



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
OCTOBER 17, 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

Interim City Manager Wendé Protzman and City Attorney Marc Hynes were also present.

3. **PRESENTATIONS**

REPORT FROM LAFCo – Martha Poyatos

Martha Poyatos, Executive Officer, Local Agency Formation Commission (LAFCo), gave a PowerPoint presentation and explained a special process being undertaken by LAFCo to study the 20 cities and special districts in San Mateo County. LAFCo was an independent commission created by the Legislature with jurisdiction over the regulation of boundaries in cities and special districts. LAFCo was responsible for adopting and renewing Spheres of Influence as well as conducting Municipal Service Reviews (MSR). Atherton's Sphere of Influence Review and MSR were to be prepared based on completion of the annual audit for Fiscal Year Ending June 2007. The Atherton Drainage District would be reviewed as well.

Council Member McKeithen raised issues regarding the Atherton Drainage District for review.

4. PUBLIC COMMENTS

Jim Dobbie, Atherton, asked that the Public Works Department review implementation of left- and right-hand turn lanes at Middlefield Road and Watkins Avenue.

Karen Bacon, Atherton, requested that Council reconsider its decision extending the Tentative Parcel Map at 64 Moulton Drive. Access at the west end of the lot was approximately 14 feet and encumbered by a heritage Valley Oak, a fire hydrant, a telephone pole, and electrical panel. In the interest of the safety of the neighborhood and accessibility of fire apparatus, she asked Council to reconsider its decision.

City Attorney Marc Hynes explained reconsideration options for Council.

Mayor Alan Carlson had no objection of putting the question on the next agenda to determine whether a majority of Council wanted to reconsider its decision.

Deputy Town Planner Lisa Costa Sanders said she would meet with the Menlo Park Fire Protection District regarding potential safety issues in advance of the meeting.

Clarice Merrill, Atherton, the property owner at 64 Moulton Drive, explained the unfortunate circumstances, which led to the delay of the project. She explained that the request for an extension was done in a timely manner as prescribed by law. The house was built and finished. Moving the driveway was not something to reconsider.

Mayor Carlson asked staff to include in the staff report any adverse impacts to the property owner by delaying the project.

Virginia Ruggeiro, Atherton, spoke regarding an announcement that five cities in San Mateo County received a share of \$2 million to transform El Camino Real into a Grand Blvd. Atherton was not among them, and she suggested the Town needed to pursue whatever grants were available. Additionally, she proposed all the signs that said Town of Atherton with the words “City Limits” be changed to “Town Limits.” Additionally she wanted emphasize the words from the City Manager’s recruitment brochure that said streets in Atherton were “scenic routes, not speed of travel.”

Public Works Director Duncan Jones noted that the transformation of El Camino Real was mostly the rejuvenation of commercial properties.

Randy Lamb, Atherton, said the judge issued a ruling regarding the litigation between the Town and the Lambs that recommended the Town’s Historic Artifacts Ordinance be reviewed as it related to the Lambs, or any future, applications. He queried when the ordinance might be reviewed. Additionally, he noted he found information on the internet regarding two contracts involving Finance Director John Johns, one of which was for 400 hours starting in February 2007 with the County of Sutter.

John Sisson Atherton, spoke regarding the failure of Lloyd Park's disaster preparedness. He heard from Council Member McKeithen that the \$100,000 allocated for disaster preparedness had been allocated/spent. An exercise was planned for November 14th, and Lloyd Park did not have the necessary equipment to participate. Further, he asked what conditions established a hostile work environment.

Mayor Carlson stated the question was inappropriate during the Public Comment period.

Council Member McKeithen said she communicated with the Menlo Park Fire Protection District regarding a possible meeting to discuss what could be done to acquire the necessary equipment to participate in the disaster preparedness exercise.

5. STAFF REPORTS

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

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

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

There was no reportable action.

**Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899**

There was no reportable action.

B. 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 reportable action.

- **Interim City Manager Wendé Protzman introduced Letty Juarez, who was helping the Town with its Human Resources and Risk Management functions, and Bill Yeomans, who was working as a consultant in the Finance Department.**
- **Council Member McKeithen asked the City Attorney to report on the P.G.&E. issue in November.**

Approved the attached Professional Services Agreement with Hexagon Transportation Consultants to prepare a traffic study to be used as part of an Initial Study and Draft Negative Declaration for Sacred Heart Schools.

13. APPROVAL OF CONTRACT FOR TEMPORARY SERVICES, SUSAN TSAI, STAFF MEMBER, FINANCE DEPARTMENT

Approved a contract with Susan Tsai for services in connection with the Town's Finance and Building Departments. The contract envisions the performance of services by Ms. Tsai as a Staff Member in the Department of Finance.

14. APPROVAL OF CONSULTANT CONTRACT, WILLIAM H. "BILL" YEOMANS, TEMPORARY FINANCE OFFICER SERVICES

Approved an agreement with Mr. William H. Yeomans for services in connection with the Town's Finance Department. The agreement envisions Mr. Yeomans' services on a 3-day per week basis. Mr. Yeomans has previously served as Acting Director of Finance for the Town.

PUBLIC HEARINGS (Items 15-17)

15. A. APPEAL OF THE PLANNING COMMISSION DECISION DENYING A CONDITIONAL USE PERMIT FOR 94 TALLWOOD *(Continued from the September 19, 2007, City Council meeting.) (Due to the length of some attachments, they will be available for review at the library and/or Town Hall.)*

Mayor Alan Carlson recused himself from the matter. Vice Mayor Janz presided over the item.

City Attorney Marc Hynes introduced Attorney Jean Savoree who would be the attorney of record for the Council. Bryan Winter would be the attorney for staff, and Chris Carrigan represented the Town in the ongoing litigation between the Kings and the Town.

Vice Mayor Janz said requests were also received for two other Council Members to recuse themselves.

Council Member Charles Marsala stated he was prepared to hear the evidence as presented, to keep an open mind, and to listen to the discussion to make a determination on what was presented.

Council Member Kathy McKeithen stated she had not formed an opinion on the matter and believed she could hear the item in a fair and impartial manner.

Deputy Town Planner Lisa Costa Sanders presented the staff report. The item before the Council was an appeal of the Planning Commission's (PC) decision to deny a Conditional Use Permit (CUP) at 94 Tallwood Court. The subject

property was a flag lot, approximately 1.42 acres, and the property owner applied for a CUP to exempt the basement area from the requirement of calculating the floor area when the basement exceeded 2 feet in height above the surrounding average natural grade. The exception could be made by the PC on properties where the average cross slope exceeded 20% as determined under section 16.24.050 of the Municipal Code. The PC reviewed the item at its July 25th meeting and did not approve the request for the following reasons: 1) the property did not meet the hillside code requirement of greater than 20%; 2) the PC relied on strict compliance with the code; 3) any modification to the ordinance with respect to the item should be done by the City Council; and 4) the purpose of the PC was to enforce the ordinances currently on the books. The engineering report as presented by the appellant indicated the site had an average cross slope of 18.6 %. Based on the information provided by the appellant, staff did not believe the site met the objective criteria as stated in the ordinance. Staff recommended denial of the appeal consistent with the action taken by the PC.

Vice Mayor Janz opened the public hearing.

William Ross, Attorney for appellants Charles and Leslie King, outlined the bases for the appeal and gave a timeline from the original application in January of 2005. He and the appellants were before the Council with regard to the CUP in an effort to settle the litigation. There were two concepts that Council might wish to consider in issuing a Certificate of Occupancy: 1) substantial compliance with the standards of the Zoning Code; and 2) estoppel, the concept of fairness. After approval of the plans on June 21st, 11 inspections took place in the progressive construction of the residence (June 24, 2005; October 3, 2005; December 3, 2005; January 7, 2006; May 9, 2006; May 18, 2006; June 9, 2006; June 28, 2006; September 27, 2007; October 6, 2006; and November 21, 2006). As of October, when the Town issued the abatement notice, the structure was 99.5% completed. What was at issue before the Council was a matter of fairness. He believed there was substantial compliance with regard to the 18.6% average cross slope, which was 93% of the 20% requirement. No authority had been presented that stated actual compliance was required with respect to zoning ordinances. He asked Council to consider the fairness aspects in implementing what was an exercise of police power, the public health, safety, and welfare. All the criteria of the public health, safety and welfare had been met legally by evidence and factually under the circumstances that the Kings proceeded in the construction of the home until October 2006, expended funds in compliance with what was represented to them as the applicable standards for development of the home, and had been denied occupancy for 82 days which presented a hardship to their family. He urged Council to grant the appeal based on substantial compliance and estoppel. The Kings were entitled to rely on the representations of Town officials even if they were in error or incorrect.

Leslie King, appellant, said her family was granted temporary occupancy of 94 Tallwood Court on the basis of agreeing to pursue a settlement and putting

litigation on hold. She was bewildered why the issue had not been resolved. She urged Council to grant a CUP or drop the notice of abatement. Since the issue was a matter of principle, she would continue in order to prevent anyone else from enduring what her family endured. She was appalled the Town used tax dollars to fight such cases. She did not believe the Town should assess any additional fees since her family had been penalized enough. Mistakes were made, and the time had come to move forward.

Steve Nachtsheim, Atherton, expressed frustration at all the negative articles written about the Town. He would rather spend money to fix the park or streets. He could not comment on the merits of the case; however, he urged Council to grant the appeal.

Suzanne Legallet, Atherton, concurred with the previous speaker. In fairness to the Kings, they should be given the privilege to live in the home. She, too, was embarrassed by what she read in the press.

Steve Dostart, Atherton, believed unless there was bad faith, unless the property owners intentionally misled the public or brokered an illegal deal with the former Building Official, they should be given their home.

Gary Ahern, the project architect for 94 Tallwood Court, had also been the architect on many other projects in the Town. Every city had different zoning ordinances, and he evaluated each one before he began a project. Since the King's property was a unique site, he explored all the issues, and met with the former Building Official. The Uniform Building Code (UCB) gave the Building Official the power to render interpretations of the UCB and to adopt and enforce the rules and supplemental regulations to clarify the applications of its provisions. The Town hired the Building Official to make those decisions. Based on information after the plan review, the architect believed the basement was not included in the square footage and the 10,323 square feet represented what was above grade. The rules changed after the Town's audit of the Building Department, and the basement became an issue. Mr. Ahern proceeded on the interpretation of the former Building Official, who had not made the interpretation capriciously or in bad faith. He believed estoppel was correct, i.e. in all fairness grant the appeal and move forward.

Michael Reed, attorney for the Kings, clarified the elevation of each floor, as noted on the plans, was expressly set forth on the final set of plans that were reviewed and approved without comment as to the height of the basement. He recalled that if the measurement were taken from the interior ceiling of the basement, the height differential above the permitted height would be a matter of inches; whereas, if the measurement were taken from the finished first floor height, the differential would be closer to 2 feet.

Jim Dobbie, Atherton, Planning Commission Member, said relying on substantial compliance was a dangerous precedent for the Planning

Commission. If the Council were to approve the appeal, Council should do so on the basis of fairness .

Charles King, Atherton, agreed with Mr. Dobbie. He understood the Planning Commission's position. He was hoping that the Council would look at the situation, accept the situation, and approve the appeal. He submitted 40 letters from neighbors in support of the project.

Lisa Lamb, Atherton, was a builder in the Town. She was worried that at the discretion of a Town official, that the same thing could happen to one of her projects. She believed what the Kings went through was shameful.

Sherry Shank, Atherton, lived in the Town for 55 years. She thought the Town was in total disarray. She did not understand what difference it made whether the interpretation was 2 inches or 15 inches on a hillside that no one looked at and did not seem fair.

Vice Mayor Janz closed the public hearing.

Council Member McKeithen said the issue was not meant to be part of the Building Department audit but had become an unfortunate offspring. Both parties made mistakes. Council needed to look to whether anyone was being hurt, i.e. was there a safety issue, was there a health issue, and was the general welfare of the community being hurt. She looked at whether there were any conditions of approval for a CUP, which might adversely affect anyone in the community. The only issue she saw was the excessive square footage and permit cost. She believed an additional fee should be paid for the additional square footage and saw it as an equity issue. She believed Council should grant the appeal and approve the CUP with the understanding that any additional fee for additional square footage, plus any late fee, should be assessed.

In response to Vice Mayor Janz, Attorney Chris Carrigan clarified if the Building Official made a mistake, and it's clear from the zoning ordinance that a mistake was made, an ignorance of the zoning ordinance was not a defense to proceed with construction on the face of such a violation. The courts had stated that the law was harsh on applicants, but the Town and its citizenry should not be punished for a mistake of an official in issuing a permit, not in interpretation, but in its face was in violation of the code. The current issue was a unique circumstance and would not set a precedent for other occurrences. The law said if the project was approved but was in facial violation of the code, the project would not be allowed to proceed. The Council had discretion to grant a waiver from the interpretation and grant the CUP on the basis that it substantially complied with the zoning code. Council could find evidence that supported findings that there was no impact to surrounding neighbors in terms of view and no impacts in terms of excessive grading.

Council Member Marsala said the project contained a very complicated slope, different calculations came out in the Phase III audit, and the issue had gone on

way too long. He believed the code needed to be reviewed in regard to determining basement height, i.e. calculating basement height based on the first floor was incorrect. He reviewed the history of the basement ordinance. Government was a process and sometimes laws needed to be modified. Perhaps the original ordinance did not consider what happened west of the Alameda. He was in favor of granting the appeal and approving the CUP without assessing any additional fees. In the future, the General Plan needed to be reviewed and receiving input from citizens west of the Alameda was imperative.

Council Member Jerry Carlson was tired of the Building Department fiasco. Attorney Chris Carrigan clarified the only way substantial compliance could set a precedent was if the exact set of circumstances existed, which would be highly unlikely. Council Carlson said the question was whether Council wanted to place conditions on the CUP. He queried whether a fee for the extra square feet of 1183 and possibly a fee would be fair at the present time.

Attorney Savoree said if Council was moving in the direction of granting the CUP, it would need to determine the findings to support that decision based on section 17.52.050 of the Municipal Code.

Vice Mayor Janz said resolving the issue was preeminent. He disagreed with Council Member Marsala to speculate on how the law might evolve. The issue before the Council was the fact that there was more square footage than was contemplated in the code.

Council Member McKeithen believed the proper procedure was to pay what would have been paid at the time of application and whatever late fee would be assessed.

Council Member Marsala wanted to move incrementally. He was not in favor of charging a square footage or late fee. Basements did not count in square footage; therefore, no fee should be attached.

Council Member Carlson wanted to focus on the concept of fairness. He tried to balance what was fair for the Town, as well as what was fair to the Kings. In the end, he favored granting the appeal to approve the CUP with some conditions to reach a fair resolution.

Council Member Marsala believed the Kings had been penalized enough by being kept from their home and made the following motion:

MOTION – to approve the appeal and issue a Conditional Use Permit with no penalty and no fee based upon the findings articulated in Municipal Code section 17.52.050, i.e., the proposed use that will not be detrimental or injurious to persons, property, or improvements in the area; Further, direction to staff to prepare the appropriate resolution of findings to be returned to the Council

The motion died for lack of a second.

MOTION – to approve the appeal and issue a Conditional Use Permit with the understanding that 1) applicable fees for the additional square footage will be paid with a waiver of any penalty; with the finding that the proposed project will not be detrimental nor injurious to person, property, or any improvement in the vicinity and will not be injurious to public health, safety, peace, comfort, or general welfare; 3) because the project is a single-family residence and is zoned for single-family residence; 4) because the lines of sight depicted on the exhibits submitted by the applicant show the project will have no adverse visual impact on surrounding property owners beyond those ordinarily attendant to a single-family structure; 5) given the fact the condition imposing applicable fees, notwithstanding the waiver of any penalties for the additional square footage, assures that any potential detriment to the Town or its residents arising from circumstances due to the excess Floor Area Ratio are offset; 6) the proposed project on the subject site is consistent with the General Plan and the Zoning Code and due to the unique slope, lot, and unique circumstances of the Town’s issuance of a building permit, the project substantially complies with the General Plan and Zoning Code; and 7) for equitable purposes; Additionally, the issuance of a CUP will in no way be deemed to be a precedent for other CUPs except for in the limited circumstances that the property is identical to the subject property; Further, the attorneys are directed to prepare a set of findings for approval at the City Council meeting of November 14, 2007

Mr. Ross requested that the public hearing be reopened since he did not have an opportunity to respond to: 1) the joint procedure and motion for the CUP; and 2) the imposition of fees and a penalty.

Vice Mayor Janz reopened the public hearing.

Attorney Ross did not believe there was evidence to support the imposition of additional building fees nor penalties for a late payment. Additionally, there was no indication on October 24, 2006 (prior to filing the lawsuit, prior to the stay of the litigation, and prior to the suggestion of the remedy) that there would be an imposition of any fees. He further reserved the right to contest the legal ability and the evidence in the records to impose it. There was no gift of public funds, which was the critical issue.

Charles King, the appellant, queried whether he would have to pay taxes on the extra square footage in perpetuity. He stated 10 to 11 months prior, he came to the Council and said he would pay the fee for the extra square footage in order to avoid litigation. He never received a response, forcing him to go down that path. He believed the Council was just trying to “save face.”

Vice Mayor Janz closed the hearing.

Attorney Carrigan clarified the imposition of fees would be based upon the fees at the time the permit was issued.

M/S McKeithen/Janz Ayes: 3 Noes: 1 (Marsala) Absent: 0 Abstain: 0
Recuse: 1 (A.Carlson)

Vice Mayor Janz called for a recess at 9:40 p.m.

B. APPEAL REGARDING 94 TALLWOOD (*Continued from the September 19, 2007, City Council meeting.*)

Based on the outcome of Item 15A, there was no need to hear Item 15B.

Mayor Alan Carlson returned to the meeting and the meeting reconvened at 9:50 p.m.

16. APPEAL OF THE PLANNING COMMISSION DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA (*Continued from the September 19, 2007, City Council meeting.*)

MOTION – to continue the item, at the request of the appellant, to the Special City Council meeting of November 14, 2007

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

17. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8 OF THE ATHERTON MUNICIPAL CODE REGULATING DRAINAGE (*Continued from the September 19, 2007, City Council meeting.*)

Public Works Director Duncan Jones presented a brief staff report and noted the Drainage Criteria included the annotations as requested by Council. He responded to Council questions.

Mayor Alan Carlson opened the public hearing.

Jeff Wise, Atherton, thought staff picked all the requirements from the various plans and developed the Cadillac of drainage plans, the logic being homes were expensive and should be protected. He agreed with the sentiment; however, he was concerned that Council would be passing requirements that had far-reaching impacts on all developments in the Town. His civil engineer thought it was a good plan for civil engineers. The 100-year flood event was an estimate and theoretical. Anticipating new regulations and requiring them before they were passed was not a good idea. He recommended additional study.

Jim Chesler, Chesler Construction, attempted to read the Drainage Criteria three times. He believed it provided a lot of opportunity for soil and civil engineers. More than tens of thousands of dollars would be needed just to prepare the documents.

Mayor Carlson closed the public hearing.

Council Member Marsala wanted to wait until the state laws were enacted. He thought more input should be sought.

Council Member McKeithen said a year of study went into the development of the Criteria, two public sessions were held, along with informal requests for comments. No matter what the people wanted, most of the regulations were previously required or new requirements were added in response to complaints. Council looked to staff as specialists, and Council needed to listen to what they said was needed. If problems arose, Public Works Director Jones would inform Council of the issue. She was in favor of passing the ordinance.

Mayor Carlson agreed with Council Member McKeithen's comments. Originally, he thought staff was reinventing the wheel and asked that the ordinance be annotated. He saw, for the most part, most of the regulations were already required or would be required. Expert opinion was sought, public comment was sought, and he was in favor of passing the ordinance.

Council Member Jerry Carlson noted the annotations were extremely helpful. He asked what whether any Town liability would be involved.

City Attorney Marc Hynes said the only liability he foresaw was if the Federal Government told you to do something and you did not do it, you could be subject to fines. The biggest concern was to ensure the Town was keeping abreast of the federal regulations.

In response to Council Member Carlson, Public Works Director Jones said the downstream protection requirements had been in place for almost ten years, arising out of potential lawsuits. The issues of protecting adjacent homeowners and homeowners themselves were the impetus for the study.

Council Member Carlson queried how many new regulations fell into the category that the 100-year flood might impact a homeowner and were not mandated by law. He was trying to ascertain whether requirements were being imposed that would affect the entire Town that were the result of one or two misadventures.

Public Works Director Jones responded one or two. He believed it was practical to design a project to divert the 100-year flood elsewhere on the property with grading. In the past three years, there were dozens of examples of problems related to drainage and drain failures.

Vice Mayor Janz said if the Town was actually doing something draconian and was causing doubling or tripling of fees, the Town would hear about it. However, the professionals recommended the Criteria and he was in favor of passing the ordinance.

MOTION – to introduce the ordinance “AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 8.54 OF THE ATHERTON MUNICIPAL CODE BY ADDING A NEW SECTION 8.54.050 ADOPTING DRAINAGE CRITERIA” based on the fact the proposed amendment is

required to adopt Drainage Criteria in order to achieve the objectives of the City Council to upgrade the Town's Drainage Criteria for development projects

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

REGULAR AGENDA (Items 18-22)

18. COMMITTEE AND COMMISSIONS MASTER SCHEDULE

- A. ARTS COMMITTEE**
- B. AUDIT COMMITTEE DISCUSSION REGARDING ITS CHARTER**
(Continued from the September 19, 2007, City Council meeting.)
- C. FINANCE COMMITTEE**
- D. PARKS AND RECREATION COMMISSION**

City Attorney Marc Hynes said a number of action items were before the Council. An effort was made to put all the Town's committees/commission in one location with the exception of the Planning Commission, which would remain in the Atherton Municipal Code because it was established by ordinance. The resolution could be adopted that evening and the additional resolutions could also be adopted, which would carry out conforming amendments to the Town's Rules of Procedure, eliminate the chapters that established the General Plan Committee and the Park and Recreation Commission, and rescind the resolution that established the Arts Committee.

Council Member McKeithen suggested the title of the resolution should be "Governing Committees/Commissions" rather than "Establishing." She noted that not all voting members were recommended by the Screening Committee. Additionally, the Screening Committee might not have the right expertise for selecting members of certain committees, as well as delaying the process. With respect to the Audit Committee, she believed they needed to meet more often than biannually. Members of the Crime Prevention Committee needed to be designated as members of the community. The Environmental Programs Committee was expanded to even number of members, and she questioned whether that made sense. She further clarified and asked for clarification on the supporting documents.

Vice Mayor Janz believed the item required more thought. The changes were a big departure from the current system. He suggested Council individually give the City Attorney their comments and return the item to the next meeting.

Council Member Jerry Carlson suggested identifying a staff person who was responsible for the committee. He believed the City Manager should not be assigned as the staff person.

City Attorney Hynes said he used the terminology that the staff person would be determined by the City Manager to ensure a clear delineation as to who appoints which staff members to a committee. Some committees might not need much staff assistance, etc.

Council Member Marsala did not believe the Crime Prevention Committee should be included, as it was more on the order of the Heritage Association. Some of the groups were not necessarily “Town” groups that would be subjected to terms.

John Ruggeiro, Atherton, spoke regarding the Transportation Committee. He noted there was no authority regulating the number of members. Council Member McKeithen cited the resolution indicated there were five members, two Council Members and three resident advisors.

Jean Schaaf, Atherton, spoke regarding the Arts Committee. The committee had great success with the annual art exhibit and reception. She did not believe a standard 4-year term for the Arts Committee would work. She urged Council to leave the terms open ended.

Vice Mayor Janz said with regard to the Atherton Rail Committee, membership should consist of “up to” 13 members and could apply to the Environmental Programs Committee and others.

Council Member Marsala noted the Environmental Programs Committee met quarterly.

Council would provide any additional comments to City Attorney Hynes.

With respect to the Audit Committee’s request to discuss its charter, Council Member Jerry Carlson said one of the original tasks given to the Committee was to assist the outside auditors and have a dialogue on how to improve Town procedures, etc. He thought that should be continued. The Committee should act in an advisory capacity to the Council as requested.

Vice Mayor Janz did not have a problem with those items related to finance; however, he would delete those items relating to management controls and operational issues. He would change Item “g” to say “Provide advice and counsel to the City Council as requested.” He suggested the following language, “Act in an advisory capacity to the City Council in all matters pertaining to financial issues including...”

Council Member McKeithen said with the exception of changing the wording from City Manager to City Council, she believed the list should be left as it was. The early warning capability was an important function.

Mayor Alan Carlson said he would not change the Audit Committee’s charter in any way. He expressed disappointment in the committee and believed some members had recently acted irresponsibly. He lacked confidence in the committee at the present time. In regards to an email by a member of the committee who indicated he would immediately resign if the proposed changes were not adopted, Mayor Carlson was prepared to accept the resignation.

Council Member Jerry Carlson thought the Audit Committee’s responsibility regarding the annual audit should be spelled out. He thought all the people who served

on Town committees tried to do the best job they could with the information they had. He thanked all those who volunteered to serve on committees. The members of the Audit Committee were professionals whose expertise was beneficial to the Town.

Vice Mayor Janz agreed with Council Member Jerry Carlson's conclusion. He referred to the Recommended Practices of the Government Financial Officers' Association and thought the scope of the Audit Committee should be limited to financial and audit items and not management operations.

Council Member Marsala agreed with his colleagues. He thought the Town's audits should receive a second opinion, to have a check and balance, to ensure its accuracy.

Council Member Jerry Carlson made the following motion:

MOTION – that the Audit Committee's duties reflect: a) interfacing with the auditors regarding the annual audit; b) acting in an advisory capacity to the City Council on items as enumerated in the Governing Resolution, with the exception of "g"

Mayor Carlson believed the City Manager form of government would be subverted by putting those who were not elected in functions that properly belonged to the Council. The Audit Committees referred to in the Recommended Practices were comprised of elected officials. He reiterated his disappointment in the recent conduct of the committee. The proposal as written subverts the administration of the Town and was a mistake.

Council discussion continued on the proper wording to be included in the Governing Resolution.

Council Member Jerry Carlson withdrew his motion.

Direction was given to the City Attorney to include the following language in the Governing Resolution: **The Audit Committee's duties reflect: a) interfacing with the auditors regarding the annual audit; and b) to act in an advisory capacity to the City Council through special projects as requested by the City Council.**

With regard to the Finance Committee, Council Member Marsala thought the Committee should be assigned a special project to evaluate how staff expenses were handled. He thought there was a need for better checks and balances.

Mayor Carlson said the review of expense reports properly resided with the City Manager.

Council Member McKeithen said she looked into the purchase of computers and discovered Town staff did not follow proper protocol. She suggested to the Town administration that a check sheet was needed in order to ensure items were being purchased according to the IT provider.

Interim City Manager Wendé Protzman stated that she and the Interim Finance Director had a discussion that day. Mr. Yeomans was reviewing expense accounts and would be implementing policy and procedures in the near future. Staff would be trained on the proper procedures.

19. CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW SPEED HUMPS *(Continued from the September 19, 2007, City Council meeting.)*

Mayor Carlson said the Town's Traffic Program, which was written in 1995, needed updating and suggested the Public Works and Police Departments should review it. A specific issue that was raised was whether or not, as a policy matter, speed bumps or humps should be part of the traffic calming devices that were used in Town. Council could approach the issue by 1) referring the item to staff for review, including the issue of speed humps; and 2) the City Council could give guidance, as a policy matter, to staff whether or not the City Council wanted those types of devices included in its arsenal of traffic control devices.

Public Works Director Duncan Jones said due to the fact there was a rural section on almost all Town streets except in Lloyd Park, speed humps were not usually used because people tried to avoid them by driving off the road. However, there were places speed humps could be used. He suggested allowing the entire arsenal of devices from the Institute of Traffic Engineers and the *Canadian Traffic Calming Guide*.

Council Member Jerry Carlson concurred that the program needed updating. He was in favor of including a wider variety of modern-day technology in the toolbox of traffic-calming devices.

Vice Mayor Janz suggested referring the item back to staff for analysis and recommendations. He supported the concept of having more tools in the toolbox unless the Council wanted to prohibit speed humps altogether.

Council Member McKeithen agreed staff should review the program and consider expanding it to include all the possibilities.

Greg Conlon, Atherton, said several people testified about traffic speeding on Fair Oaks at the Transportation Subcommittee meeting. Fair Oaks was very dangerous by its nature. Utility poles and trees blocked visibility. There were several good examples in neighboring areas where speed humps worked well.

Virginia Ruggeiro, Atherton, noted areas of unincorporated Redwood City had speed humps that worked well. She requested speed humps for Stockbridge Avenue.

Jack Ringham, Atherton, said adding to the toolbox and revising the manual with up-to-date technology was important. Menlo Park had a manual that was easier to use than the Town's. He emphasized that all the devices/technology should be added to the toolbox. He urged Council to refer the item to the Transportation Subcommittee and staff.

24. PUBLIC COMMENTS

There were no public comments.

25. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 12.14 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**