84 Walnut Avenue’s reduced front setback which made it different from 172 Austin Avenue. All the new development surrounding 84 Walnut Avenue had the newly required 20-foot setbacks. If the entire right-of-way were used for road, 84 Walnut Avenue would only be 7 feet from the roadway, causing a safety issue. She concluded that: 1) there was a safety issue; 2) the conditions of the permit were not met; 3) there was an issue of whether there was adequate screening; and 4) there was a reduced front setback. She was not in favor of granting the appeal.

Mayor Carlson believed his vote was wrong at the last meeting. Had he had in mind the Austin Avenue case, he would have voted differently. He concurred with Vice Mayor Janz’s comments in total.

Council Member Jerry Carlson really was perplexed by the logic of some of his colleagues. He believed the general fairness issue should be what was fair for the community and not comparing a past action of Council. A fairness test was whether the Council was upholding the rules the Town adopted for the whole community. For the reasons noted in the findings, the appeal should be denied. He believed reversing Council's decision would give the impression that Council did not have the political will to follow through on enforcement actions and opened the door for other challenges.

Mayor Carlson opened public hearing.

Amanada Miller, appellant, 84 Walnut Avenue, presented minor revisions to her plans that would increase the front setback to 10 feet 6 inches. Additionally, the window was moved away from the door by 10 inches. She was submitting the revised plans to the Building Department for approval. She asked Council to approve the appeal.

Mayor Carlson closed public hearing.

MOTION – to grant the appeal of the Building Official's decision regarding the alteration of a nonconforming structure at 84 Walnut Avenue and allow construction to continue

A brief discussion ensued clarifying the need for the City Attorney to return with specific findings to support Council's decision to grant the appeal.

Council Member McKeithen requested her comments be very carefully noted in the record. She believed the Council was in a tricky position where human nature and good will controlled over logic.

M/S Marsala/Janz Ayes 3 Noes 2 (J.Carlson/McKeithen) Absent: 0 Abstain: 0

City Attorney Marc Hynes stated in accordance with the Atherton Municipal Code, he would prepare findings consistent with the motion to be returned at the City Council Meeting of May 16, 2007.

Mayor Carlson called for a break at 9:58 p.m. The meeting was reconvened at 10:08 p.m.

REGULAR AGENDA (Items 25 - 29)

**25. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING
ATHERTON MUNICIPAL CODE CHAPTER 17.44 REGULATING
NONCONFORMING USES WITHIN THE TOWN OF ATHERTON**

Deputy Town Planner Lisa Costa Sanders noted changes, as suggested at the last meeting, were incorporated into the ordinance.

**MOTION – to adopt Ordinance 570, “AN ORDINANCE OF THE CITY COUNCIL OF
THE TOWN OF ATHERTON AMENDING CHAPTER 17.44 REGULATING**

NONCONFORMING USES WITHIN THE TOWN OF ATHERTON”

M/S McKeithen/J.Carlson

Ayes 5 Noes 0 Absent: 0 Abstain: 0

26. CONSIDERATION OF REQUEST FROM ATHERTON DISASTER PREPAREDNESS COMMITTEE TO PURCHASE A LAPTOP AND SOFTWARE.

Council Member Jerry Carlson clarified the computer would be used to maintain a record of volunteers, assisting in the event of an emergency and preparing for emergencies. He queried whether the issue of obtaining/maintaining personal information had been resolved.

City Manager Jim Robinson said one of the issue raised at the Town’s Emergency Preparedness Committee was who would provide the computer and how confidentiality would be maintained. In discussions with the Menlo Park Fire Protection District (MPFPD), the MPFPD said it would not provide a laptop computer but did not have objections if the citizen committee had one. Concerns were raised by the Police Chief regarding the information that would be stored and controlled by volunteers and what liability, if any, the Town would have.

Council Member Marsala noted the Atherton Civic Interest League had purchased other items in the past. He believed the equipment was needed and served a function for the Town. However, there was the unresolved issue of security. He queried whether a precedent would be set for other groups wanting computers.

City Manager Robinson said the MPFPD noted that other groups had their own computers, such as homeowner organizations, and probably had rules on how information was maintained.

Bob Jenkins, Irving Avenue, Chair of the Atherton Disaster Preparedness Committee, had already purchased a laptop and software. Lloyd Park was being set up as the alpha site which would have various maps of the area and would include shutoff valves and data on the individual occupants for each parcel. Better software had been purchased and data input was 80% completed and would be shared with MPFPD. Signoffs by all the participants were secured before information was entered into the computer. He encouraged the Council to fund the cost of the laptop computer and software.

City Attorney Marc Hynes clarified the Town would not have liability if the laptop computer were lost or the data was comprised.

Lou Paponis, Citizens Disaster Preparedness Committee, clarified one of the purposes of the database was to identify the number of people living in residences, e.g., senior citizens, children, etc. Experience showed that when catastrophes happened, confusion was paramount, and people tended to get lost.

Council Member McKeithen said Council had given money for many different causes. The citizen group had roots within the Town with dedicated volunteers who made a big

difference in how Atherton would be prepared in a disaster. She agreed that some information should not be in the public domain. A donation would be a good faith showing that Council cared about the committee and what it was doing.

MOTION – to authorize a donation of \$2,000 to the Atherton Citizens Disaster Preparedness Committee for a laptop computer and software which had been purchased

M/S McKeithen/A.Carlson

After a short discussion regarding how the donation should be made, Mayor Carlson made the following amendment to the motion:

AMENDMENT – to appropriate \$2,000 to reimburse the Atherton Citizens Disaster Preparedness Committee for the purchase of a laptop computer and software, payable to an individual on the Committee, approved by the City Manager

A/S A. Carlson/ McKeithen

MOTION AS AMENDED

Ayes 5 Noes 0 Absent: 0 Abstain: 0

27. CONSIDERATION AND POSSIBLE APPROVAL OF RESPONSE TO SAN MATEO COUNTY CIVIL GRAND JURY FEBRUARY 7, 2007 INTERIM REPORT REGARDING TOWN OF ATHERTON BUILDING DEPARTMENT.

Mayor Carlson called for a recess at 10:35 p.m. Mayor Carlson reconvened the meeting at 10:38 p.m.

Mayor Alan Carlson provided Council with a proposed draft response and clarified some legal issues. Article 9 was in the Fire Code which was part of the Building Standards Code and controlled apparatus access, was not required to be adopted by any municipality, and had not been adopted by Atherton. The Menlo Park Fire Protection District (MPFPD) was required to adopt the Fire Code; however, Article 9 was not within the totality of the Fire Code. There was an argument that Article 9 needed to be adopted in addition to and separately from the Fire Code. There was a question as to whether MPFPD had adopted Article 9. If not, there was an argument that MPFPD could not enforce Article 9 within Atherton. Another legal issues was whether Article 9 applied only to commercial, or did it apply to single-family residential. MPFPD did take the position that it had jurisdiction and authority with respect to Article 9 for both commercial and residential construction, had acted consistently in that regard, and had relied, historically, on an informal understanding with the Building Department.

Mayor Carlson agreed to correct a sentence on Page 8 and a word correction on Page 9. The response would be forwarded to the San Mateo County Civil Grand Jury, signed by the Mayor.

MOTION – to accept the draft response to the San Mateo County Civil Grand Jury Interim Report regarding the Town of Atherton Building Department, with direction to the Mayor to incorporate the suggested changes, sign, and mail the response

M/S McKeithen/J.Carlson

Ayes 5 Noes 0 Absent: 0 Abstain: 0

28. CONSIDERATION AND POSSIBLE APPROVAL OF ALLOCATION OF FUNDS TO CONTRACT WITH JILL BOONE TO ASSIST TOWN IN ESTABLISHING CO2 BASELINE

City Manager Jim Robinson said a CO2 baseline analysis needed to be completed and ICLEI did not perform those services. Council was being asked to appropriate funds to establish a CO2 baseline.

Council Member Jerry Carlson was under the impression that when the Town joined ICLEI, ICLEI would provide the expertise without Town resources.

Council Member Marsala noted AB 32 was passed by the State and would soon require cities/towns to meet objectives on CO2 reduction. The baseline analysis would help the Town meet the new regulations.

Council Member McKeithen was concerned with the amount of staff time utilized by the Environmental Programs Committee. Additionally, she did not like the piecemeal budget approach. She believed the committee needed to develop a budget.

Mayor Alan Carlson agreed. The committee needed to develop one plan over the next year, as well as a budget.

Vice Mayor Janz agreed and thought the request should be made as part of the Town's budgeting process.

No action taken.

29. CONSIDERATION AND POSSIBLE ACTION REGARDING THE TOWN OF ATHERTON ENVIRONMENTAL PROGRAMS COMMITTEE REQUEST TO REDUCE THE SOLAR PERMIT FEE TO ZERO

City Manager Jim Robinson said the recommendation was part of a discussion at the Joint Meeting of the Environmental Programs Committee and the General Plan Committee. The recommendation was to reduce the solar permit fee to zero.

Vice Mayor Janz was in favor of reducing the fee to zero when the item was before the Council previously. Since there was an upcoming comprehensive Building Department Fee reconsideration in process, he suggested waiting for that discussion.

Council Member Marsala said each committee had voted separately to recommend the fee be reduced to zero. There was a marketing advantage for the solar incentive plan

to have the fee set to zero. Additionally, a bulk rate purchase program with Solar City had been negotiated. A presentation would be held during Earth Week activities.

Council Member McKeithen said setting the fee to zero had multiple bases for being inappropriate: 1) the fee was reduced last May; 2) the Town should not subsidize other residents' projects; and 3) the 2-1/2 hours of Building Department time should be recovered. She did not believe reducing the fee would encourage the use of solar systems: a fee of \$250 would not discourage anyone.

Mayor Alan Carlson agreed with his colleagues and thought the discussion should be held with the Building Department Fee item.

No action taken.

30. COUNCIL REPORTS

- Council Member Marsala noted a solar drive would be launched the next evening and announced the various Earth Week activities. The Easter Egg Hunt was huge success. He attended the Atherton Disaster Preparedness Committee meeting. He attended a League of Cities meeting in Los Angeles to discuss pension plans and other legal issues. Mayor Carlson read a book to the first graders at Laurel School.
- Council Member McKeithen announced an Office of Emergency Services meeting would be held the next evening to review the budget. The meeting was scheduled for 5:30 p.m., in the Jury Room.
- Council Member Jerry Carlson was encouraged that younger people in Town were picking up leadership roles in the Town. Valerie Gardner, Environmental Programs Committee; and Jennifer Jeffries, Veronica Kogler, and Loren Gruner from the Dames. He thanked Jack Ringham and Phil Lively for their contributions to the Rail Committee. He attended the demonstration of the Permit Tracking System and thought it would be a great system in terms of extracting information. The biggest challenge would be the input of data, which might necessitate supplementing the budget.
- Vice Mayor Janz said the Sub-regional Housing Needs Allocation Policy Advisory Committee met on March 22nd. The formula that was submitted by the end of March was the same one used by ABAG. The number of housing units allocated to all of San Mateo County by creating a sub-region came out lower than it otherwise would have been. The next step was for the PAC and TAC to work together to determine any trade allocations. The resolution passed by the Town asking CalTrain to hire an independent consultant to review the schedule had been passed by five other cities, and Colma had submitted a letter.

31. PUBLIC COMMENTS

Lou Paponis, appreciated that Council donated \$2,000 to the Atherton Disaster Preparedness Committee. Atherton was far ahead of the cities of Menlo Park Palo Alto or any other surrounding community.

Council Member McKeithen noted Atherton was ahead of any other city in the County with the exception of Portola Valley.

32. ADJOURNMENT

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

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**