



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**April 20, 2005**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Conwell called the meeting to order at 7:05 p.m.

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**

**PRESENT:** James R. Janz  
Charles Marsala  
Alan B. Carlson  
William R. Conwell  
Kathy McKeithen

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

3. **PRESENTATION**

**Proclamation Declaring April 25 through May 1, 2005, as “West Nile Virus and Mosquito and Vector Control Awareness Week”**

Mayor Conwell presented the Proclamation declaring April 25 through May 1, 2005, as “West Nile Virus and Mosquito and Vector Control Awareness Week.” He acknowledged Doris Kellett for her work as the Town’s representative to the Mosquito Abatement District.

4. **COUNCIL REPORTS**

- Council Member McKeithen reported her attendance at the preliminary budget meeting for the Office of Emergency Services. A final budget meeting was scheduled for Thursday, April 21, at 5 p.m. The budget contained three elements: 1) Emergency Services for the County; 2) Removal of Hazardous Materials; and 3) Planning Services. Atherton’s fee for the next year increased

8% and totaled \$18,045. The Audit Committee met and the 2004/2005 Interim Audit Report was discussed. Minor remarks from the auditors were rectified immediately. The Transportation Committee met and the appointment of resident advisors included Lou Paponis, John Ruggiero, and Bob Huber. Consideration of voting rights for resident advisors would take place at a future Council meeting. A discussion regarding a traffic light on El Camino Real and Selby Lane was deferred pending a review of material from San Mateo County regarding accidents at that intersection. The possible installation of a stop sign and traffic light at Alameda de las Pulgas and Stockbridge Avenue was denied. Speed bumps on Encinal Avenue in front of Encinal School were reviewed and denied. The Committee discussed possible revisions to the Atherton Traffic Enforcement Plan. A report by Officer Kockler would be incorporated into the Traffic Enforcement Plan. Metering issues were discussed at the San Mateo Ramp Metering Tech Committee. Metering had less to do with moving traffic onto the freeway and more to do with slowing it down. A request for an overhead street name sign at Oak Grove and Middlefield Road was denied. Regarding the Red-Legged Frog ponds in the Upper Atherton Channel, one permit was obtained and permits from the Army Corps of Engineers and U.S. Fish and Wildlife Service were approved and forthcoming. California Fish and Game was completing its field study. Council Member McKeithen reviewed steps residents could take to prevent the spread of West Nile Virus. Materials were available in the lobby of Town Center.

- Council Member Janz reported that a Special City Council meeting was held April 5 to approve a Resolution to oppose the closing of Atherton's train station. A public hearing of the Joint Powers Board (JPB) was held on April 7 to take testimony. Caltrain was proposing to eliminate 350 total stops per week between San Francisco and Gilroy and to not service stations at Paul Avenue in San Francisco, Atherton, Broadway in Burlingame, and College Park in Santa Clara. The final meeting would be held on Friday, April 22, at 1:30 p.m. in San Carlos, and Council Member Janz urged everyone to attend. Additionally, he urged people to contact County representatives to lobby to keep the station open. Service would be discontinued on July 1 if the proposal were adopted. Mayor Conwell said the item was one of the most significant actions affecting the Town. He commended Council Member Janz for his dedication to the issue.
- Council Member Marsala reported that he attended a Measure W committee meeting and praised the committee's efforts. At the Waste Reduction Committee meeting, it was noted that Atherton was averaging a 65% diversion rate: 50% was the objective, and 52% was green waste and regular trash. With over 80% diversion on demolition of houses, the average came to 65%. Along with Mayor Conwell, he interviewed candidates for Town committee/commission vacancies. He was working with the Atherton Civic Interest League (ACIL) to ready for the annual State of the Town meeting and speech.
- Council Member Carlson also attended the April 12 Audit Committee and Transportation Committee meetings. On April 13, he attended the General Plan Committee meeting where the proposed Special Events Ordinance was considered and would be brought forward to the City Council for action.

- Mayor Conwell attended the San Francisco Airport Roundtable meeting and the City/County Association of Governments meeting. The Criminal Justice Commission meeting was cancelled for lack of a quorum. He met with the editorial staff of the *San Mateo Times* to discuss Measure W and had an upcoming meeting with the *San Jose Mercury* editorial staff. Congresswoman Anna Eschoo endorsed Measure W. Mayor Conwell said Measure W had to pass and encouraged everyone to speak to their friends and neighbors to support the measure.

5. **PUBLIC COMMENTS**

Phil Lively, Atherton, spoke regarding the “Vote Yes for Atherton” Committee.

Shirley Carlson, Atherton, spoke regarding the newly organized Tennis Committee.

Mayor Conwell noted the Graduation Ceremony for Menlo College would be held at 2 p.m. on May 7, 2005, and he would be executing a flyover.

6. **STAFF REPORTS**

- City Manager Jim Robinson reported that the Caltrain survey mailed to 2,463 residents was completed with a return rate of 31%. To the critical question, “Do you feel that Caltrain service to Atherton is a valuable asset worth preserving?” 83% of those responding said “yes.” On April 23, Congresswoman Anna Eshoo would be in Redwood City to talk about a number of subjects including the war in Iraq and Social Security. A possible Finance Committee meeting would be held next week. He was unable to attend the Transportation Authority meeting as he would be attending his son’s wedding.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

Joan Sanders, Interim Vice-Chair of the Arts Committee, noted there were only five members on the committee although ten were authorized. The interests, talents, and time commitment of the members would determine the committee’s agenda for the year. Due to the illness of the program coordinator, summer art classes at Holbrook-Palmer Park were cancelled. An Art Share grant was received for art classes at Selby Lane School to paint a mural. The Arts Committee was also reviewing its Mission Statement and goals in relation to the wishes stated in the Rita Corbett-Evans estate. A guitar concert was scheduled for May 1 and was co-sponsored by the Library Committee. The Arts Committee was also looking into celebrating Atherton artists with a possible all Atherton art show.

**CONSENT CALENDAR** (Items 8 - 14)

Council Member McKeithen asked for clarification on 1) Item No. 11 regarding the contractor’s name which appeared differently in the staff report and Notice of Completion; 2) Item No. 13 regarding the City of Menlo Park’s side of Valparaiso

Avenue; and 3) Item No. 12 regarding a \$5,000 discrepancy between the analysis and authorization figures.

**MOTION - to approve the Consent Calendar as presented with clarifications.**

**M/S Janz/Marsala**

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

**8. APPROVED MINUTES OF SPECIAL AND REGULAR MEETINGS OF MARCH 16, 2005, AND SPECIAL MEETING OF APRIL 5, 2005**

**9. APPROVED BILLS AND CLAIMS FOR MARCH 2005 IN THE AMOUNT OF \$760,252**

**10. ACCEPTED MONTHLY FINANCIAL REPORT FOR MARCH 2005**

**11. ACCEPTED WORK AND AUTHORIZED RECORDATION OF NOTICE OF COMPLETION FOR THE BARRY LANE BOX CULVERT PROJECT 04-001**

**Accepted work and authorized recordation of a notice of completion for the Barry Lane Box Culvert project.**

**12. APPROVED A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR FINAL DESIGN SERVICES FOR THE UPPER ATHERTON CHANNEL REPAIR PROJECT, IN AN AMOUNT NOT TO EXCEED \$98,415 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$108,257**

**Approved the proposal and authorized the Mayor to sign a Professional Services Agreement with BKF Engineers to provide final design services for the Upper Atherton Channel Repair Project in an amount not exceed \$98,415, plus a 10% contingency, for a total authorization of \$108,257.**

**13. APPROVED A PROFESSIONAL SERVICES AGREEMENT WITH TRIAD/HOLMES ASSOCIATES FOR TOPOGRAPHIC SURVEYING SERVICES FOR THE VALPARAISO AVENUE RECONSTRUCTION PROJECT, IN AN AMOUNT NOT TO EXCEED \$16,600 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$18,260**

**Approved the proposal and authorized the Mayor to sign a Professional Services Agreement with Triad/Holmes Associates to provide surveying services for the subject Valparaiso Avenue Reconstruction Project in an amount not exceed \$16,600, plus a 10% contingency, for a total authorization of \$18,260.**



Pavilion would be enlarged by bumping out recessed areas to allow enough square footage for 200 people. The Event Garden was planned to handle 200 people as well. With regard to fundraising, Ms. Kupperman suggested that projects be looked at one at a time, selectively, with the possibility of doing them less expensively. The Dames and Foundation needed to come together to create fundraising activities enabling some of the major pieces to be accomplished over time.

Council Member McKeithen noted the possibility of receiving grant money became easier with a Master Plan in place.

Council Member Carlson was particularly touched by the Vision Statement as stated in the Master Plan. He was concerned the Master Plan might be shelved and suggested the Council direct the Park and Recreation Commission (P&R) to review the Master Plan on a quarterly basis to ascertain where the Park was in achieving the goals set out in the Master Plan. Additionally, the P&R Commission should work with staff to actively solicit grant money.

Council Member Janz said the Annual Report from the P&R Commission should also include a statement on progress toward completing the Master Plan.

Shirley Carlson, Holbrook-Palmer Park Foundation member, noted the Master Plan had been presented to the Foundation. Fundraising plans were not in place at the present time; however, as a member, Ms. Carlson would help facilitate the goal.

In response to Council Member McKeithen, City Manager Jim Robinson said the Park Strategic Plan (Plan) was reviewed annually by the P&R Commission. Part of the Plan evaluated capital needs within the Park and was the mechanism to evaluate the goals of the Master Plan. In the past few years, over \$300,000 had been donated by residents to improve the Park. Having the Master Plan not only enabled greater ease in applying for grants, but also provided a plan for any items that were donated to the Town. Over \$200,000 in grant money was already committed to the Town.

Shirley Carlson noted the P&R Commission voted unanimously to begin implementing Phase I of the Master Plan.

**MOTION –to approve the Landscape Master Plan for Holbrook-Palmer Park prepared by Denise Kupperman, Joan Dolan, and Rosalyn Rubesin-Eigler. Further, to refer the Master Plan to the Park and Recreation Commission with direction to report back to the City Council not later than two City Council meetings from the City Council Meeting of April 20, 2005, on how it plans to review and implement the Master Plan.**

M/S Carlson/Janz

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

**16. NEXTG FRANCHISE AGREEMENT (Continued from the City Council meeting of March 16, 2005)**

City Attorney Marc Hynes presented the staff report. Changes to the agreement reflected comments/suggestions from the Council at the last meeting. The representative from NEXTG was present to answer any further questions of the Council.

Council Member Carlson stated he voted against the item at the last meeting; however, after completing some research, he would vote in favor.

Nicole Mason, Government Relations Director, NEXTG, thanked Council for its consideration of the item.

**MOTION – to adopt right-of-way use agreement, as amended, authorizing NEXTG Networks of California, Inc. to install and maintain micro-cellular optical repeater equipment on facilities in the Town owned by the Town and/or third parties. Further, to authorize the City Manager or designee to take all necessary action to execute the agreement on behalf of the Town.**

M/S McKeithen/Janz

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

**17. ANNUAL APPOINTMENT OF COMMISSION / COMMITTEE MEMBERS**

Council Member Marsala presented the City Council Screening Committee’s recommendations for appointments to the openings on Town commissions and committees.

**MOTION – to accept the recommendation of the City Council Screening Committee to appoint members to Town commissions and committees and extend the expansion of the Audit Committee to allow for a total of six resident members.**

**Audit Committee:  
(Three-year terms)**

**Alfred M. Dau  
Monica Ip**

**General Plan Committee:  
(Two-year terms)**

**James Ransohoff  
Barbara Shoor**

**Park and Recreation Commission:  
(Two-year terms for Dames and  
Foundation Representatives)**

**Etta Mae Bauer  
(Atherton Dames Representative)  
(Reappointment)  
Jim Massey  
(Holbrook-Palmer Recreation Park  
Foundation Representative)  
(Reappointment)**

**Planning Commission:  
(Four-year term)**

**Marion E. Oster (Reappointment)**

**Media Center Representative**

**Michael DiBattista**

(Three-year term)

M/S Marsala/McKeithen

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

**18. CONSIDERATION OF A RESOLUTION APPROVING THE FOURTH AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE TOWN OF ATHERTON AND BFI WASTE SYSTEMS OF NORTH AMERICA, INC. FOR SOLID WASTE, RECYCLABLE MATERIALS, AND PLANT MATERIAL COLLECTION SERVICES**

Deputy Town Planner Lisa Costa Sanders presented the staff report. The initial term of the collection agreement between the Town of Atherton and BFI Waste Systems of North America (BFI) was due to expire on December 31, 2006. The agreement contained an automatic three-year extension if BFI was able to achieve certain performance criteria as outlined in the staff report. The South Bayside Waste Management Authority (SBWMA), on behalf of each jurisdiction, conducted a performance hearing and found that BFI had substantially complied with the performance criteria as outlined in the agreement. One item not achieved was the diversion requirement for commercial recyclables in the years 2002 and 2003. The Town had the right to waive the performance criteria standard and grant the three-year extension and also had the ability to extend the agreement further if desired. SBWMA recommended that each member agency extend its collection agreement with BFI for a four-year term beyond the December 31, 2006, termination date. SBWMA had entered into a 15-year disposal agreement with BFI to use Ox Mountain Landfill that gave the Town a reduced disposal rate and an \$11.6 million payment to SBWMA over three years. SBWMA approved an amended, restated operating agreement for a four-year term beyond 2006 for the operation of the transfer station and recyclery. Staff recommended approval of the Fourth Amendment to the agreement.

In response to Council Member questions, Deputy Town Planner Costa Sanders said Council was being asked to either approve or disapprove the amendment. All member agencies had to agree to extend the collection agreement; and, with the exception of the County of San Mateo, all had agreed. If the County did not extend the agreement for the four-year term, discussions would take place with BFI to determine whether BFI would exclude the County.

Stacy Wagner, BFI Community Relations Manager, thanked the Council for the privilege of providing garbage, recycling, and yard waste services for the Town and looked forward to the opportunity to continue services if Council approved the proposed four-year extension.

**MOTION - to adopt Resolution No. 05-36 approving the Fourth Amendment to the Franchise Agreement with BFI Waste Systems.**

M/S McKeithen/Carlson

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

**20. DISCUSSION AND POSSIBLE ACTION - URGENCY ORDINANCE REGARDING FLOOD ESTATE ARTIFACTS – PUBLIC HEARING**

City Attorney Marc Hynes presented the staff report. At the March 16, 2005, City Council meeting, the Council referred an item regarding the preservation of Town artifacts to the General Plan Committee for study. An urgency ordinance was being presented to the Council under authority of the State Planning and Zoning Law, Government Code Section 65858, which authorized the ability to put a “hold” on the subject being studied to ensure the artifacts remained in their existing condition through Town oversight, the use permit process, and appropriate environmental review. Environmental review was an information-gathering process. If the removal of the artifacts were determined to have a significant impact on the environment, mitigation measures could be imposed. Additional information was presented that provided background to the historic significance relative to the Flood Estate artifacts

In response to Council Member questions, City Attorney Hynes stated historic preservation had developed over the last 30 years. He believed the artifacts fell within the purview of the Town to look into their protection. The urgency ordinance would treat the Flood Estate artifacts as accessory structures under the existing zoning code and would follow the procedures for requesting a use permit at the Planning Commission with appeal possible to the City Council. Under Public Resources Code Section 210084.1, local agencies had the ability to consider and to have an environmental analysis performed to determine the historic significance of items regardless of whether they qualified for the National Historic Register or the State Historic Register. The urgency ordinance protected the items until such time as the General Plan Committee completed the study to determine what needed to be done to identify the artifacts and to recommend how each would be treated. For an urgency ordinance, the only noticing requirement was to comply with the Brown Act’s public meeting notice. In order to extend the moratorium, a 10-day notice and a public hearing would be required.

Mayor Conwell opened the public hearing at 9:05 p.m.

Marion Oster, President, Atherton Heritage Association; Director, Lindenwood Homes Association; gave a brief history of the Flood Estate. She urged the Council to approve the urgency ordinance.

Judy Castaillac, Atherton Heritage Association, Lindenwood Homes Association, was writing a book about the history of Atherton. She presented photographs of the subject fountain. She spoke in support of preserving the fountain in its present location.

Bill Garrett, Partner, Hanna and Van Atta Law Firm, represented Mr. and Mrs. Manuel Henriquez, prospective buyers for the property at 42 Flood Circle. He stated Exhibit A of the urgency ordinance was a compilation of public and private property. Mr. Henriquez was outraged at the prospect of restricting his private property rights. Government Code Section 65858 required that the subject of the ordinance must

**impact the public health, safety or welfare. He urged Council to consider the implications of restricting owners of private property the use of their property, which was unconstitutional. Additionally, he noted Ms. Oster had expressed an interest in purchasing the property and the timing of the urgency ordinance.**

**City Attorney Hynes said that Atherton's General Plan stated that the Town would endeavor to protect scenic resources, significant stands of natural vegetation, wildlife habitat, public safety, and significant archeological resources, both publicly and privately held. He believed the Flood Estate artifacts qualified as archeological resources.**

**Shirley Carlson, Atherton Heritage Association, urged the Council to preserve the pieces of art for future generations.**

**Monica Korman, Alain Pinel Realtors, represented Fred P. Chapman, son of the deceased owner of 42 Flood Circle, and read a letter from Mr. Chapman into the record. Mr. Chapman and his siblings requested that the City Council reject the urgency ordinance on the basis of 1) there was no immediate threat to the public health, safety, and welfare; 2) there were existing protocols to adequately protect the city's interests; and 3) democratic due-process required that advance notice be given to all stakeholders to give them time to reflect on any implications and a reasonable opportunity to express their views.**

**Manuel Henriquez, Menlo Park, prospective buyer of 42 Flood Circle, stated he was aggressively looking for a place to donate the fountain and wished to preserve it. He was in favor of restoring and preserving important artifacts; however, he believed imposing the urgency ordinance was invasive to private property owners' rights. He was available to enter into discussions with the Town to find a proper place for the fountain. He urged Council not to approve the ordinance.**

**Tom Hill, Director, Lindenwood Homes Association, assured the Council there was overwhelming support from Lindenwood residents for saving the fountain. He urged Council to approve the ordinance.**

**Barbara Tyler, Menlo Park, Coldwell Banker Realtor, represented the prospective buyer and believed there was a conflict of interest on the part of Ms. Oster who also had an offer on the property. The buyer, in good faith, had removed contingencies based upon the information available. Approving the ordinance would interfere with the transaction because California Real Estate Law required a new disclosure to the buyer that allowed a 3-day right of rescission of the contract.**

**Randy Lamb, Atherton, said his property was listed on Exhibit A. He believed the discussion was really about personal property vs. real property. The artifacts were not accessory structures but were pieces of personal property that belonged to the property owners.**

**Council Member McKeithen clarified the purpose of the urgency ordinance was to give the Town 45 days to authenticate and ascertain whether the artifacts listed in Exhibit A were items the Town wanted to maintain. Although she believed Mr. Henriquez's intentions were good, there was no permanent assurance that the fountain would be preserved or not moved out of the Town. She hoped Mr. Henriquez would work through the permitting process to come to a resolution together with the Town.**

**Mr. Henriquez stated, for the record, that he would not destroy the fountain; however, the concrete water basin underneath the fountain might be destroyed when the fountain was moved. He was willing to meet with Town officials as early as the next day to find a home for the fountain.**

**In response to Council Member Marsala, City Attorney Hynes said the urgency ordinance was a temporary hold to look at the Flood Estate artifacts. There was nothing in the ordinance to prevent the fountain from being moved through the use permit process. Although he could not predict the outcome of possible litigation, he did not believe the circumstances were as severe as was being represented by the evening's speakers.**

**Mayor Conwell called for a brief recess at 10:15 p.m. The meeting resumed at 10:25 p.m.**

**Mr. Garrett asked Council to consider exempting the concrete water basin from the ordinance so that Mr. Henriquez would be able to move forward with his development plans for the property if he acquired it.**

**Mayor Conwell closed the public hearing at 10:30 p.m.**

**Mayor Conwell understood the points of view of the realtors, the sellers, the prospective buyers, etc. He respected private property rights and resented being told what to do with what he perceived as his private property. He also believed Council had an obligation to protect the historic artifacts for the Town. He looked to his colleagues for guidance.**

**Council Member Carlson clarified the only conflict of interest that could exist was among the five council members. He understood the emotions and believed that people should be able to do what they wanted on their property; however, our society was based on balances. The purpose of the urgency ordinance was to preserve the status quo to work out a process/compromise for the future. He would vote in favor of the ordinance in the spirit that, over the 45-day period, the Town would put in place an ordinance that balanced private property rights with the public good, public interest, and public welfare.**

**Council Member Marsala believed people had the right to do what they wanted on their property. The Chapmans also had a right to sell the house. The General Plan Committee, when crafting an ordinance, would need to allow owners of the artifacts some freedom on where the artifacts could be placed. He believed if the urgency**



**There was no public comment.**

**22. ADJOURNMENT**

**The meeting was adjourned by Mayor Conwell at 11:55 p.m.**

**Respectfully submitted,**

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**Linda Kelly, Acting City Clerk**

**Minutes Prepared by:**

**Kathi Hamilton**