



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

March 19, 2008

6:00 P.M.

Meeting Room

Town Administrative Offices

91 Ashfield Road

Atherton, California

Special Meeting

6:00 P.M. ROLL CALL J. Carlson, Marsala, Janz, McKeithen

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

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

Lamb vs. Town of Atherton, et al.

Superior Court of California, San Mateo County, CIV 461630

John P. Johns Petitioner vs. Town of Atherton et. al. Respondent

Superior Court of California, San Mateo County, CIV 465782

**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

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

Claimant: Stanford University Hospital/Medical Center

Agency Claimed Against: Town of Atherton

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☛ *Please contact the City Clerk's Office at 650.752.0500 with any questions.* Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



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AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
MARCH 19, 2008

7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

PLEASE NOTE: *Times listed on the Agenda are an approximation and not a time certain. The Council may take up items out of order. Please arrive well in advance of the time listed for any item in which you are interested.*

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:03 P.M. 2. **ROLL CALL** J. Carlson, Marsala, Janz, McKeithen
- 7:05 P.M. 3. **PRESENTATIONS**
- A. Arbor Day Proclamation
B. Rain Gage Project – Cynthia D’Agosta
C. Menlo Park Fire Protection District – Quarterly Update
- 7:40 P.M. 4. **PUBLIC COMMENTS** (only for items which are not on the agenda – limit of three minutes per person)
- 7:50 P.M. 5. **STAFF REPORTS**
- 8:00 P.M. 6. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed by Resolution No. 99-6)
- None.
- 8:00 P.M. **CONSENT CALENDAR (Items 7-21)**

(Consent Calendar items are routine in nature and are generally considered in one motion and adopted by a single vote of the City Council. If discussion regarding a Consent Calendar item is desired, the member(s) of the City Council, public, and/or staff wishing to pull the item should so indicate at the time the Mayor calls for consideration of the Consent Calendar.)

7. **APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING FEBRUARY 7, 2008; THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR CITY COUNCIL MEETINGS OF FEBRUARY 20, 2008**
8. **APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY IN THE AMOUNT OF \$ 785,293; APPROVAL OF ADDITIONAL CLAIMS LIST IN THE AMOUNT OF \$1,428,172**
9. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR FEBRUARY 2008**
10. **SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING SECTION 13.10.070 OF THE ATHERTON MUNICIPAL CODE FOR PUBLIC, EDUCATIONAL AND ACCESS SUPPORT FEES FROM VIDEO SERVICE PROVIDERS**

Recommendation: Adopt the ordinance amending Section 13.10.070(b)(1)(B) of the Atherton Municipal Code to set fee to be paid by video service providers for public, educational and access support and waive further reading beyond the title.

11. **ADOPTION OF A RESOLUTION CONSENTING TO COUNTY HEALTH OFFICER ENFORCEMENT OF STATE AND LOCAL HEALTH REGULATIONS**

Adopt a Resolution designating San Mateo County Health Officer as the enforcement authority for all applicable state and local health regulation enforcement within the Town.

12. **RESOLUTION ADOPTING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 137 STOCKBRIDGE AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL AND DEPUTY TOWN PLANNER (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**

Recommendation: Consider attached resolution adopting findings and, if appropriate, adopt the resolution by majority vote.

13. **2007 ANNUAL REPORT TO THE CITY COUNCIL ON THE ATHERTON GENERAL PLAN IMPLEMENTATION**

Recommendation: Accept the Annual Report and authorize its transmittal to the California Governor's Office of Planning and Research and the California Department of Housing and Community Development pursuant to Section 65400 of the California Government Code (CGC).

14. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH REGIONAL GOVERNMENT SERVICES AUTHORITY (RGS) FOR A HUMAN RESOURCES CONSULTANT

Recommendation: City Council to approve an agreement with Regional Government Services Authority (RGS) For a Human Resources Specialist.

15. PROFESSIONAL RECRUITMENT FOR THE POSITIONS OF ASSISTANT TO THE CITY MANAGER, DIRECTOR OF FINANCE AND CHIEF OF POLICE

Recommendation: Award recruitment contract for Assistant to the City Manager, Director of Finance and Chief of Police to Peckham and McKenney Executive Search and Consulting, not-to-exceed \$46,000.

16. ADOPTION OF A RESOLUTION FROM THE CITY COUNCIL OF THE TOWN OF ATHERTON ENDORSING THE PARKS FOR THE FUTURE CONCEPT

Recommendation: Adopt the attached Resolution endorsing the Parks for the Future concept.

17. ADOPTION OF A RESOLUTION AUTHORIZING THE INSTALLATION OF AN ADDITIONAL 80-FOOT NO PARKING ZONE ON EL CAMINO REAL, SOUTH OF SPRUCE AVENUE AT 1850 EL CAMINO REAL

Recommendation: That the City Council adopt a resolution approving the recommendation from the City of Menlo Park to remove parking in front of 1850 El Camino Real.

18. ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION FOR THE VALPARAISO AVENUE OVERLAY PROJECT, PROJECT NO. 06-001

Recommendation: Accept the work and authorize recording of a Notice of Completion for the Valparaiso Avenue Project, Project No. 06-001.

19. AWARD OF CONTRACT TO JOHN DEERE LANDSCAPES, GREENTECH DIVISION, FOR THE EL CAMINO REAL IRRIGATION REPAIR AND UPGRADE PROJECT

Recommendation: Award the contract for the El Camino Real Irrigation Repair and Upgrade Project to John Deere Landscapes, Greentech Division, the sole source bidder for \$19,241.25 with a 10% construction contingency of \$1,924.12, for a total authorization of \$21,165.37.

20. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MACLEOD AND ASSOCIATES, INC. FOR TOPOGRAPHIC SURVEY SERVICES FOR THE TOWN CENTER LANDSCAPING PROJECT

Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with MacLeod and Associates, Inc., to provide topographic survey services for the Town Center Landscape Project in an amount not to exceed \$21,000, plus a 10% contingency, for a total authorization of \$23,100.

21. APPROVAL OF MAYOR'S 2008 CITY COUNCIL COMMITTEE ASSIGNMENTS

Recommendation: Approve the 2008 Council Committee assignments made by Mayor Jim Janz.

REGULAR AGENDA (Items 22, 23)

8:10 P.M. 22. REPORT FROM KEVIN KIELTY, CONTRACT ARBORIST, REGARDING LANDSCAPING AT 12 SELBY LANE (Continued from the City Council meeting of February 20, 2008.)

Recommendation: Review report by Arborist Kevin Kielty pertaining to replacement landscaping following improper heritage tree removal at 12 Selby Lane. Provide direction to Staff regarding replacement landscaping and expenditure of funds for this purpose.

8:40 P.M. 23. ADOPTION OF A RESOLUTION APPROVING THE MID-YEAR BUDGET ADJUSTMENT (Continued from the City Council meeting of February 20, 2008.)

Recommendation: Adopt the Resolution increasing the Budget for fiscal year 2007-2008.

9:10 P.M. 24. COUNCIL REPORTS

9:20 P.M. 25. PUBLIC COMMENTS

9:30 P.M. 26. ADJOURNMENT

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DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
February 7, 2008
8:00 A.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Jim Janz at 8:05 a.m.

ROLL CALL

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

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

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

Lamb vs. Town of Atherton, et al.

Superior Court of California, San Mateo County, CIV 461630

John P. Johns Petitioner vs. Town of Atherton et. al. Respondent

Superior Court of California, San Mateo County, CIV 465782

- 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

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of closed session as follows:

There was no reportable action taken with respect to Item A, Lamb vs. Town of Atherton, et al. Superior Court of California, San Mateo County, CIV 461630 or John P. Johns Petitioner vs. Town of Atherton et. al. Respondent, Superior Court of California, San Mateo County, CIV 465782.

With respect to Item B, the City Attorney was given direction to prepare and schedule a training session regarding the Brown Act.

ADJOURN

The meeting was adjourned by Mayor Jim Janz at 9:10 a.m.

Respectfully submitted,

James R. Janz
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
February 20, 2008
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Jim Janz at 6:00 p.m.

ROLL CALL

PRESENT: Jerry Carlson
Charles E. Marsala
James R. Janz

ABSENT: Kathy McKeithen (Excused)

PUBLIC COMMENTS

There were no public comments.

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

Lamb vs. Town of Atherton, et al.

Superior Court of California, San Mateo County, CIV 461630

John P. Johns Petitioner vs. Town of Atherton et. al. Respondent

Superior Court of California, San Mateo County, CIV 465782

- B. **LIABILITY CLAIMS – pursuant to Government Code Section 54956.95**

Claimant: Dorothy E. Saxe

Agency Claimed Against: Town of Atherton

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported that there was no reportable action taken on Item A or Item B.

ADJOURN

The meeting was adjourned by Mayor Jim Janz at 6:50 p.m.

Respectfully submitted,

James R. Janz
Mayor

Minutes Prepared by:
Kathi Hamilton

Respectfully submitted,

James R. Janz
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
FEBRUARY 20, 2008
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Jim Janz called the meeting to order at 7:00 p.m.

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

PRESENT Jerry Carlson
Charles E. Marsala
James R. Janz

ABSENT: Kathy McKeithen (Excused)

City Manager Jerry Gruber and City Attorney Marc Hynes were also present.

3. PRESENTATIONS

None

4. PUBLIC COMMENTS

There were no public comments.

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

Lamb vs. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461630

There was no reportable action.
John P. Johns Petitioner vs. Town of Atherton et. al. Respondent

There was no reportable action.

B. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Dorothy E. Saxe

Agency Claimed Against: Town of Atherton

There was no reportable action.

- **City Manager Jerry Gruber met with Menlo Park Fire Protection District (MPFPD) Chief, Harold Schapelhouman, on Tuesday, February 19, regarding fire flow, infrastructure, disaster preparedness, and an evacuation route for West Atherton. He met with Bob Jenkins and discussed CERT training and emergency preparedness plans. Vice Mayor Carlson asked the City Manager to follow up with MPFPD regarding possible funding for disaster preparedness. City Manager Gruber met with Peter Ingram, interim city manager for Redwood City regarding drainage issues from a regional perspective. A tour of the flood gates was cancelled due to rain. With respect to Watkins Avenue, City Manager Gruber and Public Works Director Duncan Jones would meet next week with the city manager of Menlo Park and other staff.**
- **Deputy Town Planner Lisa Costa Sanders said the first Zoning Code Update Workshop was held on February 6, attended by 59 people. The topics were height measured for buildings and dormers. The next meeting was scheduled for March 5, at Holbrook-Palmer Park Pavilion, for discussions regarding light wells, retaining walls, and floor area calculation.**
- **Public Works Director Duncan Jones said the developer of the 1906 El Camino project expressed an interest in proceeding. Public Works Director Jones informed him his next step was to come to the Transportation Sub-Committee to initiate the traffic program/traffic study. Since the project would connect to the Town's drainage system, the developer would need to follow the Town's drainage procedures as well.**
- **Acting City Clerk Kathi Hamilton confirmed that James Dobbie had qualified as a candidate for the upcoming Special Election on June 3, 2008. March 7, 2008, was the deadline for filing nomination papers.**

6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Environmental Programs Committee

Valerie Gardner, Chair, Environmental Programs Committee (EPC), said there was international recognition regarding global climate change. California had a long history of being in the forefront of progressing environmental protections and had passed AB32 regarding greenhouse gas emissions and led in many areas of climate change. She reported on what had been taking place throughout the United States, regionally, and locally. Atherton topped the charts in average residential electrical and

gas usage. The EPC's mission was to address these issues. She reported on the EPC's events and outreach efforts. She discussed what the EPC wanted to accomplish in 2008.

Council Member Marsala commended Ms. Gardner for her work on the EPC. He reported on several issues related to solar within the Town. Additionally, he commended Town Arborist Kathy Hughes Anderson for developing the first Earth Day and compliance in waste diversion.

CONSENT CALENDAR (Items 7- 21)

Council Member Marsala requested Item No. 13 be removed and placed at the end of the Regular Agenda for discussion. With regard to Item No. 8, Ms. Tsai was primarily working in the Building Department helping with the software conversion. Her contract would end in June.

MOTION – to approve the Consent Calendar as presented with the exception of Item No. 13 which was removed and placed at the end of the Regular Agenda for discussion.

M/S J.Carson/Marsala Ayes: 3 Noes: 0 Absent: 1 (McKeithen) Abstain: 0

7. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING JANUARY 2, 2008; THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR CITY COUNCIL MEETINGS OF JANUARY 16, 2008

8. APPROVED BILLS AND CLAIMS FOR JANUARY IN THE AMOUNT OF \$ 1,112,771

9. ACCEPTED MONTHLY FINANCIAL REPORT FOR JANUARY 2008

10. ACCEPTED THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED DECEMBER 31, 2007

11. ADOPTED A RESOLUTION FOR SIGNATURE AUTHORITY FOR COMERICA BANK

Adopted the Resolution No. 08-04, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING SIGNATURE AUTHORITY FOR CERTAIN INDIVIDUALS AFFILIATED WITH THE TOWN OF ATHERTON"

12. ADOPTED THREE RESOLUTIONS FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT

Adopted Resolution No.08-05, 08-06, and 08-07 "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE PUBLIC EMPLOYEES' MEDICAL AND

HOSPITAL CARE ACT,” for 1) Miscellaneous Employee Group; 2) Sworn Police Unit, and 3) the Management Group.

- ~~13. REVIEW/APPROVAL OF PROPOSAL FROM PMC FOR PUBLIC OUTREACH FOR THE HISTORICAL ARTIFACT ORDINANCE~~ *(Removed and placed on the regular agenda for discussion.)*

~~Recommendation: Staff recommends approval of expenditure in an amount not to exceed \$35,000.00 and approval of the proposal to provide consultant services for Public Outreach in connection with amendments to the Town’s Historic Preservation Ordinance.~~

14. 2006 ANNUAL REPORT TO THE CITY COUNCIL ON THE ATHERTON GENERAL PLAN IMPLEMENTATION

Accepted the Annual Report and authorized its transmittal to the California Governor’s Office of Planning and Research and the California Department of Housing and Community Development pursuant to Section 65400 of the California Government Code (CGC).

15. MENLO PARK RECOMMENDATION TO REMOVE PARKING IN FRONT OF 1850 EL CAMINO REAL (CELIA’S RESTAURANT) AND CONVERT THE SHOULDER TO A RIGHT TURN ONLY LANE AT THE INTERSECTION OF SPRUCE AVENUE AND EL CAMINO REAL

Approved the recommendation from the City of Menlo Park to remove parking and modify the intersection of Spruce Avenue at El Camino Real.

16. THE ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS REFERRING THE DRAFT ORDINANCE ADDING ATHERTON MUNICIPAL CODE SECTION 8.56 PERTAINING TO WOOD-BURNING APPLIANCES TO THE GENERAL PLAN COMMITTEE

Directed the General Plan Committee to review and consider the proposed wood burning appliance ordinance.

17. APPROVED A RESOLUTION AUTHORIZING THE CITY MANAGER AND MAYOR TO INITIATE TRANSACTIONS WITH THE STATE OF CALIFORNIA LOCAL AGENCY INVESTMENT FUND

Adopted Resolution No. 08-08, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AUTHORIZING INVESTMENT OF FUNDS WITH THE STATE TREASURER

18. INTRODUCTION OF AN ORDINANCE AMENDING SECTION 13.10.070 OF THE ATHERTON MUNICIPAL CODE FOR PUBLIC, EDUCATIONAL AND ACCESS SUPPORT FEES FROM VIDEO SERVICE PROVIDERS

Introduced ordinance amending Section 18.10.070(b)(1)(B) of the Atherton Municipal Code to set fee to be paid by video service providers for public, educational and access support.

19. APPROVED A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR MUNICIPAL STORM DRAINAGE SYSTEM DESIGN SERVICES FOR THE FLETCHER-RIDGEVIEW PROJECT

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide Drainage Design services for the Fletcher Ridgeview Project in an amount not exceed \$56,532, plus a 10% contingency, for a total authorization of \$62,185.20. In addition, authorized the Public Works Department to utilize Wilsey Ham as the on-call municipal storm drainage system design engineering consultant for future Town drainage projects.

20. AWARD OF CONTRACT TO TRU-GREEN LANDCARE FOR THE TREE MAINTENANCE PROJECT NUMBER 07-010

Awarded a contract for the 2008 Tree Maintenance Project, project number 07-010 to Tru-Green Landcare, the low bidder on the February 5, 2008, bids, for \$52,000, and to authorize the Mayor to sign the contract on behalf of the Town.

21. AWARD OF FOUR CONTRACTS FOR THE HOLBROOK-PALMER PARK TOWN HOME PROJECT, PROJECT NO. 7-011

Awarded four contracts for the Holbrook-Palmer Park Town Home Project, Project No. 07-011, for up to \$75,000, with a 10% construction contingency of \$7,500, for a total authorization of \$82,500; authorized the use of informal bidding; and authorized the Mayor to sign the contracts on behalf of the Town.

PUBLIC HEARINGS (Item 22)

22. APPEAL OF THE DECISION OF STAFF REGARDING 137 STOCKBRIDGE AVENUE – (APN 059-292-060)

Deputy Town Planner Lisa Costa Sanders presented the staff report. The existing single-story residence located at 137 Stockbridge was considered legally non-conforming as it encroached into the current side-yard setback. The existing residence was located 19' from the left side yard, while the current side-yard setback requirement of the lot was 36'-6". The existing residence was 3,724 square feet in area. The applicant proposed to demolish a majority of the residence, with the exception of the two nonconforming sections of the building (approximately 720 square feet in area). The newly completed residence would be 7,456 square feet in area (including the second floor). The appellants indicated their Architect met with the Building Department to review the preliminary plans and were assured that the nonconforming rooms could remain. Plans for the major renovation were submitted to the Building Department on June 22, 2007. After reviewing the plans, staff informed the appellants that the proposed renovation was not consistent with the recently adopted

nonconforming ordinance. Staff met with the appellants to further discuss options. As the appellants indicated their desire to proceed with the plans as submitted rather than redesign, staff prepared a letter dated December 7, 2007, denying the plans as submitted. An appeal of Staff's decision was filed with their letter dated December 13, 2007 (attached). Deputy Town Planner Costa Sanders responded to Council questions.

Mayor Janz opened the public hearing.

Mr. Larry Lowry, appellant, gave a PowerPoint presentation regarding his home at 137 Stockbridge Avenue. He gave a timeline of the planning and research phase, as well as the decision to remodel in October 2005, which was based upon the former Building Official's assurances that the two nonconforming rooms could be retained. During the next two years, an architect was hired, the plans were developed, and various engineering and geotechnical surveys were completed, and the plans were formally submitted to the Town on June 22, 2007. It was not until September 2007 that he discovered the new ordinance had become effective on May 18, 2007, just 35 days before the plans were submitted. Mr. Lowry had spent over \$250,000 and a decade to develop the plans based on specific, repeated, and explicit assurances from the Town's senior staff that the nonconforming rooms could be retained. He compared two previous appeals granted by Council that he believed were analogous situations: one at 172 Austin, and the other at 84 Walnut. In both cases, the owners were given assurances that their plans would be approved and had spent substantial time, effort and money based on those assurances. In both cases, the appeal would not impinge on any neighbor. The one difference between 172 Austin and 137 Stockbridge was the plans were developed and entirely consistent with and based on both the former Building Official's assurances and the letter of the zoning codes in place throughout the entire design process and up until 35 days before the plans were formally submitted to the Town. He believed approving the appeal would ultimately benefit everyone by substantially upgrading the main structure, eliminating two accessory structures, completing the already started substantial upgrade of street-side landscaping, and screening of the two nonconforming rooms prevented them from being seen outside the property. He urged Council to do the right thing and approve the appeal.

Mayor Janz clarified the Austin and Walnut Avenue appeals were different. In one case, part of the wall that was to be retained in conformance with the code was accidentally knocked down. In the other case, they were told they could knock down the old existing wall and replace it with a new one on the theory that there was justification in having new construction and a new foundation, new materials, etc. He believed Mr. Lowry's situation was just the reverse; that is, keeping the old nonconforming portions in place when the new code did not allow it. He was amazed that the only part of the house being retained was the nonconforming rooms. He believed the house could be designed with the same square footage, with the same functions, in compliance with the current code.

Council Member Marsala queried whether the Building Department should implement some type of stamp indicating a certain amount of time that the approval was good, e.g., six months.

Deputy Town Planner Costa Sanders said staff informed people to check especially with the zoning code updates under way. Changes do happen, and people need to keep in touch.

Dr. David Burton, Atherton, next-door neighbor, submitted a letter regarding objections to the appeal. He thought the plan could be revised. If the appeal was granted, it would set a precedent.

Denise Kupperman, Atherton, there had been a number of issues arise since the former Building Official, Mike Hood, left. She recently built a home and believed Mr. Hood was being vilified. She thought he was very clear about how a nonconforming structure could be retained. She believed the home should meet the existing zoning ordinance.

Mayor Janz closed the public hearing.

Council Member Marsala clarified that had the appellant submitted his plans 40 days before he did, the plans would have been approved under the old regulations. He queried whether a precedent would be set if the appeal was approved.

City Attorney Marc Hynes said an argument was always presented that a precedent would be set. The key was to look at the unique facts of the case and make a determination on that basis. The Council had discretion to either approve or deny the appeal.

Council Member Marsala asked whether there was a plan for “getting the word out” regarding the zoning code updates so that everyone knew the rules had changed.

Deputy Town Planner Costa Sanders indicated she had met with the City Manager and would be proposing additional funds to be allocated in the budget for more advertising, etc.

Vice Mayor Carlson was concerned about the precedent aspect and had that concern with the previous appeals. He did not put too much emphasis on what conversations took place in the past. Time had past and the architect should have been keeping abreast of what happened in the Town. He believed the Town’s ordinances needed to be enforced.

Mayor Janz shared Vice Mayor Carlson’s feelings. Almost a year had passed when the last conversation with Mr. Hood took place and the next action was taken. He wanted to see codes that were properly enacted implemented. He sympathized with the appellant. The only way he could possibly approve what the appellant requested was to install a condition that said the accessory structures must stay removed, which also had issues.

Council Member Marsala said each case should be looked at uniquely. There were letters from neighbors in opposition and in support. He was in favor of approving the appeal based on needing to do a better job of communicating. The appellant missed deadline by 35 days. Given the length of time to build a house, he would decide in favor of the appellant.

Mr. Lowry said he was repeatedly assured by the Building Department that the nonconforming portions could be maintained. Subsequently, the ordinance was changed, and he missed the deadline by 35 days. He did not believe that set a dangerous precedent. Secondly, he believed he did everything possible to keep abreast of any changes.

MOTION – to deny the appeal of staff’s decision regarding 137 Stockbridge Avenue

M/S J.Carlson/Janz Ayes: 2 Noes: 1 (Marsala) Absent: 1 (McKeithen) Abstain: 0

REGULAR AGENDA (Items 23 & 24)

Mayor Janz moved Item No. 13 forward for discussion.

13. REVIEW/APPROVAL OF PROPOSAL FROM PMC FOR PUBLIC OUTREACH FOR THE HISTORICAL ARTIFACT ORDINANCE

Council Member Marsala asked for clarification of Council’s action from the last meeting.

City Attorney Marc Hynes said the Deputy Town Planner suggested that PMC had the expertise to conduct focused public meetings rather than send the item to the General Plan Committee. Council concurred and PMC provided the proposal suggesting a truly focused approach on the Historic Artifact Ordinance as opposed to including it with the Zoning Code Update Workshops. Since the Historic Artifact Ordinance was not part of the Zoning Code, having separate focused meetings would be preferable. PMC’s approach was a good one and designed to solicit public outreach.

Council Member Marsala believed there had been significant public participation in the past and queried what new information would be gathered.

Deputy Town Planner Lisa Costa Sanders said since the General Plan Committee was not able to reach consensus and was not able to recommend an ordinance to the City Council, she brought the ordinance to the City Council because the emergency ordinance was going to expire. PMC reviewed the newspaper articles and saw the strong emotions involved with the issue and believed holding smaller stakeholder meetings would help to find consensus.

Council Member Marsala believed a vote was necessary and the \$35,000 would be a great start for a fund to buy artifacts.

Vice Mayor Carlson thought the topic was important. People he spoke to supported the idea that the artifacts should be preserved. They also supported the idea that the Town should play a role. He thought the fact that the artifacts were considered important to preserve, finding a consensus within the entire Town was also important. Perhaps through the process, some ideas would gain broader support for an approach that was acceptable to everyone. He was in favor of the proposal.

Mayor Janz was surprised at the cost of the proposal. The subject was difficult with a lot of emotion involved. If PMC was able to facilitate some discussions that resulted in consensus, the expenditure would be worth it. He agreed a great deal of discussion had taken place; however, the results were not positive. He asked staff to pare down the proposal. He suggested a not-to-exceed amount of \$25,000.

Denise Kupperman, Atherton, asked how much the Town had spent in pursuing the Historic Artifact Ordinance in terms of studies and other professional fees.

Deputy Town Planner Costa Sanders said she and Consultant Laura Jones had spent two years with public outreaches and advertisement in newspapers; although, she did not have a tally.

City Attorney Hynes said if you began with the moratorium and counted legal fees, the amount was easily \$200,000.

William Grindley, Atherton, said to make clear to the residents how the PMC process was to work and invite everyone to be part of the discussion.

MOTION – to approve the expenditure in an amount not to exceed \$25,000.00 and to approve the proposal to provide consultant services for Public Outreach in connection with amendments to the Town’s Historic Artifact Ordinance

M/S Janz/J.Carlson Ayes: 2 Noes: 1 (Marsala) Absent: 1 (McKeithen) Abstain: 0

23. REPORT FROM KEVIN KIELTY, CONTRACT ARBORIST, REGARDING LANDSCAPING AT 12 SELBY LANE

Mayor Janz noted that a letter from the Tree Committee was not included in the packet. Since Mr. Kielty was not present, he suggested continuing the item to the next Council meeting.

John Thomas, Atherton, presented Council with a document he prepared. He said the neighbor’s plan called for several Coastal Redwoods to be planted, as many as the \$20,000 fine would allow. He said the arborist informed him that a large crop of 48” box, 30’ tall Coastal Redwoods was available with a performance guarantee. The Tree Committee plan proposed planting 24” box Ginkgo trees. Council gave direction last November from the parties to meet and confer. He indicated there was a failure to do so. He pointed out inconsistencies with suggested plantings.

Denise Kupperman, Atherton, said the Tree Committee wrote a letter to the Council in response to its request for the Tree Committee to recommend a tree for Selby Lane. She thought the discussion was not so much about the size of tree but the type of tree. The Tree Committee noted that the property owner paid the fine, and the property owner did plant replacement trees. They complied with the settlement agreement. The Tree Committee was concerned as to whether another resident had influence over what another individual would plant. The planting of an evergreen tree on the south side of the house would make the house dark and cold. The only thing the Tree Committee recommended was that a deciduous tree be planted rather than an evergreen because in the long term it would be environmentally beneficial to the residents. The property owner needed to be in agreement with what was planted.

Rachel Croft, Atherton, Chair of the Tree Committee, believed a Ginkgo tree was a good idea because it grew 30 to 40 feet tall and there was a variety that grew rapidly. She recommended evergreen shrubs, English Laurel, etc., that made hedge-type material that would make the wall appear more attractive.

MOTION – to continue the item to the City Council meeting of March 19, 2008.

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

24. ADOPTION OF A RESOLUTION APPROVING THE MID-YEAR BUDGET ADJUSTMENT

Interim Finance Director Bill Yeomans presented the staff report with the aid of a PowerPoint presentation. The mid-year budget process involved looking at the first half-year financial results and projecting future revenues and expenditures to the end of the fiscal year, June 30, 2008. The process enabled the Town to determine how it was doing compared to the original budget and to make any mid-year adjustments as needed. The results from the last fiscal year were higher than anticipated and resulted in \$1.9 million more than projected. Revenues for the current fiscal year, with projections to the end of the fiscal year, looked to be ahead by \$406,000 from the original estimates and were due to higher property taxes. Expenditures were also running over budget by \$460,000. A list of adjustments would be presented to cover the additional expenditures. The adjustments were as follows: 1) Unanticipated litigation; 2) Planning/Building Projects, Zoning Code Update, Historic Artifacts Ordinance; 3) Management Recruitments; 4) Town Home Improvements; 5) Police Department power backup; 6) Disaster Preparedness, etc. He was recommending other smaller adjustments to be taken out of the Contingency fund. There were two amendments to the resolution: 1) reduce planning consulting by \$10,000; and 2) reduce the scale of the Sacred Heart Science Building to \$40,000 revenues and \$30,000 expenditures.

Vice Mayor Carlson said the Finance Committee had normally met regarding the mid-year budget adjustments went to Council. He believed the basic problem was not doing as good a job in budgeting as should have been done. Budget surpluses grew but Parcel Tax funds were allocated to General Fund expenses. He believed the Town should not have used Parcel Tax dollars for the General Fund but using those dollars

for infrastructure improvements. He would like to go through the methodology, assumptions, find out what had changed, and decide if he concurred with the processes.

Council Member Marsala queried whether the Town needed to use any Reserve funds for the current fiscal year as previously forecasted.

Interim Finance Director Yeomans said believed a surplus was possible and Reserve funds would not be needed.

Council Member Marsala said some of the surplus was due to property taxes exceeding what was forecasted and received a refund in ERAF money that was not expected.

Vice Mayor Carlson said the Council should be given another layer of knowledge than what was presented.

Mayor Janz said Council should direct that the Finance Committee to convene and review the mid-year budget with the Finance Director and address in detail Vice Mayor Carlson's questions.

Council Member Marsala noted the Facilities Committee recommended that the Town Home allocation be included in the current year budget in order to complete the Town Home before the City Manager was living there.

Vice Mayor Carlson suggested the recommendation needed to be effectively communicated to the Council.

Valerie Gardner, Atherton, queried whether any green building was included in the Town Home.

Council Member Marsala responded that the Facilities Committee recommended that the home be inspected for insulation before work was done. The home was inspected and found to be adequately insulated.

Public Works Director Duncan Jones said windows and appliances were being considered for energy efficient replacements. New light fixtures would be energy efficient.

Vice Mayor Carlson suggested that a discussion of goals and objectives at a workshop would be a driver for the next year's budget.

Mayor Janz clarified when the parcel tax was presented, a specific percentage was split between operations and capital improvements.

MOTION – to continue the item to the City Council meeting of March 19, 2008

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

25. COUNCIL REPORTS

- Vice Mayor Carlson attended HEART, DARE, the Menlo Park Transportation Committee, and Council of Cities meetings. He met with the Police Department and discussed with Chief Brennan and Lieutenant Nielson pie charts regarding utilization of police time. He attended a Redwood City Chamber-sponsored meeting regarding High-Speed Rail electrification. The High-Speed Rail Authority was preparing to vote on accepting the EIR that favored the Pacheco Pass Plan. The Governor and Senator Diane Feinstein would be co-chairing the committee for the High-Speed Rail. There was no organized opposition.
- Council Member Marsala had lunch with City Manager Jerry Gruber. He acknowledged Wendé Protzman for her service to the Town and for taking care of tough issues. The Facilities Committee met regarding completing the Town Home improvements. He attended the General Plan Committee meeting and queried how to put things on the agenda. He wanted to see some of the limitations of the Municipal Code relaxed for unique situations and lots that were several acres. He announced the Facilities Committee would hold a public meeting regarding fundraising for a new Town Hall.
- Mayor Janz clarified that the General Plan Committee meeting attended by Council Member Marsala was a workshop regarding the Zoning Code Update and was conducted by consultants. The intent was not to make drastic changes but to make it more understandable. Last November a meeting was held to discuss global issues to be addressed by the General Plan Committee. The Committee was working on the list and getting through the Zoning Code Update was a priority.

26. PUBLIC COMMENTS

Valerie Gardner, Atherton, said Attorney General Jerry Brown was looking at General Plan Updates and sending his critique in a directive that would indicate, for example, the need to add Green Building Guidelines.

William Grindley, Atherton, attended the Joint Meeting of Council with Menlo Park City Council. He thought the meeting was constructive. He thought the expenditure of \$30 billion for High-Speed Rail was a fantasy and would probably be double the amount.

27. ADJOURNMENT

Mayor Jim Janz adjourned the meeting was at 10:14 p.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: BILL YEOMANS, CONTRACT FINANCE OFFICER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: CLAIMS FOR FISCAL YEAR 2007/2008

RECOMMENDATION:

Approve Claims.

INTRODUCTION:

The February Claims list is routine, but some oversights in prior months need to be corrected.

ANALYSIS:

These corrections do not change any transactions; they request Council approval for transactions that have occurred but were not listed on the Claims list in prior months.

- For four months, I omitted the electronic payroll transfers for employees direct deposits
- Two weekly claims lists in July and October were omitted from the claims list. The checks are attached here.
- One manual check was listed on two Claims lists but only issued once.
- A typo on the claims list occurred in October

Prepared by:

Approved by:

Bill Yeomans
Contract Finance Officer

Jerome Gruber
City Manager

ATTACHMENTS:

1. Checks for October 19, 2007 and August 3, 2007.

TOWN OF ATHERTON
ADDITIONAL CLAIMS LIST
 July through December, 2007

Electronic Transfers	September	\$ 264,151
Electronic Transfers	October	272,535
Electronic Transfers	November	253,806
Electronic Transfers	December	378,617
Correction Typo	September	-300
Correction PR check	October 10546	-12,171
A/P Checks	24503-24528	162,243
A/P Checks	24969-25000	109,791
TOTAL		\$ 1,428,172

I, Jerry Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 24503-24528 & 24969-25000, electronic transfers for employees direct deposits, and corrections amount to \$1,428,172; are true and correct, and that there are sufficient funds for payment.

 Jerry Gruber
 City Manager

The above claims, check numbers 24503-24528 & 24969-25000, electronic transfers for employees direct deposits, and corrections amount to \$1,428,172; are true and correct, and are authorized for payment.

 James R. Janz
 Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$193,955
105	Tennis Fund	
201	Special Parcel Tax	13,500
202	Transportation	-
203	Gas Tax Fund	
210	Road Construction Impact Fees	48,377
211	Park Grants Fund	-
213	Library Special Revenue Fund	1,341
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	
610	Vehicle Replacement	
611	Computer Maint. & Replacement	15,168
612	Administrative Services	1,034
715	Evans Estate	-
740	Tree Committee	-
TOTAL		\$272,034

TOWN OF ATHERTON
CLAIMS LIST
February, 2008

Payroll Checks	11018 - 11147	\$ 7,786
Electronic Transfers		346,465
A/P Checks	25615 – 25761	431,042
TOTAL		\$ 785,293

I, Jerome Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 11018 - 11147 (payroll) and 25615 - 25761 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$785,293; are true and correct, and that there are sufficient funds for payment.

Jerome Gruber
City Manager

The above claims, check numbers 11018 – 11147 (payroll) and 25615 - 25761 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$785,293; are true and correct, and are authorized for payment.

James R. Janz
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$350,709
105	Tennis	
201	Special Parcel Tax	10,440
202	Transportation	-
203	Gas Tax	-
210	Road Construction Impact Fees	20,177
211	Park Grants	-
213	Library	3,699
401	General Capital Projects	17,633
402	Storm Drainage	-
403	Atherton Channel District	2,460
411	Park Well	12,505
610	Vehicle Replacement	4,123
611	Computer Maint. & Replacement	4,222
612	Administrative Services	5,075
715	Evans Estate	-
740	Tree Committee	-
TOTAL		\$431,042



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: BILL YEOMANS, CONTRACT FINANCE OFFICER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: MONTHLY FINANCIAL REPORT, FEBRUARY 2008

RECOMMENDATION:

Receive the Monthly Financial Report for February 2008.

INTRODUCTION:

The attached schedules revenues and expenditures for all funds as of February 29, 2008.

HIGHLIGHTS:

Revenues in the General Fund are at 64% of the original budget estimate after eight months (67%). April is the largest revenue month, so revenues should comfortably exceed the estimate by yearend.

Expenditures in the General Fund are at 69% of budget and mid-year adjustments proposed last month and revised at this meeting will accommodate departmental expenditures:

1. The City Attorney Department is at 192% of budget and includes unanticipated litigation costs that will be addressed by the mid-year budget adjustment. Some of the Laburnum case costs have been recoded to this department from Building/Planning this month.
2. The City Council budget has been impacted by a team building session and a project for a sustainable San Mateo County.
3. Building is seeing higher-than-budgeted costs as a result of litigation, a new computer system installation, and planning updates, all non-recurring expenditures.
4. Allocation of Utility bills has brought the Internal Service funds into balance.

In Special Funds, the large street projects impacting the Parcel Tax, Road Impact Fees, and other funds are being reviewed to assure that funding is sufficient.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

William Yeomans
Interim Finance Officer

Jerome Gruber
City Manager

TOWN OF ATHERTON
Revenue Summary
for the Month Ended February 29, 2008

Fund	Revenue source	2007-08 Estimate	Current Period Revenue	Year to date Revenues	% received
	Property Tax	4,286,303	14,014	2,801,926	65%
	Sales & Use Tax	147,756	20,300	133,848	91%
	Other Taxes	1,162,774	80,891	402,840	35%
	Licenses & Permits	2,128,188	57,031	1,072,401	50%
	Fines & Forfeitures	35,000	2,079	24,517	70%
	Revenue from Other Agencies	414,500	9,272	638,206	154%
	Charges for Services	293,808	32,702	359,048	122%
	Investment & Rental Income	489,478	11,988	301,599	62%
	Other Revenues	5,000	8,580	42,602	852%
	Total General Fund Revenues	8,962,807	236,857	5,776,987	64%
	Interfund (Operating Transfers) In	900,000			
101	General Fund Total	9,862,807	236,857	5,776,987	
	Special Revenue Funds				
105	Tennis	8,000	0	2,329	29%
201	Special Parcel Tax	1,858,000	0	1,102,383	59%
202	Transportation	265,000	0	162,807	61%
203	Street Improvement (Gas Tax)	150,000	0	89,067	59%
208	Police on the Street Grant		0	104	
209	State COPS Grant	100,000	0	276	0%
210	Road Construction Impact Fees	1,132,102	22,216	543,098	48%
211	Grants Fund	104,800	0	928	1%
213	Library	284,000	0	59,527	21%
	Total	3,901,902	22,216	1,960,519	50%
	Capital Project Funds:				
401	Capital Improvement	2,000	0	6,210	311%
402	Storm Drainage	1,000	0	962	96%
403	Channel Drainage District	46,000	191	39,949	87%
406	Facilities Construction			1,612	
	Total	49,000	191	48,733	165%
	Internal Service Funds:				
610	Vehicle Replacement	104,049	0	59,340	57%
611	Information Technology	109,637	0	79,391	72%
612	Administrative Services	312,599	0	158,087	51%
614	Workers Compensation Insurance				
	Total	526,285	0	296,818	60%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500	0	4,194	29%
740	Tree Committee	1,400	500	1,958	140%
	Total	15,900	500	6,152	29%
	Total Revenues	14,355,894	259,764	8,089,209	56%

TOWN OF ATHERTON
Expenditure Summary
for the Month Ended February 29, 2008

Fund	Description	2007-08 Estimate	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	24,122	4,358	23,616	98%
	12 City Manager	565,206	59,535	364,729	65%
	16 City Attorney	197,728	101,768	379,302	192%
	18 Finance	445,758	62,751	333,892	75%
	25 Building	1,487,474	57,302	1,067,800	72%
	40 Police	4,886,587	467,022	3,320,999	68%
	50 Public Works	2,237,939	230,187	1,398,950	63%
	Contingency	100,000	0	0	0%
	Total General Fund Expenditures	9,944,814	982,923	6,889,288	69%
	Interfund (Operating Transfers) out				
101	General Fund Total	9,944,814	982,923	6,889,288	
	Special Revenue Funds				
	105 Tennis	5,521	0	1,327	24%
	201 Special Parcel Tax	1,506,535	10,440	274,800	18%
	202 Transportation	229,500	0	15,000	7%
	203 Street Improvement (Gas Tax)	145,000	0	28,765	20%
	209 Law Enforcement	100,000	38,046	38,046	38%
	210 Road Construction Impact Fees	1,000,000	14,440	647,222	65%
	211 Grants	306,710	0	25,023	8%
	213 Library	78,326	8,140	14,532	19%
	Total	3,371,592	71,066	1,044,715	31%
	Capital Project Funds:				
	401 Capital Improvement	67,755	14,468	29,373	43%
	402 Storm Drainage	21,394	0	2,963	14%
	403 Channel Drainage District	55,000	808	22,823	41%
	411 Park Well	0	12,505	8,805	
	Total	144,149	27,781	63,964	44%
	Internal Service Funds:				
	610 Vehicle Replacement	64,060	4,123	48,637	76%
	611 Information Technology	108,304	-35,432	61,965	57%
	612 Administrative Services	351,532	-29,977	200,859	57%
	Total	523,896	-61,286	311,461	59%
	Trust and Agency Funds:				
	715 Evans Creative Design	11,500	0	3,753	33%
	740 Tree Committee	0	0	1,139	
	Total	11,500	0	4,892	43%
	Total Expenditures	13,995,951	1,020,484	8,314,320	59%

FUND BALANCES
02/29/08

Fund	Start Balance 7/1/2007	Revenues YTD	Expenditures YTD	End Balance 1/31/2008
101 General	9,853,933	5,776,987	6,889,288	8,741,632
105 Tennis	29,450	2,329	1,327	30,452
201 Special Tax	73,573	1,102,383	274,800	901,156
202 Transportation	37,018	162,807	15,000	184,825
203 Gas Tax	193,594	89,067	28,765	253,896
208 Police on the Street	4,455	104		4,559
209 COPS(Law Enf.)	11,807	276		12,083
210 Road Const Impact Fee	34,408	543,098	647,222	(69,716)
211 Grants	39,486	928	25,023	15,391
213 Library	2,564,923	59,527	14,532	2,609,918
401 GF Projects (Cap. Impr.)	270,200	6,210	29,373	247,037
402 Storm Drainage	42,381	962	2,963	40,380
403 Atherton Channel District	78,578	39,949	22,823	95,704
406 Facilities Construction	69,447	1,612	8,805	62,254
411				
610 Equipment Operations	304,332	59,340	48,637	315,035
611 Computer Services	80,400	79,391	61,965	97,826
612 Administrative Services	185,742	158,087	200,859	142,970
614 Worker's Comp Insurance				
715 Evans Estate (AAC)	121,920	4,194	3,753	122,361
725 Lindenwood Gate Trust	250			250
727 Colley Trust Fund	-			-
730 Park Improvement	5,851			5,851
731 MA Little League	-			-
740 Tree Committee	41,519	1,958	1,139	42,338
TOTALS	14,043,402	8,089,209	8,314,320	13,818,291



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF MARCH 19, 2008

**SUBJECT: ADOPTION OF AN ORDINANCE AMENDING SECTION 13.10.070 OF
THE ATHERTON MUNICIPAL CODE FOR PUBLIC, EDUCATIONAL
AND ACCESS SUPPORT FEES FROM VIDEO SERVICE PROVIDERS**

RECOMMENDATION:

Adopt ordinance amending Section 13.10.070(b)(1)(B) of the Atherton Municipal Code to set fee to be paid by video service providers for public, educational and access support.

EXECUTIVE SUMMARY:

The amendment proposed by the attached ordinance is necessary in order to enable the Town to continue receiving revenues from TCI Cablevision of California, Inc. (COMCAST) following its acquisition of a state franchise. The ordinance was introduced at the regular City Council meeting on February 20, 2008.

BACKGROUND AND ANALYSIS:

In 2000, the Town entered into a Joint Exercise of Powers Agreement in which the City of Palo Alto as administering agency oversees a cable television franchise to TCI Cablevision of California, Inc. (Comcast). The Town also added Chapter 13.08 to the Atherton Municipal Code relative to franchises for cable television and video systems at the time of entry into the Joint Powers Agreement. Comcast is the only cable operator under franchise. The franchise is scheduled to expire in 2010.

In the fall of 2006, Assembly 2987 was signed into law. Entitled "the Digital Infrastructure and Video Competition Act of 2006" ("DIVCA"), this law removes the authority of the Town to

issue franchises in this area. In return, however, DIVCA provides a five percent (5%) franchise revenue to the local agency, even though the franchise is now held with the State.

Section 13.10.070 of the Atherton Municipal Code mirrored Section 2.11.070 of the City of Palo Alto Municipal Code. As the City of Palo Alto is the administering agent for the Joint Powers Agreement between the Town and the cities of Palo Alto, Menlo Park, East Palo Alto and the Counties of San Mateo and Santa Clara. and TCI Cablevision of California, Inc. (Comcast) it is appropriate for the Town to bring its regulations into conformance with the changes that the City of Palo Alto is making amending Section 2.11.070 of the Palo Alto Municipal Code on the subject of fees paid by video service providers for public, educational and governmental access channel capacity and support. An amendment to Section 13.10.070(b)(1)(B) to the Atherton Municipal Code will match the City of Palo Alto's Section 2.11.070(b)(1)(B).

When COMCAST terminated its local franchise by obtaining one from the state under DIVCA, Section 13.10.070 provided that the Town, by ordinance, could collect either the current public educational and governmental access support fee of 0.88 cents per subscriber per month, or a PEG support fee of one percent of the gross video service revenues in the Town. Palo Alto City Staff has concluded that, at the present time, a PEG fee of 0.88 per subscriber exceeds what a one percent PEG fee would yield by about 30%. Accordingly, the City of Palo Alto Staff has proposed amendments to the Palo Alto Municipal Code to establish a PEG fee of 0.88 per subscriber. In selecting the 0.88 option as opposed to the one percent of gross revenue alternate, the Palo Alto City Staff admits to a potential downside. The fixed-figure has no built-in mechanism for growth. Over time, inflation could erode its purchasing power. Additionally, if COMCAST revenues continue to grow at their current rate, the one percent option could yield greater PEG fees than the 0.88 option in the next 4 to 5 years.

Notwithstanding this, however, the Palo Alto City Staff has concluded that anticipated competition may drive down prices and the expected bundling of video with non-video service revenues makes it risky to assume that revenues will grow at the same rate in the future. Accordingly, the Palo Alto City Staff has recommended the 0.88 option because it provides more revenue in the short term and a stable funding amount in the long term.

FISCAL IMPACT:

Adoption of this ordinance will continue the Town's ability to receive revenues from COMCAST at the stated rate.

Prepared by:

Approved by:

Marc G. Hynes
City Attorney

Jerry Gruber
City Manager

Attachment

ORDINANCE
ORDINANCE OF THE COUNCIL OF THE TOWN OF ATHERTON
AMENDING SECTION 13.10.070 OF THE ATHERTON MUNICIPAL CODE
REGARDING PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG)
ACCESS SUPPORT FEES

The City Council of the Town of Atherton does hereby resolve as follows:

Section 1. Amendment of Code

Section 13.10.070(b)(1)(B) is hereby amended to read as follows:

“(B) Upon the expiration of the Comcast Franchise or its earlier termination pursuant to Section 5840(o)(3) of the California Public Utilities Code, every state franchisee operating within the jurisdictional boundaries of the Town shall, pay a new PEG support fee to the Town in the amount of eighty-eight cents (\$0.88) per month per subscriber in the Town.”

Section 2. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

Section 3. The City Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.

Section 4: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 20th day of February, 2008.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the _____ day of _____, 2008, by the following vote:

Ayes:	Council Members
Noes:	Council Members
Abstain:	Council Members
Absent:	Council Members

James R. Janz, MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF MARCH 19, 2008

SUBJECT: ADOPTION OF A RESOLUTION CONSENTING TO COUNTY HEALTH OFFICER ENFORCEMENT OF STATE AND LOCAL HEALTH REGULATIONS

RECOMMENDATION:

Adopt a resolution designating San Mateo County Health Officer as the enforcement authority for all applicable state and local health regulation enforcement within the Town.

BACKGROUND:

State law requires appointment of a health officer unless the jurisdiction has made other arrangements with the county to exercise the same powers and duties.

Atherton has previously authorized the San Mateo County Health Department to enforce any state and local health regulations within the Town. As presently existing, the only stated duties for health officer enforcement within the Town relate to milk and cream regulations as set out in Chapter 8.12 of the Atherton Municipal Code. However, enforcement of public nuisance regulations could involve state and/or local regulations which would fall within the jurisdiction of a health officer. Accordingly, it is recommended that the City Council adopt the resolution which accompanies this staff report which clarifies that the San Mateo County Health Department will have enforcement authority for Health & Safety Code and all other statutes and regulations relating to the public health within the Town of Atherton.

FISCAL IMPACT:

None.

Prepared By:

Approved By:

Marc G. Hynes
City Attorney

Jerry Gruber
City Manager

Attachment - Resolution

RESOLUTION NO. 08- _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
CONSENTING TO SAN MATEO COUNTY HEALTH OFFICER ENFORCEMENT
WITHIN THE TOWN OF ATHERTON OF HEALTH OFFICER ORDERS
PROMULGATED PURSUANT TO STATUTE AND REGULATION**

RESOLVED, by the City Council of the Town of Atherton, State of California, that

WHEREAS, pursuant to Section 101460 of the California Health & Safety Code, every governing body of a city shall appoint a health officer, except when the city has made other arrangements for the county to exercise the same powers and duties within the city, as are conferred upon city health officers by law; and

WHEREAS, pursuant to Section 101375 of the California Health & Safety Code, the governing body of a city in San Mateo County may consent by resolution to the San Mateo County Health Officer enforcing in that city, orders and quarantine regulations prescribed by the Department of Health Services, other regulations issued under the Health & Safety Code and all other statutes relating to the public health; and

WHEREAS, this Town has consented to the San Mateo County Health Officer performing these tasks for more than 50 years and desires to have the San Mateo County Health Officer continue to do so; and

WHEREAS, the City Council desires to reaffirm its consent in the form of a resolution that is uniform with those adopted by all the cities within the County of San Mateo,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the City Council of the Town of Atherton hereby consents to the San Mateo County Health Officer enforcing and observing in the Town, orders and quarantine regulations prescribed by the Department of Health Services and the San Mateo County Health Department, other regulations issued under the Health & Safety Code and all other statutes and regulations relating to the public health. This Resolution supersedes all prior Resolutions that might be in conflict.

This Resolution shall be effective immediately upon adoption.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of _____ 2008, by the following vote:

*AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:*

James R. Janz, MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF MARCH 19, 2008

SUBJECT: RESOLUTION ADOPTING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 137 STOCKBRIDGE AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL AND DEPUTY TOWN PLANNER (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)

RECOMMENDATION:

Consider attached resolution adopting findings and, if appropriate, adopt the resolution by majority vote.

BACKGROUND:

At the City Council meeting on February 20, 2008, the City Council conducted a public hearing on an appeal by the property owners of 137 Stockbridge, from a determination by the Building Official and the Deputy Town Planner that the proposed renovation of the residence on their property could not proceed under the provisions of the Town's nonconforming use regulations. Attached is a resolution setting forth the findings to support the denial of the appeal.

FISCAL IMPACT:

None.

Prepared By:

Approved By:

Marc G. Hynes
City Attorney

Jerry Gruber
City Manager

Attachment

RESOLUTION NO. 08-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
DENYING APPEAL OF BUILDING OFFICIAL DETERMINATION
FOR 137 STOCKBRIDGE AVENUE, ATHERTON**

The City Council of the Town of Atherton hereby resolves as follows:

The City Council of the Town of Atherton having considered the matter, in accordance with the provisions of Chapter 17.44 and particularly Sections 17.44.010 and 17.44.050 of the Atherton Municipal Code, hereby makes the following findings and determinations in the appeal from the decision of the Building Official dated December 7, 2007, denying building plans submitted for property known as 137 Stockbridge Avenue, Atherton, California.

1. Larry and Jeanne Lowry ("the Lowrys"), owners of property located at 137 Stockbridge Avenue, Atherton, California, timely appealed the decision of the Building Official denying the plans for a renovated residence proposed by them at 137 Stockbridge Avenue.

2. The Lowrys were present at the appeal hearing and Larry Lowry presented the matter on their behalf.

3. Written and documentary evidence was presented and considered by the City Council, along with testimony from members of the public, all of which testimony and evidence was received without objection and considered and discussed by the City Council Members during the public hearing and thereafter in making their determination.

4. The City Council determines that based upon substantial evidence the appeal should be denied for the following reasons:

A. The Lowrys own a single-story residence at 137 Stockbridge Avenue which is legally nonconforming because it encroaches into the current side-yard setback. The existing residence is located 19 feet from the left side yard, while the current side-yard setback requirement of the lot is 36 feet 6 inches. The existing residence is 3,724 square feet in area. The Lowrys proposed to demolish a majority of the residence with the exception of two non-conforming sections of the building (consisting of approximately 720 square feet) and to complete a new residence of approximately 7,456 square feet in area which would include a second floor.

B. Section 17.44.050 of the Atherton Municipal Code as revised effective May 28, 2007, provides, in pertinent part, that "alterations or additions to nonconforming main buildings may be permitted as long as the addition or alteration is limited to no more than 50 percent of the floor area and not more than 50 percent of the nonconforming exterior walls or rebuilt, either as a single project, or cumulatively over time Alterations or additions over 50 percent are required to entirely meet current building and zoning code requirements."

C. The proposed renovation at 137 Stockbridge Avenue well exceeds the 50 percent thresholds. The existing residence is 3,724 square feet in area (720 square feet of which is located within the required setback making the existing residence a nonconforming structure.)

D. The Lowrys' proposal would demolish 3,004 square feet or 80 percent of the existing floor area, followed by new construction which would total 7,456 square feet including the 720 square feet located within the required setback. Section 17.44.050 requires that an alteration as extensive as proposed must entirely meet current zoning and building code requirements. Accordingly, plans which attempt to retain an encroachment consisting of 720 square feet were properly rejected by the Building Official.

E. As Section 17.44.050 of the Atherton Municipal Code as revised effective May 28, 2007, requires that the project of this size meet current code requirements, retention of nonconforming portions of the existing residence are prohibited. Although the Lowrys claim that they have been advised by representatives of the Town's Building Department that their proposal could be constructed, when the plans were submitted to the Building Department on June 22, 2007, the requirements of Section 17.44.050 controlled. Denial of the submitted plans under amended Section 17.44.050 was appropriate.

F. The City Council recognizes that the proposed renovation would result in two accessory buildings being removed and has considered the evidence submitted by the Lowrys that because of a 20 foot hedge along the rear of their property the renovated home will not be intrusive to the adjacent neighbor. The City Council has heard and considered evidence offered by the Lowrys that the representatives of the Building Department had assured them that under Chapter 17.44 as it existed prior to its amendment effective May 28, 2007, their plans and proposed renovation would be approved. However, between the time of this discussion and the actual submittal of the plans, Town regulations were changed as described in subparagraph B above. Revisions to the zoning ordinance having been properly enacted, they now should be implemented.

G. The Lowrys' presentation regarding the extensive time consumed in the development and presentation of their plans has also been considered, however, it is noted that a professional had been engaged to prepare and process the plans and should be expected to keep informed of developments in the applicable building code and zoning regulations which affect properties in the Town.

H. Based upon the foregoing, the determination of the Building Official is upheld and the Lowrys' appeal from that decision is denied.

This Resolution shall be effective immediately upon adoption.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 19th day of March, 2008, by the following vote.

AYES: *Council Members:*
NOES: *Council Members:*
ABSENT: *Council Members:*
ABSTAIN: *Council Members:*

ATTEST:

James R. Janz, MAYOR
Town of Atherton

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc Hynes

Marc Hynes, City Attorney

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

660 WEST DANA STREET

P.O. BOX 279

MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)

L.M. FARASYN (1915-1979)

REPLY TO:

MARC G. HYNES

March 12, 2008

Via e-mail john1@hanvan.com

John P. Hanna, Esq.

Hanna & Van Atta

525 University Avenue, Suite 705

Palo Alto, CA 94301-1921

Re: LARRY LOWRY – 137 Stockbridge Avenue, Atherton, California

Dear John:

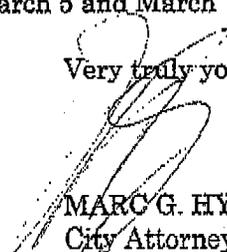
This responds to your letter dated March 10, 2008. I believe the key here is the definition of a newspaper of general circulation. Government Code section 6000 defines this as one which is printed and published at regular intervals in the state, county, or city where publication is to be given. I understand that you are reading the word "or" in the disjunctive, which is indeed appropriate, a jurisdiction determining whether to publish looks to the word which most appropriately describes it. In the case of the Town, we look to the word "city", and conclude that publication is required in a newspaper of general circulation printed and published at regular intervals in the city, i.e. Town. When there is none, posting is appropriate.

As Government Code section 65090 requires publication pursuant to Government Code section 6061, it is clear to me that such publication envisions publications in a newspaper of general circulation as defined in section 6000. Since there is no newspaper of general circulation in the Town of Atherton as the term is defined, then there is no requirement to publish.

There is a specific provision in Government Code section 65090 providing for posting in circumstances where there is no newspaper of general circulation. Notice is to be posted in at least three public places within the jurisdiction of the local agency. This language would be meaningless if the provision for a newspaper of general circulation were not read as I have described. As you know, statutory interpretation holds that all statutory language is purposeful.

I will certainly pass your letters of March 5 and March 10 on to the City Council, along with my responses.

Very truly yours,


MARC G. HYNES

City Attorney, Town of Atherton

MGH:cwb

C: City Manager
Town Planner

HANNA & VAN ATTA
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Facsimile: (650) 321-5639
www.hanvan.com

John Paul Hanna, a Professional Corporation
David M. Van Atta, a Professional Corporation
William R. Garrett, a Professional Corporation

Email: john1@hanvan.com

March 10, 2008

Marc Hynes, Esq.
Atherton Town Attorney

Via email: mhynes@netgate.net

Re: Larry Lowry, 137 Stockbridge Ave.

Dear Marc:

Thank you for your March 6th letter replying to my letter of March 5th.

It seems that my March 5th letter to you was not entirely clear. In referring to the statement in the town ordinance, I may have mislead you because the town ordinance, section 2.08.010, deals with posting of ordinances. However, I was not talking about posting of an ordinance. The complaint that Mr. Lowry has is that the Notice of Hearing was not published. Once the ordinance is posted, it has already been adopted. The purpose of the Notice of Hearing is to alert citizens to the fact that an ordinance is to be considered. That gives them an opportunity to voice their objection to the adoption of the ordinance, should they have an objection. More importantly, in the case of the Lowrys, it gives them the opportunity to file their application for approval of their plans before the new ordinance is heard and/or adopted.

The section which you have cited in support of the argument that publication must be in a newspaper "published and circulated in the city," deals not with the requirement for giving notice of hearings, but rather deals with the publication of ordinances. Government Code §36933, which requires publication "in a newspaper of general circulation published and circulated in the city," deals with ordinances that have already been passed. The section begins: "Within 15 days after its passage, the city clerk shall cause each ordinance to be published at least once ..."

The section to which I referred in my letter, Government Code §65090, provides that when a provision of the Government Code requires "*notice of a public hearing* to be

Marc Hynes, Esq.
March 10, 2008
Page 2

given, notice shall be published pursuant to §6061 in at least one newspaper of general circulation within the jurisdiction of the local agency ...”

In addition, Government Code §6060 provides that “whenever the law provides that publication of notice shall be made ... such notice shall be published in a newspaper of general circulation ...” Section 6061 requires publication for one time.

In other words, the Government Code section requiring notices of hearing require that the publication be in a newspaper of general circulation. A newspaper of general circulation is defined in Government Code §6000 to be a newspaper “printed and published at regular intervals in the state, county, or city where publication ... is to be given ...” The statute clearly says state, county or city, and thus is distinguishable from Government Code §36933 (which applies to Notice of Adoption of Ordinances) in which section the newspaper is to be published and circulated in the city.

I therefore respectfully reiterate that Atherton did not follow the state law when it merely posted notice of its intent to consider and adopt the ordinance. This had the effect of torpedoing two years of efforts and expenditure of much money by the Lowrys on architectural plans which, had they been filed a day before the hearing (notice of which was posted, but not published), would have been approved.

I would hope that the council will take this into consideration when Mr. Lowry appears and asks for reconsideration.

Very truly yours,

John Paul Hanna

JPH:dg

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cc: Larry Lowry, via email: lowrylarry@aol.com

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

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P.O. BOX 279

MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

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REPLY TO:
MARC G. HYNES

J.M. ATKINSON (1892-1982)
L.M. FARASYN (1915-1979)

March 6, 2008

Via e-mail johnl@hanvan.com

John P. Hanna, Esq.

Hanna & Van Atta

525 University Avenue, Suite 705

Palo Alto, CA 94301-1921

Re: LARRY LOWRY – 137 Stockbridge Avenue, Atherton, California

Dear John:

This follows our telephone conversation and your letter dated March 5, 2008, concerning the Town's procedures on posting ordinances.

You have cited Section 2.08.010 of the Atherton Municipal Code and questioned the practice of the Town in only posting adopted ordinances rather than publishing them. While you have also cited California Government Code section 65090 and Section 6061, it is necessary to view both of these in light of the provisions of Government Code Section 36933(a) and Section 6000.

Government Code Section 36933 provides in pertinent part that ordinances be published in a newspaper of general circulation "published and circulated in the city, or if there is none, he or she shall cause it to be posted in at least three public places in the city or published in a newspaper of general circulation printed and published in the county and circulated in the city." Government Code Section 6000 defines a newspaper of general circulation as one printed and published in the city where publication is to be made.

As no newspapers are published in the city, posting is an appropriate procedure and complies with legal requirements. The City Council is presently looking into ways in which broader distribution of information regarding its ordinances can be done. It certainly is possible that, in future, there will be publication of ordinances as well as posting. However, there is nothing improper in the manner in which ordinances in the past have been posted.

MARC G. HYNES

City Attorney, Town of Atherton

MGH:cwb

C: City Manager
Town Planner

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John Paul Hanna, a Professional Corporation
David M. Van Atta, a Professional Corporation
William R. Garrett, a Professional Corporation

Email: john1@hanvan.com

March 5, 2008

Marc Hynes, Esq.
Town Attorney
Town of Atherton

Via E-Mail

Re: LARRY LOWRY - 137 Stockbridge Avenue

Dear Marc:

Following-up on our telephone conversation of Tuesday, March 4, I am quite curious about the provision in the Town Ordinances, specifically Section 2.08.010 ("Posting Places"). That code section (which has apparently been around for some time) starts by stating "there being no newspaper published and circulated in the Town, all ordinances must be posted..." I contrast this language with California Gov't Code Section 65090, which states that when the law requires notice of a public hearing to be given that the notice "shall be published pursuant to Section 6061 in at least one newspaper of general circulation within the jurisdiction of a local agency..." The contrast between the local ordinance and the State law is rather significant. There are probably very few communities which can boast the publication of a newspaper within the boundaries (jurisdiction) of the town or city. I believe that is why the State law refers to "general circulation" rather than "publication". It is obvious to all that there are perhaps a dozen newspapers that are generally circulated within the Town of Atherton. One has to wonder for how many years Atherton has not been following what appears to be the State law, by not publishing notices. One also has to wonder what would be the motivation for not complying with the State law in that regard? Perhaps it is the fact that it costs money to buy newspaper space to publish notices, and it saves a lot of money to instead merely post them in public places. The problem with that approach is that not very many citizens have the time or the interest to drive by the City Hall once a week to find out what has been posted. The purpose of requiring publication in newspapers of general circulation is to give as wide as possible notice to citizens within the jurisdiction of the Town.

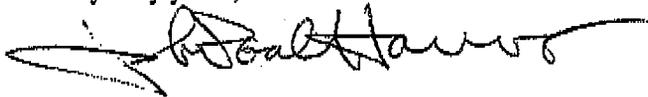
We have in the case of the Lowrys a graphic example of the harm that can result from failing to follow the State law by merely posting instead of publishing notice of a hearing involving the adoption of an ordinance, the effect of which has been to absolutely torpedo the house plans that the Lowrys spent two years or more refining, and filing with the Town, and spent hundreds of thousands of dollars in developing. This is not to say that, had the notice been published instead of merely posted, the Lowrys would for sure have been alerted, but you have to admit that the odds of their finding out about the ordinance go way up in the case of publication versus posting.

Mark Hynes, Esq.
Page 2 of 2
March 5, 2008

As a result of the failure of the Lowrys to get timely notice of the new ordinance, and as a result of the Town Council's denial of the Lowrys' appeal, the Lowrys have been damaged well in excess of \$1,000,000. The Town is left with a situation where a very satisfactory solution to a problem lot and a problem house could have been reached, had the parties only known that the change in the ordinance was coming down the pike. They could have filed a week before, instead of as it happened a week after the ordinance became effective.

It may or may not be too late to do anything about this. I would think that if this situation were called to the attention of the Council, that at least some of the more reasonable and responsible members in the Council would look upon this as less than satisfactory governance, and would see the justice involved in reversing the decision made the other night, and granting the appeal, and allowing the Lowrys to obtain their building permit and get everyone out of a nightmarish situation.

Very truly yours,



John Paul Hanna

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cc: Larry Lowry

RECEIVED
TOWN OF ATHERTON

2008 MAR 13 P 3:40

March 13, 2008

BY HAND DELIVERY AND EMAIL

Mayor James R. Janz
Vice Mayor Jerry Carlson
Council Member Kathy McKeithen
Council Member Charles E. Marsala
Town of Atherton
91 Ashfield Road
Atherton California 94027

Re: Reconsideration of Appeal re Application for 137 Stockbridge Avenue

Honorable Mayor Janz, Vice Mayor Carlson and Members of the Town Council:

On behalf of our clients, Larry and Jeannine Lowry, we respectfully request that the Town Council reconsider the decision made at its February 20, 2007 Town of Atherton (“Town”) Council meeting in which it denied our clients’ appeal. As you will recall, the subject matter of the appeal was the denial by Town Building Department Staff of our clients’ application for a major remodel and addition to 137 Stockbridge Avenue.

In accordance with Roberts Rules of Order, we urge you make a decision at the next Town Council meeting on Wednesday, March 19th as to whether to reconsider the appeal at your April meeting.

The stated grounds for rejecting our clients’ request was the application by Town Staff of a zoning ordinance amendment effective on May, 28 2007, which changed the regulations governing nonconforming uses and buildings (the “Ordinance”). However, that Ordinance is unenforceable because it was not enacted in accordance with applicable provisions of State law. Specifically, the Ordinance did not comply with State law public hearing and notice requirements and therefore deprived our clients – along with all other residents of the Town – of their rights to due process.

The City Attorney has verbally confirmed to our clients on several occasions¹ that the Town only posted – **but did not publish** – notice of the required public hearings on the Ordinance prior to its adoption. Indeed, the City Attorney has informed the Lowrys that it has

¹ Including in a teleconference in which I participated on Tuesday, March 12, 2008.

Mayor James R. Janz
Vice Mayor Jerry Carlson
Council Member Kathy McKeithen
Council Member Charles E. Marsala
March 13, 2008
Page 2

long been the Town's practice only to post and not to publish notice of changes to the Town's Zoning Ordinance prior to public hearings by the Planning Commission and Town Council.

Regardless of how long it has continued or how many changes to the Zoning Ordinance have been approved by the Town Council pursuant to this practice, it is simply not lawful. The Town's failure to publish notice in a newspaper of general circulation in the Town of Atherton of the required public hearings on this Ordinance – and any other zoning ordinance – violates State law, as described in more detail below.

State law requires both the Town's Planning Commission and the Town Council to hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance and requires that notice of the public hearings be given pursuant to Section 65090. [Cal. Gov't Code §§ 65854, 65856.] Section 65090 of the Government Code states that: "notice shall be published pursuant to Section 6061 *in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding* at least 10 days *prior to* the hearing or, if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency. Section 6061 states that "[p]ublication of notice pursuant to this section shall be for one time."

Within 15 days *after* passage of the ordinance, the city clerk must cause publication of the ordinance in a newspaper of general circulation *published and circulated* in the city or, if there is none, to cause it to be posted in at least three public places in the city, or published in a newspaper of general circulation printed and published in the county and circulated in the city. [Cal. Gov't Code § 36933.] Failure to publish or post an ordinance, or its summary, in substantially the manner and at the time required by California Government Code Section 36933 prevents the ordinance from taking effect or being valid. [Cal. Gov't Code. § 36933(b).] As there is no newspaper *published* in the Town of Atherton, we agree that merely posting the Ordinance *after its adoption* was proper.

However, Sections 65854 and 65856, which govern the noticing of the required public hearings *prior to adoption* of zoning ordinances, allow for only the posting of the notice (in contrast with the posting and publication, or only posting, of the notice) if there is no newspaper of general *circulation* in the Town. It is not the case that there is no newspaper of general circulation in the Town of Atherton; there are several, including the *Almanac* and the *Palo Alto Weekly* both of which are delivered free to all residents of Atherton. Therefore, because there is at least one newspaper of general circulation in the Town of Atherton, the Town must publish

Mayor James R. Janz
Vice Mayor Jerry Carlson
Council Member Kathy McKeithen
Council Member Charles E. Marsala
March 13, 2008
Page 3

notice of public hearings on *all* zoning ordinances – including the Ordinance – in at least one such newspaper.

It appears that the Town Attorney has mistakenly conflated the requirements of the “before-hearing” and “after-passage” State statutes, leading to his erroneous conclusion (and longtime advice to the Council) that publication is not required in Atherton because no newspaper of general circulation is actually published there. The publication requirement is simply not part of the “before-hearing” notice requirement.

Based on the foregoing analysis, it is undeniable that the Town violated state law public notice and hearing requirements and the due process rights of its residents by substituting posting of the notice in lieu of publication of the notice. It is our firm legal conclusion that the Town has seriously and repeatedly misinterpreted State law governing public hearing and noticing requirements, resulting in depriving not only our clients but all Atherton residents of their due process rights.

If you take the time to review the Lowrys’ letter of appeal (a copy of which is enclosed herewith for your convenience), you will bear witness to a “perfect storm” set of facts demonstrating how a municipality’s failure to provide due process to its citizens can result in draconian consequences for those citizens. These consequences amount to \$1,381,560 in damages for our clients. The letter of appeal provides multiple examples of steps our clients could have taken – and surely *would* have taken – to avoid these damages had they had the requisite ten-day notice of the pending Ordinance before both the Planning Commission meeting and the City Council meeting.

However, our clients had no notice whatsoever of the pendency of the Ordinance or of the meeting at which it would first be discussed. As Mr. and Mrs. Lowry are both avid and regular readers of the *Almanac* and the *Palo Alto Weekly*, they surely would have been alerted to the pendency of the Ordinance if notice of the requisite public hearings on the Ordinance had been published in compliance with state law. Given our clients’ high level of diligence of the Town’s zoning policies and practices, as demonstrated in their attached letter of appeal, Mr. and Mrs. Lowry would surely have taken the opportunity both to meet with Town staff prior to the Planning Commission meeting to learn the possible effects of the then-proposed Ordinance on their remodel plans, but would also have attended the Planning Commission and Town Council meetings and made their voices heard during these public hearings. They may well have requested that the public bodies agree to postpone the effective date of the Ordinance until all applications then “in the pipeline” had been finally approved or denied. The only reason they

Mayor James R. Janz
Vice Mayor Jerry Carlson
Council Member Kathy McKeithen
Council Member Charles E. Marsala
March 13, 2008
Page 4

did not do so is that notice of the required public hearings on the Ordinance were not properly published in compliance with state law.,

In reconsidering our appeal, we request that you adopt the second alternative provided in the City Council Staff Report dated February 20, 2008 from Ms. Lisa Costa Sanders, Deputy Town Planner which states on page three: "If the Council wishes to approve the appeal, the Council could direct staff to apply the former nonconforming regulation as the applicants had invested significant resources into the preparation of the plans and the plans were completed and ready for submission prior to the effective date of the ordinance." The Lowrys' architect is prepared to submit a written declaration, signed under penalty of perjury, that the plans were fully complete before the effective date of the ordinance.

Should the Council refuse to reconsider our clients' appeal, we will have no choice but to file a writ of mandate against the Town by which we will ask the San Mateo County Superior Court to direct the Town to comply with State law applicable to noticing public hearings for zoning changes. We respectfully urge you to reconsider our clients' appeal and avoid unnecessary litigation on this matter that would expose not only the Town's violation of State notice and hearing requirements for the Ordinance, but for all of the zoning ordinances it has enacted to date without providing proper notice.

Respectfully submitted,

Robin B. Kennedy

CJS

Robin B. Kennedy

RBK:mjc
Enclosure

cc: Jerry Gruber, City Manager (By Hand Delivery)
Kathi Hamilton, Acting City Clerk (By Hand Delivery)
Marc G. Hynes, Esq., City Attorney (via email)
John Hanna, Esq. (via email)
Client (via email)

Larry & Jeannie Lowry
137 Stockbridge Avenue
Atherton, California 94027
Phone: 650-364-9090
Fax: 650-368-9891
Email: larry_lowry@L3Ventures.com

January 27, 2008

Mr. Jerry Gruber
City Manager

Ms. Lisa Costa Sanders
Deputy Town Planner

Atherton Town Council

Town of Atherton
91 Ashfield Road
Atherton, California 94027-3896

Re: Appeal of Atherton Building Department Staff decision regarding major remodel and addition for 137 Stockbridge Avenue - Addendum

Per your request, this letter is intended to recap the timeline and bases for our appeal which we discussed at our meeting on January 24, 2008. We very much appreciate the time you spent with us and your assistance with this. We understand that this letter will be included as an addendum to our appeal.

RECAP OF THE TIMELINE

As discussed at our meeting last Thursday and in our appeal letter, we have been working on the plans for our major remodel and addition for almost ten years. We and our architect have had numerous, specific discussions with the Town building department regarding our plans throughout this effort, including detailed discussions of the plans themselves. At each stage of the process, we received specific input from the Town's building department regarding the plans, assurances that the plans that were being developed were consistent with the Town's zoning codes, and commitments that our plans would be approved if submitted as reviewed. Outlined below is a brief recap of the timeline.

1998 – 2005 (Planning and Research Phase)

We have dubbed this period the planning and research phase. This might seem like a long time. However, when you want to conduct research, consider all the alternatives, and

make sure that what you are considering is consistent with the Town's zoning codes, etc., it can take some time.

During this period we:

- Considered alternatives, including moving versus doing a major remodel and addition
- Toured the large number of houses that were on the market over time to gather ideas and to make sure that we thoughtfully evaluated the alternative of moving instead
- Met with a half a dozen prospective architects to discuss their thoughts on possible options for a major remodel and addition, discuss our ideas, and evaluate them as possible candidate architects for us
- Commissioned a set of "as-is" plans so that we could very specifically consider and evaluate possible alternative designs
- Developed initial concepts and sketches
- Had two meetings with Mike Hood, one at his office and one at our property

At our two meetings with Mike Hood, we reviewed the as-is drawings, our design concepts, zoning requirements and the implications for maintaining the two non-conforming rooms. At these meetings, Mike Hood assured us that we would be permitted to retain the two non-conforming rooms, in accordance with the explicit zoning codes and policies of the Town.

Based on this research and effort, and the explicit assurances from the Town via Mike Hood, we decided to proceed with the remodel and addition option.

October, 2005

In October of 2005, we hired Jim Maliksi & Associates to design our major remodel and addition, handle the permitting process, and assist us in selecting and monitoring the work of a prime contractor. In commissioning Maliksi & Associates we were very specific about the design we envisioned. We provided a written description and sketches of the design based on the as-is drawings we had commissioned and the substantial research and consideration we had undertaken. We also specifically alerted Maliksi & Associates to the two non-conforming rooms, the retention of which was central to the design and to our decision to do a major remodel and addition instead of moving, and the discussions we had had with and the assurances we had received from the Town. Jim Maliksi of Maliksi & Associates confirmed that he understood Atherton's zoning codes and that retaining the two non-conforming rooms was permitted. We asked him to reconfirm his, and our, understanding regarding retaining the two legally non-conforming rooms directly with the Town before launching the effort.

Week of October 10, 2005:

Jim Maliksi met with Mike Hood and Mike Wasserman to discuss zoning regulations and encroachment information regarding our project. Mr. Maliksi showed Mr. Hood and Mr. Wasserman the as-built plans prepared by our prior architect. These plans included the two existing set back encroachments. Mr. Hood advised Mr. Maliksi that the two set back encroachments were allowed to stay as long as the size and shape were not changed. Mr. Hood also represented that exterior finish changes and interior modifications to those rooms were authorized.

Based on Mr. Hood's once again very specific assurances, we launched the detailed design effort in October, 2005.

February, 2006

In February, 2006, Mr. Maliksi visited another project in the Town of Atherton which had encroachments similar to the ones involved with our project. The owner of that property indicated to Mr. Maliksi that the Town had allowed them to undertake a remodel at that site that involved non-conforming elements similar to our remodel. Mr. Maliksi reviewed the plans for that property to confirm that the Town of Atherton had authorized a remodel similar to our remodel. On February 10, 2006, Mr. Maliksi met with Lois English who confirmed the Town's authorization of that project. With this additional, "live" confirmation of the assurances from Mike Hood, our project continued to proceed.

June, 2006

During the period from October, 2005, to June, 2006, our initial plans were turned into detailed plans and drawings.

During the June 19-29, 2006, period, Gary McClure, the project manager for our project at Maliksi & Associates, met with the Atherton building department to review the proposed floor plans and site plan to ensure conformity with Atherton's zoning codes. He met first with Ken Huo, building inspector and plan checker, and presented the site plan and floor plans as proposed, showing the retention of the existing non-conforming areas of the existing residence, as well as the remodel and addition to the first floor and addition of a new second story. After establishing that the front, rear and side setbacks were correct for the particular site, they began discussing the issue of retaining the existing non-conforming structures, and the extent to which they could be modified. Ken Huo asked Mike Hood to join in this meeting. Gary McClure communicated the design intent in retaining the perimeter walls of the existing non-conforming portion of the house and adding or replacing the windows and doors per the revised plan. Mike Hood stated that this would be allowed, so long as it did not increase the degree of non-conformity. At the conclusion of this meeting, it was understood that the retention of the existing non-conforming structures would be allowed.

Based on these, once again, explicit and specific assurances from the Town, we proceeded with the detailed design of all exterior and interior elevations, selection of

appliances, materials, etc., and commissioned and completed the required engineering and geotechnical surveys, etc.

November, 2006

As of November, 2006, all of the plans, including all of the exterior and interior elevation details, etc. were completed, as indicated on the plans (see plan drafts dated November 15, 2006).

November, 2006 – April, 2007

During the period from November, 2006, when the plans were essentially complete to April, 2007, as we awaited the completion of the engineering and geotechnical surveys, etc., we refined the plans, visited appliance centers to select the kitchen appliances, visited show rooms to select flooring, counter top, and bath room materials and fixtures, etc., and detailed out the living room and dining room paneling, etc.

April 12, 2007

By early Spring of 2007, the engineering and geotechnical surveys, etc. along with all of the final detailed drawings had been completed. On April 12, 2007, the plans were stamped for submission for permits and were to be submitted to the Town.

June 22, 2007

The plans were formally submitted to the Town

April – September, 2007

With the plans completed, we launched the process of selecting the prime contractor for the project. We met with, interviewed and check references on five potential prime contractors, and visited completed projects for two of them. We also continued to refine the materials selections, etc.

September, 2007

For the first time we heard – “There may be a problem – new ordinance”.

Based on further research and discussions, we discovered that a new ordinance, that could effectively render valueless the very considerable time, effort and money we had invested, had become effective on May 18, 2007, i.e., just 35 days before our plans were formally submitted; over a month after they had been fully completed, stamped for submission, and were to have been submitted; over six months after they were essentially complete (November, 2006); and after years of multiple reviews and explicit assurances and commitments from the Town that retaining the two non-conforming rooms would be permitted.

APPEAL

1) Fairness

During the design process, we and our architect met with the Town's building department on numerous occasions, reviewed our plans in detailed and received repeated explicit assurances from the Town that we could retain the two non-conforming rooms. We have spent, literally, a decade and over \$250,000 on this effort, based on those specific, repeated and explicit assurances from the Town's senior staff. And, as is covered later, if our appeal is not acted on favorably, for us there will be no alternative but write off all of that effort and expenditure, sell our current property, secure a new property and start all over there – a very high price to pay given that our plans were developed based on explicit, repeated assurances from the Town; and, given that our plans were fully completed before the new ordinance was even voted on.

Should our architect have submitted our plans in April when he was supposed to? He stated that he had gone to the building department to submit our plans in April but that he had been sent away to gather some additional information.

Should our architect have done a better job of staying current on all developments in Atherton? He repeatedly assured us that he was doing so.

Given the major impact of the new ordinance, should the Town have made a more genuine effort to alert the residents of Atherton to the new ordinance? Menlo Park, Woodside and Portola Valley, in fact even the West Bay Sanitary District, all publish notices of potential/pending changes in zoning, etc., in the Country Almanac. Palo Alto publishes them in the Palo Alto Daily.

Should we ourselves have done more to stay current on changes and make certain that our plans were submitted in a timely manner? We thought that we were. We sought assurances from our architect at every step in the process. We very regularly read and monitored developments in the Country Almanac and the Palo Alto Daily. We did not realize that we had to go to and look at the posting board by the door of the Council chambers every month, or perhaps every week, to stay informed on major zoning changes, new ordinances, etc. I am sure that, if we had known that that is what we had to do, we could have found a way to do so. However, we did not know that we needed to do so, as I would guess is the case for the vast majority of Atherton residents.

These are all questions which may be worth some discussion. However, the real base question is – Should Atherton honor the very explicit, specific assurances and commitments it gave us repeatedly on multiple occasions throughout the design process? We believe that the only fair and honorable thing to do is to honor those commitments.

2) Consistency

The Council granted appeals in analogous situations involving 172 Austin in December of 2006, 84 Walnut Avenue in April of 2007, and possibly others. The case of 172 Austin is particularly interesting and relevant. In that case, the owners of 172 Austin appealed the staffs decision to not just remodel/rebuild the conforming part of their house but rather to rebuild even the non conforming part of their house, which they had been assured by Mike Hood that they could do even though doing so was against the written zoning code in place throughout their entire design effort.

Comparing the two cases, the cases of 172 Austin and 137 Stockbridge:

1) In both cases the owners were given repeated, explicit assurances that their plans would be approved; and, in both cases the owners expended very substantial time, effort and money based on Mr. Hood's (acting in his role as head of the Town's building department and thereby on behalf of the Town) explicit assurances. We are not sure what the basis was for Mr. Hood's assurances in the case of 172 Austin. However, in our case, i.e., 137 Stockbridge, his assurances were given repeatedly and were based on detailed reviews of very detailed plans, the same plans as were submitted with our permit application.

2) In both cases, approving the appeal would not impinge on any neighbor. This was the judgment of the Council in the case of 172 Austin. In the case of 137 Stockbridge, as discussed in detail in the next section (the Balance of Interests section), due to our extensive investment of both money and time in landscaping, including the 20 foot high hedge along the edge of our property on the side where the two non-conforming rooms are, the two currently existing legal non-conforming rooms can not even be seen from anywhere outside our property.

Further, in the case of the immediately adjacent property, i.e., the property at 18 Ralston Road, even absent this hedge the non-conforming rooms would not be visible. In 1998 - 1999 when they built their new house, in addition to the main residence and the guest house that they built 10 feet from the property line in the back corner of their property, the owners of 18 Ralston Road elected to build two new garages (against which they built lean-to's that extend nearly to the property line) and a third structure, each of which is 10 feet from the property line and between their main house and our property. So, in spite of the fact that they refused to install their legally required screening landscaping to block the view of these structures from our property, these structures are situated (conveniently for them) such that they totally block the view of our property from their house, even absent the 20 foot high hedge that we have invested heavily in developing on our side of the property line. Unfortunately for us, it has taken ten years to grow the screening landscaping on our property to screen the view from our property of these structures, the junk and trash piled up against them, and the old toilets that the owners of 18 Ralston felt it was appropriate to use along the property line,

facing us, as “stepping stools” to their elevated train tracks. Again, fortunately for them, the elevated structure for their train tracks block the view of these toilets from their yard, just as the three structures they built 10 feet from the property line and the extensive landscaping we invested in block any view of our property from their property.

And finally, 3) Interestingly, there is a difference between the two cases. In the case of 172 Austin, the plans which were developed were consistent with Mike Hood’s assurances but in violation of the letter of the zoning codes which were in place for the entire time, and for many years prior to the time during which, the plans for 172 Austin were being drafted. Conversely, in the case of 137 Stockbridge, the plans which have been developed are entirely consistent with and were based on both Mike Hood’s repeated reviews and assurances and the letter of the zoning codes in place throughout the entire design process, through the time at which the plans were completed, and up until 35 days before the plans were formally submitted to the Town.

So, rejecting the appeal for 137 Stockbridge, after accepting the appeal for 172 Austin, would seem to be inconsistent in the extreme.

3) Balance of Interests

If the Council rejects our appeal, it will result in substantial damages to us. We have spent literally 10 years considering every alternative and working on this, and have invested very, very substantial time and money in the effort, based on Mike Hood’s specific assurances that we could retain the two non-conforming rooms. There is not a viable alternative for us on this property. Therefore, rejecting our appeal will result in our having to scrap this effort, write off all of the time and money expended to date, and start over somewhere else, at very, very considerable additional cost to us.

Conversely, approving our appeal will benefit all:

- It will result in a very substantial upgrade to the main structure, at very considerable cost to us
- It will result in our eliminating from our property two very old, long time existing, very unattractive accessory structure, to the benefit of all
- In conjunction with the remodel and addition, we will be completing our already started very substantial upgrade of our street-side landscaping and fence
- And, the two non-conforming rooms that would remain are totally screened by a 20 foot high, very dense (English Laurel) hedge, and therefore can not even be seen from outside our property.

Inserted below is a picture of the hedge discussed above. The hedge is along our property line on the side of our property where the two existing legally non-conforming rooms are. The hedge is over 20 feet tall and totally blocks any visibility of the two non-conforming rooms.



Inserted below is a picture from in front of the adjacent property, i.e., the property at 18 Ralston Road. As is clear from this picture, our house, much less the two existing non-conforming rooms, can not even be seen from 18 Ralston Road. Also, in this picture, which was taken from the street in front of the property at 18 Ralston, you can see one of the three new structures that the owners of 18 Ralston Road built along, and 10 feet from, our common property line. Those structures also totally block any view of our property from theirs.



4) Best Alternative for All Concerned

Our planned major remodel and addition is the best alternative for all concerned. It

- Very substantially upgrades the property
- Eliminates the two very old, long time existing, very unattractive accessory structures from our property
- And, due to the very extensive screening landscaping that we have invested in, and that is already in place, the two non-conforming rooms that are to be retained can not even be seen from anywhere outside our property

Staying with the property as currently configured is a worse alternative for all concerned. It

- Retains the same two non-conforming rooms as in the option above
- But, also retains the two very old, long time existing, very unattractive accessory structures, each of which is ten feet from the property line
- Destines the property of further deterioration. The property is old and tired and in need of a major upgrade; but, such an upgrade can not be justified given its current configuration

Other alternatives that have been suggested would be even worse for all concerned or simply wouldn't work

- One alternative that has been suggested, i.e., tearing down the two existing non-conforming rooms and rebuilding them fully within the setback, although ironically, in fact very ironically, permitted by current zoning codes, makes no sense for anyone. Doing so
 - Moves them eight feet closer to the property line, with the result that they would then be only 12 feet (or, as would be allowed under current zoning codes, perhaps even only 10 feet), instead of their current 20 feet from the property line.
 - Could result in damage to the hedge, potentially to the detriment of our neighbor
 - Would add very substantial cost to the project, for no gain for anyone
 - Doesn't work in terms of the intended use of the rooms
- Other alternatives that have been raised, e.g., building a bedroom and a bedroom/office at the front of the house in front of the living room, or behind the family room and kitchen (blocking the back yard), or elongating the house even further and putting bedrooms along the hall and across from the dining room, also simply don't work or don't make sense.
- We clearly would welcome any other well thought out ideas. However, having spent ten years on this, and having solicited input from six architects, we can

assure you that we have considered a very full range of alternatives and have not been able to come up with any that meet our needs.

In summary, we are appealing the staffs' decision and asking the Council to approve our plans.

Or, said another way, we are asking the Council to Do the Right Thing, i.e., to

- Honor the assurances that were given to us and the commitments that were made to us, not once, but repeatedly and explicitly throughout our very expensive, intensive and extensive planning effort, including assurances that were given to us based on detailed reviews of detailed plans
- Be consistent in applying its judgment
- Balance the interests of all
- Support the alternative that is best for all
- Approve our plans, which were developed based on the explicit assurances and commitments of the Town, and that were fully completed before the new ordinance was even voted on
- And, take this opportunity to finally, constructively close the books on the Mike Hood era

We look forward to your favorable response to our appeal.

Regards,

Larry & Jeannie Lowry

RECEIVED Larry & Jeannie Lowry
TOWN OF ATHERTON 137 Stockbridge Avenue
Atherton, California 94027
2008 MAR 14 P Phone: 650-364-9090

March 13, 2008

Mr. James R. Janz, Mayor
Mr. Jerry Carlson, Vice Mayor
Ms. Kathy McKeithen, Council Member
Mr. Charles E. Marsala, Council Member
Town of Atherton
91 Ashfield Road
Atherton, California 94027-3896

Dear Sirs and Madam,

We would like to request that the Town Council reconsider our appeal. Further, we would like to request that in doing so, the Council in particular consider the second option which was included in the staff's report for the Council meeting on February 20, 2008, but not presented or discussed at the Council meeting on February 20, 2008, i.e., "If the Council wishes to approve the appeal, the Council could direct staff to apply the former nonconforming regulation as the applicants had invested significant resources into the preparation of the plans and the plans were completed and ready for submission prior to the effective date of the ordinance." (Please see page 3 of the staff's report for the Council meeting on February 20, 2008.) If, in considering this option, it would be helpful to the Council, our architect could submit a written declaration, signed under penalty of perjury, that the plans were fully complete before the date on which the ordinance was voted and well in advance of the effective date of the ordinance.

To briefly recap the main elements of our appeal:

- Our plans were fully completed and stamped for submission before the new ordinance was even voted on and long before it became effective.
- Our plans were explicitly approved by the former head of the Atherton building department, which prompted the subsequent extensive investment in detailing.
- The Town did not provide the notice that it was considering the new Ordinance that is required by State law, and in fact violated State law Section 65090 [Cal. Gov't Code §§ 65854, 65856.] which states that: "notice shall be published pursuant to Section 6061 *in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding* at least 10 days prior to the hearing or, if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency." This State law, which is explicitly intended provide the fullest possible opportunity for public awareness and input and to avoid situations such as ours, does not require

that there be a newspaper published and circulated within the jurisdiction. Rather, it requires that notice be published if there is a newspaper *in general circulation* within the jurisdiction. And, there are several such newspapers in general circulation in Atherton, including the Almanac and the Palo Alto Weekly, which is why all of the surrounding municipalities, including Menlo Park, Palo Alto, Woodside, Portola Valley, and even the West Bay Sanitation District, all publish notices as required by State law.

- If the Town had complied with this State law, we and our architect would have been aware of the impending ordinance and would have taken the steps necessary to avoid this entire situation for all of us. Unfortunately, however, the Town's failure to comply with State law, subsequent rejection of our plans and denial of our appeal, if not reconsidered, will result in damages to us in the amount of \$1,381,560.
- Our plans result in a very substantial upgrade of the main residence and landscaping, and, more importantly, remove from the property two old accessory structures which are in poor condition and ten feet from our property line, and preclude for ever the addition of any new accessory structures.
- Our plans are better for all concerned than the legally permitted alternative of tearing down the two legally non-conforming rooms and rebuilding them ten feet closer to the property line.

As very long term residents of Atherton, we are hopeful that we all can find a constructive way to deal with this situation. Therefore, we would very much appreciate your thoughtful reconsideration of our appeal, including the option provided by the staff and referred to above, especially in light of the fact that the Town did not comply with State law regarding the requirement to provide notice.

Sincerely,



Larry & Jeannie Lowry

cc: Mr. Jerry Gruber, City Manager
Mr. Marc G. Hynes, City Attorney
Ms. Lisa Costa Sanders, Deputy Town Planner



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: NEAL J. MARTIN, TOWN PLANNER

DATE: FOR THE MEETING OF MARCH 19, 2008

**SUBJECT: 2007 ANNUAL REPORT TO THE CITY COUNCIL ON THE ATHERTON
GENERAL PLAN IMPLEMENTATION**

RECOMMENDATION:

Accept the Annual Report and authorize its transmittal to the California Governor's Office of Planning and Research and the California Department of Housing and Community Development pursuant to Section 65400 of the California Government Code (CGC).

BACKGROUND:

The State of California Statutes of 2005 (effective January 1, 2006) require the preparation of an annual report to the local legislative body, the California Governor's Office of Planning and Research (OPR) and the California Department of Housing and Community Development (HCD) describing the following:

1. The status of the local general plan and progress in its implementation.
2. The progress in meeting its share of regional housing needs.
3. The degree to which the local general plan complies with the adopted OPR guidelines.
4. The date of the last revision to the local general plan.

The annual report is required to be filed with the State agencies by April 1 following the reporting year.

2007 ANNUAL REPORT:

Status of the Atherton General Plan and Progress in its Implementation

The Atherton General Plan was updated in 2002 and adopted by the City Council on November 20, 2002. It contains Land Use, Circulation, Housing, Open and Conservation, Noise, and Community Safety Elements. The Housing Element, which is the only element required to be reviewed by HCD, has been found to be “not in compliance” with the HCD review criteria. However, the Atherton City Council adopted the Housing Element pursuant to CGC Section 65585(f)(2) and included in its resolution of adoption written findings that explain the reasons the City Council believed that the element substantially complies with the requirements of the statute despite the findings of HCD.

Atherton is essentially built out in accordance with the policies stated in the General Plan. The Sphere of Influence as adopted by the San Mateo Local Agency Formation Commission is coterminous with the current City Limits. Essentially all of the existing parcels of land have been developed with land uses consistent with the General Plan. All of the streets and highways described in the General Plan are developed to their planned capacity. The entire infrastructure needed to serve the planned land uses and population is in place with sufficient capacity to accommodate the planned land uses and population.

Progress in meeting Atherton’s Share of Regional Housing Needs

CGC Section 65400(b)(2) provides: “The housing element portion of the annual report ... shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development ...” The tables provided in Attachment 1 describe the progress made in meeting Atherton’s share of regional housing needs.

Degree to which the Atherton General Plan complies with the Adopted OPR Guidelines

OPR adopted General Plan Guidelines in 2003 for use by local jurisdictions in the preparation of their general plans. The Guidelines are permissive, not mandatory and are quite extensive. Staff has prepared an analysis of the Atherton General Plan compared to the general criteria included in the Guidelines along with an evaluation of the degree to which the Atherton General Plan complies with the OPR Guidelines. That analysis is provided in Attachment 2. The analysis shows that the Atherton General Plan is in substantial compliance with the adopted OPR Guideline with a few minor exceptions. Staff is planning to propose a line item in the FY 2008-09 Budget for preparing amendments to the General Plan to bring that document into compliance with the Guidelines and other recent State law additions.

Date of the Last Revision to the Atherton General Plan

The last revision to the Atherton General Plan was adopted by the City Council on November 20, 2002.

ALTERNATIVES:

1. Accept the Annual Report.
2. Provide direction to Staff for modification to the Annual Report.
3. Take no action.

FINANCIAL IMPACT:

All costs associated with this project are paid for by the Town of Atherton from the Contract Planner budget.

RECOMMENDATION:

It is recommended that the City Council accept the Annual Report and authorize its transmittal to the California Governor's Office of Planning and Research and the California Department of Housing and Community Development pursuant to Section 65400 of the California Government Code (CGC).

FORMAL MOTION:

I move that the City Council accept the 2007 Annual Report and authorize its transmittal to the California Governor's Office of Planning and Research and the California Department of Housing and Community Development pursuant to Section 65400 of the California Government Code (CGC).

Prepared by:

Approvee by:

/s/ Neal Martin
Neal J. Martin
Town Planner

Jerry Gruber
City Manager

Attachments:

1. Annual Housing Element Progress Report – Tables A – C
2. Analysis of Atherton General Plan with OPR Guidelines

Town of Atherton
Annual Element Progress Report - 2007
Housing Element Implementation

Reporting Period: January 1 - December 31, 2007

Table A

Annual Building Activity Report
Very Low, Low and Moderate Income Units and Mixed Income Multifamily Projects

1 Project Identifier	2 Unit Category	3 Tenure R=Renter O=Owner	4 Affordability by Household Incomes				4a Units Demolished	5 Total Net Units per Project	6 Housing with Financial Assistance and/or Deed Restrictions		8 Housing without Financial Assistance or Deed Restrictions
			Very Low Income	Low Income	Moderate Income	Above Moderate Income			Assistance Programs for Each Development	Deed Restricted Units	
117 Glenwood	SFD	O			1		1	0			
37 De Bell	SFD	O			1		1	0			
98 Deodora	SFD	O			1		1	0			
78 Alejandra	SFD	O			1		1	0			
1 Barmetta	SFD	O			1		1	0			
2 Normandy	SFD	O			1		1	0			
96 Atherton	SFD	O			1		1	0			
251 Atherton	SFD	O			1		1	0			
49 Fairview	SFD	O			1		1	1			
73 Irving	SFD	O			1		1	0			
233 Park Lane	SFD	O			1		1	0			
86 Broadacres	SFD	O			1		1	0			
48 Fairview	SFD	O			1		1	0			
15 Cowell	SFD	O			1		1	0			
217 Camino al Lago	SFD	O			1		1	0			
73 Madrone	SFD	O			1		1	0			
4 Catalpa	SFD	O			1		1	0			
96 Clay	SFD	O			1		1	0			
70 Stern	SFD	O			1		1	0			
244 Polhemus	SFD	O			1		1	0			
(9) Total of Above Moderate from Table A2					20		19	1			
(10) Total by income units (Field 5) Table A					20		19	1			

Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable.

Town of Atherton
Annual Element Progress Report - 2007
Housing Element Implementation

Reporting Period: January 1 - December 31, 2007

Table B
Regional Housing Needs Allocation Progress
Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period.	RHNA Allocation by Income Level										Total Units to Date (all years)	Total Remaining RHNA by Income Level
	Income Level	2007	2008	2009	2010	2011	2012	2013	2014	2014		
Very Low	Deed Restricted	1	2	3	4	5	6	7	8		19	
Low	Non-Deed Restr.										14	
	Deed Restricted											
Moderate	Non-Deed Restr.										16	
	Deed Restricted											
Above Moderate	Non-Deed Restr.	1									33	
Total RHNA by ABAG.		1									33	
Enter allocation number:		1										
Total Units												33
Remaining Need for RHNA Period												

Residential Building Permits 2007-2014

Year	Units Demo.	New Units	New 2nd Units	HIP Units	Net
2007	19	20			1
2008					0
2009					0
2010					0
2011					0
2012					0
2013					0
2014					0
Totals	19	20	0	0	1

Town of Atherton

Annual Element Progress Report - 2007
Housing Element Implementation

Reporting Period: January 1 - December 31, 2007

Table C

Program Implementation Status

Program Description (by Housing Element Program Names)	Name of Program	Objective	Deadline in H.E.	Status of Implementation
§3.410 Market Rate Housing Construction	107 New Above Market Units	107 New Above Market Units	2006	Net 1 new unit constructed. Market has limited residential construction to reconstruction of 1 unit for each demolished unit.
§3.420 Second Dwelling Unit Program	10 New Low Income Units	10 New Low Income Units	2006	No new units constructed.
§3.430 Faculty and Student Housing Program	27 New Faculty Units and 58 New Student Units in very low, low and moderate income ranges	27 New Faculty Units and 58 New Student Units in very low, low and moderate income ranges	2006	Market failed to construct any faculty or student units during the planning period.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH REGIONAL GOVERNMENT SERVICES AUTHORITY (RGS) FOR A HUMAN RESOURCES SPECIALIST

RECOMMENDATION:

City Council to approve an agreement with Regional Government Services Authority (RGS) For a Human Resources Specialist.

INTRODUCTION:

With the recent departure of the Town's Assistant to the City Manager, a void has been created with the Town's Human Resources Department. Although the position of Assistant to the City Manager encompassed a broad scope of responsibilities, one of the key functions is Human Resources and Human Resource Management. Human Resources requires an individual with extensive expertise in labor law, labor relations, labor negotiations, and strong organizational skills. Fortunately the Town of Atherton was able to secure Ms. Andrea Greenberg from Regional Government Services Authority. Ms. Greenberg served as the Human Resources Director for San Carlos and has twenty years experience in the field of Humana Resource Management. I am confident that Ms. Greenberg will be instrumental in moving the organization forward until we can hire a permanent Assistant to the City Manager. A copy of Ms. Greenberg's resume is attached for your review. A copy of Regional Government Services Authority Contract for a Human Resources Consultant is also attached.

ANALYSIS:

After consultation with the outgoing Assistant to the City Manger and discussion with the Town of Atherton's staff, it was determined that a qualified Human Resources Specialist could maintain the current level of services providing that additional responsibilities conducted by the Assistant to the City Manager be delegated to other staff members. These responsibilities include Risk Management; Information Technology; and attending, supporting, and interacting with regional organizations and activities. Numerous other functions were also performed by this position and will be handled by the City Manager.

FISCAL IMPACT:

The Outgoing Assistant to the City Manager received a total Benefit package of \$ 12,196.00. Regional Government Services Authority will charge the Town of Atherton \$ 100.00 per hour for the position of Human Resources Consultant. Ms. Greenberg will be working twenty four hours per week; therefore, the total monthly charge will be \$ 9,600.00 for a monthly savings of \$ 2,596.00

Attachments:

Andrea Greenberg
Human Resources Consulting Services
22239 Moyers Street
Castro Valley, CA 94546
510-886-5432 or 510-206-3320(c)
andreaghr@aol.com

Career Summary

My career in Human Resources spans over 30 years in Human Resources (HR), Labor Relations, and Workers' Compensation. I have worked as a management analyst and director and am proficient in all areas of Human Resources. My experience also takes in small, medium and large employers including local, regional, and state government.

My goal in managing and performing HR work is to assist employers in adopting or furthering positive management practices that consider and, when possible, harmonize the interests of the agency and its employees.

My current areas of work interest include project work and part time work in the following HR subject areas:

- Positive HR Management Practices –Advise on how to identify and achieve;
- HR Policy and Procedures - Develop and update;
- HR Initiatives and Proposals - Develop and provide cost/benefit summaries;
- HR Special Projects – Manage or assist in special projects such as FLSA determinations, special event coordination;
- Labor Relations –Advise on approaches to employee relations issues, initiate and respond to labor contract proposals including contract language, develop employer/employee relations resolutions and manage or assist in completing related processes such as certification/decertification;
- HR Initiatives or Issues Requiring Research and Reports –Provide all staff work up to and including staff report;
- Training and Development – Identify and develop courses and low-cost/no cost resources for course presentation and evaluation
- Complaint Resolution– Advise on appropriate management actions to take to resolve conflicts or complaints and resources to consider for conducting investigations when necessary;
- Job Description/Classification Development and Compensation – Provide all staff work;
- Management Recruitments – Manage or assist in executive recruitment processes including all aspects of selecting and monitoring activities of recruiter and manage logistics;
- Non-Management Recruitment – Manage or assist in all aspects of recruitments.

/ag

AGREEMENT FOR MANAGEMENT AND ADMINISTRATIVE SERVICES

This Agreement for Management Services (this "**Agreement**") is made and entered into as of the **20th** day of **March 2008**, by and between the Town of Atherton ("**Town**"), a general law Town, and Regional Government Services Authority ("**RGS**"), a joint powers authority, (each individually a "**Party**" and, collectively, the "**Parties**").

RECITALS

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

- A. That Town desires to engage RGS to render certain services to Town;
- B. That RGS is a management and administrative services provider and is qualified to provide such services to Town; and
- C. That Town has elected to engage the services of RGS upon the terms and conditions as hereinafter set forth.

TERMS AND CONDITIONS

1. **Services.** The services to be performed by RGS under this Agreement shall include those services set forth in **Exhibit A**, which is by this reference incorporated herein and made a part hereof as though it were fully set forth herein.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

1.1 Standard of Performance. RGS shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which RGS is engaged in the geographical area in which RGS practices its profession. RGS shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in RGS' profession.

1.2 Assignment of Personnel. RGS shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Town, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, RGS shall reassign such person or persons.

1.3 Time. RGS shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in above and to satisfy RGS' obligations hereunder, but no less than provided for in **Exhibit A**.

2. **Term of Agreement and Termination.** Services shall commence March 20, 2008, and shall continue through December 31, 2008, unless earlier terminated. This agreement may be terminated by either Party, with or without cause, upon thirty (30) days written notice. Town has the sole discretion to determine if the services performed by RGS are satisfactory to the Town, which determination shall be made in good faith. If the Town determines that the services performed by RGS are not satisfactory, the Town may terminate this agreement by giving written notice to RGS. Upon receipt of notice of termination by either Party, RGS shall cease performing duties on behalf of Town on the termination date specified and the compensation payable to RGS shall include only the period for which services have been performed by RGS.
3. **Compensation.** Payment under this Agreement shall be as provided in **Exhibit A**.
4. **Effective Date.** This Agreement shall become effective when executed by both Parties.

5. Relationship of Parties.

5.1 It is understood that the relationship of RGS to Town is that of an independent contractor and all persons working for or under the direction of RGS are its agents or employees and not agents or employees of Town. Town and RGS shall, at all times, treat all persons working for or under the direction of RGS as agents and employees of RGS, and not as agents or employees of the Town. Town shall have the right to control RGS only on the basis of RGS' services rendered pursuant to this agreement and assignment of personnel pursuant to Section 1.

5.2 RGS shall provide services under this Agreement through one or more employees of RGS qualified to perform services contracted for by Town. Key staff of RGS who will provide services to the Town are indicated in **Exhibit A**. The Executive Director of RGS will not reassign any of RGS staff indicated in **Exhibit A** without first consulting with the Town. The Executive Director of RGS will consult with Town on an as-needed basis to assure that the services to be performed by RGS are being provided in a professional manner and meet the objectives of Town.

5.3 TOWN shall not have the authority or ability to direct how services are to be performed, specify the location where services are to be performed, establish set hours or days for performance of services, or determine the technical or policy outcome, except as set forth in **Exhibit A**.

5.4 TOWN shall not have any right to discharge any employee of RGS from employment with RGS.

5.5 RGS shall, at its sole expense, provide for its employees providing services to Town pursuant to this Agreement any and all benefits, such as worker's compensation, disability insurance, vacation pay, sick pay, or retirement benefits; obtain and maintain all licenses and permits usual or necessary for performing the services; pay any and all taxes incurred as a result of the employee(s) compensation, including estimated taxes, FICA and other employment taxes; and provide Town with proof of payment of taxes on demand.

- 6. Insurance Requirements.** Before beginning any work under this Agreement, RGS, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by RGS and its agents, representatives, employees, and subcontractors. RGS shall provide proof satisfactory to Town of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the Town. RGS shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be paid by RGS. RGS shall not allow any subcontractor to commence work on any subcontract until RGS has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to Town. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

6.1 Workers' Compensation. RGS shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by RGS. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, RGS may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be determined by the California Department of Industrial Relations. The insurer, if insurance is provided, or RGS, if a program of self-insurance is provided, shall waive all rights of subrogation against the Town and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement where the subject loss is not proximately caused by the actions of or failure to act by a Town officer, agent or employee or any person or entity other than the parties to the agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

6.2 Commercial General and Automobile Liability Insurance.

6.2.1 General requirements. RGS, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. RGS shall additionally maintain commercial general liability in an amount not less than TWO MILLION DOLLARS (\$2,000,000) aggregated for bodily injury, personal injury, and property damage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

6.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

6.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. TOWN and its officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of RGS, including the insured's general supervision of RGS; products and completed operations of RGS; premises owned, occupied, or used by RGS; and automobiles owned, leased, or used by RGS. The coverage shall contain no special limitations on the scope of protection afforded to Town or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the Town and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the Town shall be called upon to contribute to a loss under the coverage.
- d. Any failure of RGS to comply with reporting provisions of the policy shall not affect coverage provided to AUTHORITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

6.3 Professional Liability Insurance. Upon written request of Town, RGS, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

6.3.1 Any deductible or self-insured retention shall not exceed \$1,000 per claim.

6.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

6.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, RGS must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The Town shall have the right to exercise, at RGS' sole cost and expense, any extended reporting provisions of the policy, if RGS cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the Town prior to the commencement of any work under this Agreement.

6.4 All Policies Requirements.

6.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

6.4.2 Verification of coverage. Prior to beginning any work under this Agreement, RGS shall furnish Town with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.4.3 Subcontractors. RGS shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

6.4.4 Variation. The Town may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the Town's interests are otherwise fully protected.

6.4.5 Deductibles and Self-Insured Retentions. RGS shall disclose to and obtain the approval of Town for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Town's Town Manager, RGS may increase such deductibles or self-insured retentions with respect to Town, its officers, employees, agents, and volunteers. The Town's Town Manager may condition approval of an increase in deductible or self-insured retention levels with a requirement that RGS procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

6.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, RGS shall provide written notice to Town at RGS' earliest possible opportunity and in no case later than five days after RGS is notified of the change in coverage.

6.5 Remedies. In addition to any other remedies Town may have if RGS fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Town may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Town may have and are not the exclusive remedy for RGS' breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order RGS to stop work under this Agreement or withhold any payment that becomes due to RGS hereunder, or both stop work and withhold any payment, until RGS demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

7. Legal Requirements.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. RGS and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, RGS and any subcontractors shall comply with all applicable rules and regulations to which Town is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. RGS represents and warrants to Town that RGS and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. RGS represents and warrants to Town that RGS and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

7.5 Nondiscrimination and Equal Opportunity. RGS shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by RGS under this Agreement. RGS shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

8. **Keeping and Status of Records**

8.1 Records Created as Part of RGS' Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that RGS prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Town. RGS hereby agrees to deliver those documents to the Town upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Town and are not necessarily suitable for any future or other use.

8.2 RGS' Books and Records. RGS shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Town under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to RGS to this Agreement.

8.3 Inspection and Audit of Records. Any records or documents that Section 8.2 of this Agreement requires RGS to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Town.

9. **Non-assignment.** This Agreement is not assignable either in whole or in part without the written consent of the other party.
10. **Amendments.** This Agreement may be amended or modified only by written agreement signed by both Parties.
11. **Validity.** The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.
12. **Governing Law/Attorneys Fees.** This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the Parties hereto to enforce any provision of the Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs of litigation.
13. **Mediation.** Should any dispute arise out of this Agreement the Parties may meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached, neither Party shall be deemed a prevailing party for any purpose, including paragraph 12 of this Agreement, and each Party shall bear its own legal costs.
14. **Entire Agreement.** This Agreement, including **Exhibit A**, comprises the entire Agreement.
15. **Indemnity.** It is understood and agreed that neither Town nor its officers or employees are responsible for any damage or liability occurring by reason of anything that RGS or its officers or employees do or fail to do under or in connection with any work or authority delegated to or performed by RGS under this Agreement. It is also understood and agreed that, pursuant to Government Code section 895.4, RGS shall fully indemnify Town and hold it harmless from any damage or liability occurring by reason of anything done or omitted to be done by RGS or its respective officers or employees in connection with any work or authority delegated to or performed by RGS under this Agreement. Said indemnity shall include, but is not limited to, all reasonable costs and attorney's fees incurred in defense of any and all claims covered by this provision.

Similarly, it is understood and agreed that neither RGS nor its officers or employees are responsible for any damage or liability occurring by reason of anything that Town or its officers or employees do or fail to do.

under or in connection with any work or authority delegated to or performed by Town under this Agreement. It is also understood and agreed that, pursuant to Government Code section 895.4, Town shall fully indemnify RGS and hold it harmless from any damage or liability occurring by reason of anything done or omitted to be done by Town or its respective officers or employees in connection with any work or authority delegated to or performed by Town under this Agreement. Said indemnity shall include, but is not limited to, all reasonable costs and attorney's fees incurred in defense of any and all claims covered by this provision.

Notwithstanding the foregoing, RGS shall defend, indemnify and hold Town harmless from any and all claims and liabilities arising from any assertion that any employee of RGS or person performing work pursuant to this agreement is entitled to benefits from, or is covered by, the Social Security or California PERS retirement systems as a result of providing any services to Town, provided that RGS' obligation for any payments shall be limited to payments the Town may be required to pay.

16. **Notices.** All notices required by this Agreement shall be given to Town and RGS in writing, by first class mail, postage prepaid, addressed as follows:

TOWN: Town of Atherton
91 Ashfield Road
Atherton, CA 94027

RGS: Regional Government Services (RGS) Authority
PO Box 1350
Carmel Valley, CA 93924

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first written by their respective officers duly authorized on their behalf.

Town of Atherton:

By: _____
Jerry Gruber, Town Manager

Dated: _____, 2008

APPROVED AS TO FORM:

By: _____
Marc G. Hynes, Town Attorney

Dated: _____, 2008

REGIONAL GOVERNMENT SERVICES:

By: _____
Richard H. Averett, Executive Director

Dated: _____, 2008

APPROVED AS TO FORM:

By: _____
Elizabeth Silver, RGS Counsel

Dated: _____, 2008

EXHIBIT A

SCOPE OF SERVICES

RGS will assign its employee to act as Human Resources Consultant. The assigned Human Resources Consultant will periodically report to and assist the Town Manager or his/her designees to perform the services. Assignments include initiating: recruiting for an Assistant to the City Manager, Police Chief and Town Clerk; sourcing a Negotiator for upcoming negotiations and assisting in the negotiations (with three bargaining units up for renewal at the same time); developing a set of policies and procedures and finishing the drafted Personnel Rules and Regulations; and performing routine Human Resource and workers' comp functions. Risk management functions will also be performed, with assistance of risk management expertise at terms acceptable to the Town. This may include subcontracting as approved by the Town Manager.

For the assignment initially contemplated under this agreement, the RGS employee assigned to provide HR Consultant services shall be reasonably available to perform the services on-site for 24 hours per work week, for a duration mutually agreeable to the parties, but not later than December 31, 2008.

COMPENSATION:

1. Fees. The Town agrees to pay to RGS the full cost of compensation, a part of the hourly rate as shown in Exhibit A, for the assigned RGS employees. Compensation is shown on an hourly basis but will be invoiced on a monthly basis. Any changes to the list of key RGS staff will be made by written notice of RGS' Executive Director to Town. If the Town elects to hire RGS employee any time during or within six months of the completion of that RGS employee's service provision under this agreement, the Town shall pay a fee to RGS of \$10,000.
2. RGS and Town acknowledge and agree that compensation paid by Town to RGS under this Agreement is based upon RGS' costs of providing the services required hereunder, including salaries and benefits of employees. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities for which RGS may be obligated for its employees or may otherwise be contractually obligated.
3. Reimbursement of RGS' Administrative Cost. The Town shall reimburse RGS for RGS administrative support, and direct external costs. Administrative support costs are those expenses necessary to administering this Agreement, and are included with hourly costs listed below.
4. Terms of Payment. RGS shall submit invoices at least monthly. Payment of invoices is due within 30 days of receipt and prior to the beginning of each month. Delinquent payments will be subject to a late payment carrying charge computed at a periodic rate of 1% per month, which is an annual percentage rate of 12%, which will be applied to any unpaid balance owed commencing seven (7) days after the payment due date. Additionally, in the event the Town fails to pay any undisputed amounts due to RGS within fifteen (15) days after payment due date, then the Town agrees that RGS shall have the right to consider said default a total breach of this Agreement and the duties of RGS under this Agreement may be terminated by RGS upon ten (10) working days advance written notice.

PAYMENT ADDRESS:

All payments due RGS shall be paid to: Regional Government Services, c/o McGilloway & Ray Accounting and Consulting, 2511 Garden Road, Suite A-180, Monterey, CA 93940-5381.

KEY RGS STAFF:

POSITION	KEY STAFF	HOURLY COSTS
Human Resources Consultant	Andrea Greenberg	\$100.00

The anticipated start date for the assigned RGS employee is on or after March 20, 2008.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY MANAGER, JERRY GRUBER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: PROFESSIONAL RECRUITMENT FOR THE POSITIONS OF ASSISTANT TO THE CITY MANAGER, DIRECTOR OF FINANCE AND CHIEF OF POLICE

RECOMMENDATION:

Award recruitment contract for Assistant to the City Manager, Director of Finance and Chief of Police to Peckham and McKenney Executive Search and Consulting, not-to-exceed \$46,000.

INTRODUCTION:

With the departure of the Assistant to the City Manager and the Director of Finance, in addition to the upcoming retirement of the Police Chief (see attached letter from Bob Brennan), a need to recruit, hire and retain key management staff exists. Currently, the Town of Atherton is fortunate to have Mr. Bill Yeomans as the Interim Director of Finance. Bill has agreed to provide the Town with his services until December 2008 if needed. Ms. Andrea Greenberg from RGS has agreed to stay on until the Position of Assistant to the City Manager has been filled and a transitional time can be successfully completed. Andrea is doing a great job with our Human Resources Department. Lieutenant Glenn Nielson has agreed to be the Interim Chief of Police until the recruitment for the Chief of Police is completed. I requested three proposals from executive recruitment firms and required that all three recruitments be bid on collectively for fiscal and logistical reasons.

ANALYSIS:

Currently, two of the three recruitments are being filled with contract employees. The long-term Goals and Objectives for the Town of Atherton need to focus on recruiting, hiring, training, and retaining qualified individuals who can continue to move the

organization forward. After reviewing the three proposals from, Bob Murray and Associates, and William Avery and Associates and analyzing timing, fees, and placement guarantees, Peckham and Mckenny seems to meet the needs of the Town over the other two.

FISCAL IMPACT:

As part of the Mid- Year Budget adjustment for fiscal budget year 2007- 2008 to be presented to Council on March 19, 2008, \$ 46,000 has been allocated for professional recruitment.

Attachments:



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: ADOPTION OF A RESOLUTION ENDORSING THE PARKS FOR THE FUTURE CONCEPT

RECOMMENDATION

Consider adoption of the attached Resolution endorsing the Parks for the Future concept.

SUMMARY

Parks for the Future is an effort to secure dedicated tax-based revenues to support the parks- and recreation-related activities of San Mateo County, the cities located within the County, the Ladera and Highlands Recreation Districts and Mid-peninsula Regional Open Space District. This would be accomplished through voter approval of a measure on the June 3, 2008, ballot to increase sales tax by 1/8th of a cent for a period of 25 years.

The revenue, projected to rise between approximately \$16 million per year (at 2002 figures), would be allocated to jurisdictions per a formula. The revenue must be used for park- and recreation-related functions, but each jurisdiction will have the authority to spend the funds according to its need. Funds could be spent on maintenance, operations, activities and programs, capital improvements or acquisition; and jurisdictions could vary how the money is spent over the life of the tax. Under the measure, cities and the County will be required to maintain their General Fund contributions to the parks and recreation budgets. C/CAG would serve as the administrative board for distribution of funds, auditing and reporting functions.

BACKGROUND:

Funding Distribution

Through a negotiated process, the following distribution formula was determined.

Percentage	Recipient
52%	cities
42%	county
6%	special districts
Annual growth of sales tax revenues equal to or less than 4% will be distributed per this formula. Cities and special districts only will benefit from annual growth greater than 4%.	

The cities further discussed and identified a distribution formula for the cities' share. The revenues will be distributed per capita with the smaller cities receiving a minimum of 1.357 % of the net revenue. A distribution chart representing revenue per this formula using 2002 figures for all cities and special districts is attached at end of the document.

The numbers reflect the distribution of the net revenues, after administrative costs are subtracted. Note that the State Board of Equalization estimates that it is 5% to administer the tax and for planning purposes, 1% is being identified for local administration by C/CAG. Administrative costs will be charged at actual costs and may be less depending on number and frequency of audits. A one-time setup charge (could be as high as \$40,000) and any election costs (could be as high as \$350,000 depending on number of countywide measures) will also be deducted from the first quarter revenues.

Voter Approval Required

Action by city councils is not required to place the measure on the ballot; however, proponents are seeking support from the cities. Two-thirds approval by those voting in the election is required for the measure to pass. The measure does not need two-thirds approval of the voters in each city.

**This table *illustrates* expected base year distribution.
It uses sales tax at 2002 level with administrative costs deducted**

	<i>Base Amount</i>
County	\$6,346,207
Special Districts	\$906,601*
<u>Atherton</u>	\$205,000
<u>Belmont</u>	\$268,272
<u>Brisbane</u>	\$205,000
<u>Burlingame</u>	\$300,681
<u>Colma</u>	\$205,000
<u>Daly City</u>	\$1,106,502
<u>East Palo Alto</u>	\$315,076
<u>Foster City</u>	\$307,569
<u>Half Moon Bay</u>	\$205,000
<u>Hillsborough</u>	\$205,000
<u>Menlo Park</u>	\$328,733
<u>Millbrae</u>	\$221,234
<u>Pacifica</u>	\$409,942
<u>Portola Valley</u>	\$205,000
<u>Redwood City</u>	\$805,169
<u>San Bruno</u>	\$428,896
<u>San Carlos</u>	\$295,983
<u>San Mateo</u>	\$987,556
<u>South San Francisco</u>	\$646,596
Woodside	\$205,000
Total	\$15,110,017

*** Special District Allocations**

MROSD (70% of 6%)	\$634,620	
Highlands RD (20% of 6%)	\$181,320	Ladera
RD (10% of 60%)	\$ 90,660	

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ENDORING THE PARKS FOR THE FUTURE CONCEPT**

WHEREAS, Parks for the Future is an effort to secure dedicated tax-based revenues to support the parks- and recreation-related activities of San Mateo County, the cities located within the County, the Ladera and Highlands Recreation Districts, and Mid-Peninsula Regional Open Space District through a ballot measure to increase sales tax by 1/8th cent; and,

WHEREAS, The Parks for the Future team has worked diligently to achieve consensus among the 20 cities, specials districts, and San Mateo County on a distribution system that is fair and equitable; and,

WHEREAS, Town of Atherton representatives participated in the consensus building effort;

WHEREAS, The sales tax revenue will provide a stable source of funding to maintain San Mateo County parks in a clean and safe condition, to complete deferred maintenance and capital improvement projects.

NOW, THEREFORE, BE IT RESOLVED that the Town of Atherton endorses the San Mateo County Board of Supervisors measure on the June 3, 2008, ballot.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of March, 2008, by the following vote:

*AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:*

ATTEST:

James R. Janz, MAYOR
TOWN OF ATHERTON

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF MARCH 19, 2008

**SUBJECT: ADOPT A RESOLUTION APPROVING THE MENLO PARK
RECOMMENDATION TO REMOVE PARKING IN FRONT OF 1850 EL
CAMINO REAL (CELIA'S RESTAURANT)**

RECOMMENDATION:

That the City Council adopt a resolution approving the recommendation from the City of Menlo Park to remove parking in front of 1850 El Camino Real.

BACKGROUND:

The City Council approved the recommendation of Menlo Park to remove parking in front of Celia's restaurant at the February City Council meeting. Menlo Park then advised that Caltrans requires a resolution in order to install the No Parking zone. The attached resolution adopts the action approved at the February meeting.

FISCAL IMPACT:

There is no fiscal impact of this approval. Menlo Park has agreed to bear the project costs.

Prepared by:

Approved by:

Duncan L. Jones, P.E.
Public Works Director

Jerry Gruber
City Manager

Attachments: Resolution

RESOLUTION 08-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AUTHORIZING THE INSTALLATION OF AN ADDITIONAL 80-FOOT NO
PARKING ZONE ON EL CAMINO REAL, SOUTH OF SPRUCE AVENUE
AT 1850 EL CAMINO REAL**

WHEREAS, the Town of Atherton, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefor,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the Town of Atherton that the City Council does hereby authorize the installation of an additional 80-foot No Parking zone on El Camino Real, south of Spruce Avenue, at 1850 El Camino Real.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of March, 2008, by the following vote:

<i>AYES:</i>	<i>COUNCIL MEMBERS:</i>
<i>NOES:</i>	<i>COUNCIL MEMBERS:</i>
<i>ABSENT:</i>	<i>COUNCIL MEMBERS:</i>
<i>ABSTAIN:</i>	<i>COUNCIL MEMBERS:</i>

ATTEST:

James R. Janz, MAYOR
TOWN OF ATHERTON

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF MARCH 19, 2008

**SUBJECT: ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD
NOTICE OF COMPLETION FOR THE VALPARAISO AVENUE
OVERLAY PROJECT, PROJECT NO. 06-001**

RECOMMENDATION

Accept the work and authorize recording of a Notice of Completion for the Valparaiso Avenue Project, Project No. 06-001.

INTRODUCTION

The Council awarded a contract in June 2007 to Granite Construction Company for \$590,615.50, with a \$59,061.55 construction contingency, for a total authorized amount of \$649,677.05. Work under the contract has been completed.

ANALYSIS

The original contract price was for \$590,615.50. There were multiple field directive change orders which are still being negotiated. In addition, the final division of funding between Atherton and Menlo Park still needs to be determined. Because the contractor is complete with the work, including the punch list items, it is appropriate to approve and record a Notice of Completion at this time. Final payment is not made for 35 days after recording of the Notice of Completion. By that time, the financial information will have been resolved and brought back to the City Councils of Atherton and Menlo Park for approval of the final project cost, and final payment to the contractor.

FISCAL IMPACT

Federal funds in the amount of \$470,000 have been allocated and authorized for this project. A cooperative agreement with Menlo Park will result in reimbursement to Atherton of the Menlo Park share of the project costs above the federal grant amount (the local share), as determined by costs spent within each jurisdiction. Parcel Tax funds in the amount of \$360,000 were budgeted for this project in FY 2006-07 for Atherton's share. Of this amount, \$180,000 is Atherton's anticipated share of the federal funds and \$180,000 is from Parcel Tax funds. Atherton's share of the original contract amount is \$251,561 (or \$71,561 of the local share), \$108,439 below the FY 2006-07 budget. The final project cost and Menlo Park reimbursement will be determined for the April 2008 City Council meeting.

CONCLUSION:

It is appropriate for the Council to accept the work and authorize recording a Notice of Completion at this time.

Prepared by:

Approved by:

Duncan L. Jones, P.E.
Public Works Director

Jerry Gruber
City Manager

Attachment: Notice of Completion
Certificate of Completion

RECORD REQUESTED BY:

TOWN OF ATHERTON
AND WHEN RECORDED MAIL TO:

CITY CLERK, TOWN OF ATHERTON

91 ASHFIELD ROAD
(Street Address)
ATHERTON, CALIFORNIA 94027
(City, State and Zip Code)

No fee pursuant to Government Code Section 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TOWN OF ATHERTON
NOTICE OF COMPLETION

Valparaiso Avenue Overlay Project
PROJECT NO. 06-001
ATHERTON, CALIFORNIA

NOTICE IS HEREBY GIVEN THAT Duncan L. Jones, Engineer of Work for the Town of Atherton, County of San Mateo, California, on the 20th day of March, 2008, did file with the City Clerk of said Town a Certificate of Completion for the work described in the construction contract awarded to Granite Construction Company on the 20th day of June, 2007, said contract being executed on the 24th day of July, 2007.

That said work and improvements were accepted as completed on the 3rd day of March, 2008, and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 19th day of March, 2008, and that the name of the surety on the Contractor's bond for performance, labor and materials on said project is Federal Insurance Company, 15 Mt. View Road, Warren, NJ 07059.

That said work and improvements consisted of milling, asphalt overlay, utility adjustments and pavement striping on Valparaiso Avenue from North Lemon Street to El Camino Real, as described in the plans and specification approved by the City Council of the Town of Atherton pursuant to motion, adopted the 21st day of February, 2007.

That I, Duncan L. Jones, City Engineer of the Town of Atherton, am authorized by said Motion to execute and file this notice with the County Recorder of the County of San Mateo.

BY: _____
City Engineer

Date

ATTEST: _____
City Clerk

Date

'I declare under penalty of perjury that the foregoing is true and correct.'

(Date and Place)

(Signature)

**TOWN OF ATHERTON
CERTIFICATE OF COMPLETION**

PROJECT NAME: Valparaiso Avenue Overlay
PROJECT NUMBER: 06-001
LOCATION: North Lemon Street to El Camino Real

NOTICE IS HEREBY GIVEN:

1. That on March 3, 2007, the Public Works project known as the Valparaiso Avenue Overlay Project Number 06-001 was completed in accordance with the plans and specifications as required by the Town of Atherton.

2. That the name and address of the party filling this notice is:
Town of Atherton
91 Ashfield Road
Atherton, California 94027.

3. That the name and address of the Contractor responsible for the construction of the project is:
Granite Construction Company
715 Comstock Street
Santa Clara, CA 95054

4. That the name and address of the Contractor's surety is:
Federal Insurance Company
15 Mt. View Road
Warren, NJ 07059

5. That the project is described as:
Milling, asphalt overlay, utility adjustments and pavement striping on Valparaiso Avenue from North Lemon Street to El Camino Real, as more particularly described in the plans and specification approved by the City Council of the Town of Atherton pursuant to Motion, adopted the 21st day of February, 2007.

BY: _____
Duncan L. Jones, P.E. _____
Public Works Director **Date**

ATTEST: _____
Kathi Hamilton _____
Acting City Clerk **Date**



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF MARCH, 2008

**SUBJECT: AWARD OF CONTRACT TO JOHN DEERE LANDSCAPES,
GREENTECH DIVISION, FOR THE EL CAMINO REAL
IRRIGATION REPAIR AND UPGRADE PROJECT**

RECOMMENDATION:

Award the contract for the El Camino Real Irrigation Repair and Upgrade Project to John Deere Landscapes, Greentech Division, the sole source bidder for \$19,241.25 with a 10% construction contingency of \$1,924.12, for a total authorization of \$21,165.37.

BACKGROUND:

Since its installation in the late 1990s, the irrigation system along the median of El Camino Real has been run by power granted to us by the owner of the old "Fontana's" restaurant. Since the sale of that restaurant to the new owners (Celia's) and a rather inopportune accident into a power transmission line that once stood in front of that restaurant, the Town is no longer the benefactor of that "free" power supply or any metered power source at all. Therefore, the irrigation system that controls the entire median from Atherton Avenue south to Encinal has no automatic watering.

During the past few seasons, Public Works has done its best to "hand" water the area by manually activating the many water valves. This is labor intensive, prone to mishaps (over/under watering of plant materials), and not conducive to watering at the optimum times to use our water resources to their best advantage.

Over the past few years, our park has been moving into more state-of-the-art irrigation control systems. After much research, the Rainmaster Eagle RME system was chosen as

the best answer to our parks watering needs. This system is internet based, has flow sensors that detect sprinkler/pipe breaks, runs off an ET system that looks at weather conditions in our location and adjusts watering times accordingly and is fully programmable from a desktop computer.

We checked with the vendor for this equipment, John Deere Landscapes/Greentech Division as to setting up one of these controllers with a solar powered source. They said they had experience doing it in the past and were very successful. This would solve our need for running a controller without a power source as well as help us to move towards standardizing our system throughout the entire town.

We also needed to replace the controller for the median area of El Camino Real between Atherton Aveue north to Stockbridge as that controller is inoperative and is no longer capable of being repaired. That controller HAS a fully functioning power source and only the controller needs replacement/upgrade to the Rainmaster Eagle RME.

ANALYSIS:

We decided to sole source this application for the following reasons: 1) John Deere Landscapes is the only purveyor of these irrigation controllers in Northern California; 2) John Deere landscapes also has the capability of building the Town a solar site to run this system; 3) The Town has run this system successfully the past few years at the park; and 4) We were very comfortable with the product, its service, and its application to our needs,

The costs break down as follows:

El Camino Real North

R & R existing controller with a Rainmaster Eagle RME & I-Card. Use existing Enclosure and concrete pad and 1 year service -- \$ **2,552.35**

El Camino Real South

Replace existing controller with Satellite/Solar assembly.
Includes Eagle RME with I-Card, R & R existing concrete pad and enclosure and 1 year service -- **\$16,688.90**

1 bid was received for the project as follows:

<u>Company</u>	<u>Location</u>	<u>Bid Amount</u>
John Deere Landscapes/Greentech	Patterson	\$19,241.25

FISCAL IMPACT:

The Public Works Department is currently running well under budget in its utility program. There should be more than enough money left in this account to fund the

\$21,165.37 purchase of the new solar utility as well as the new irrigation controllers. No budget adjustment will be necessary to fund this repair/upgrade.

Prepared By:

Approved by:

Duncan L. Jones, P.E.
Public Works Director

Jerry Gruber
City Manager

Attachments: Bid Results



JOHN DEERE LANDSCAPES

-GreenTech Division

PRICE QUOTATION

DATE: 25 FEB 2008

BID #: 912618 JOB#: 202467
 CUST #: 202467
 NAME: TOWN OF ATHERTON
 ADDR: UGT ACCOUNT ONLY
 91 ASHFIELD ROAD
 ATHERTON CA 94027
 PHONE: 650-752-0541
 FAX: 650-752-0591

EXP. DATE: 03/26/08 PAGE: 1
 SHIP TO: TOWN OF ATHERTON
 UGT ACCOUNT ONLY
 91 ASHFIELD ROAD
 ATHERTON CA 94027

WRITER: GRIMM, BEN
 NOTE: ATHERTON-EL CAMINO

SALESMAN: BG

PRODUCT NUMBER	PRODUCT DESCRIPTION	QUANTITY	NET PRICE	PER	AMOUNT
	EL CAMINO NORTH				
	REPLACE EXISTING RAIN MASTER CONTROLLER WITH EAGLE & ICARD. EXISTING ENCLOSURE AND PAD WILL BE USED.				
5.RME36EG-RP	RM 36EG PANEL ONLY	1	1274.350		1274.35
6.EG-ICENTRAL	RAINMASTER I-CENTRAL COMMU.	1	999.000		999.00
7.RM-ISVC-1Y	RM-ISVC-1Y ONE YEAR SERVIC	1	279.000		279.00
	EL CAMINO SOUTH				
	REPLACE EXISTING IRRITROL CONTROLLER WITH GREEN TECH SATELLITE/SOLAR ASSEMBLY. INCLUDES BUILT IN EAGLE AND ICARD. EXISTING PAD & ENCLOSURE TO BE REPLACED.				
14.SA4-RM3-24	GT RME-18EGI SAT ASSY	1	5916.600		5916.60
15.SOLAR-400	SOLAR SYSTEM - 4 PANEL	1	7242.300		7242.30
16.GTINSTALL	GT INSTALLATION LABOR	3530	1.000		3530.00
	TOWN RESPONSIBLE FOR LANE CLOSURES, PERMITS, TRAFFIC CONTROL, USA.				
					19,241.25

NOTE : QUOTED PRICE IS FOR MATERIAL ONLY. APPLICABLE SALES TAX WILL BE CHARGED WHEN INVOICED.
 ALL PRODUCT AND PRICING INFORMATION IS BASED ON LATEST INFORMATION AVAILABLE AND IS SUBJECT TO CHANGE WITHOUT NOTICE OR OBLIGATION.

* South El Camino requires new concrete pad, cabinet to house
 Needs equipment for Solar system, spiking the cost.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF MARCH 19, 2008

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH
MACLEOD AND ASSOCIATES, INC. FOR TOPOGRAPHIC SURVEY
SERVICES FOR THE TOWN CENTER LANDSCAPING PROJECT**

RECOMMENDATION:

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with MacLeod and Associates, Inc., to provide topographic survey services for the Town Center Landscape Project in an amount not exceed \$21,000, plus a 10% contingency, for a total authorization of \$23,100.

BACKGROUND:

The Town Center Landscape project was approved by the City Council in June 2007. In order to continue the project, a topographic survey of the area is needed. In discussions with the Facilities Committee regarding possible redevelopment of Town Center, including a new Town Hall and an expanded or modified Library, it was recommended that the entire Town Center area be surveyed in order to provide an accurate base map for future planning and design activities.

ANALYSIS:

MacLeod and Associates, Inc. surveyed a substantial portion of the Town Center as a part of the Corporation Yard project. In order to incorporate this previous work, MacLeod and Associates, Inc. was selected to expand and update its previous survey to include all of Town Center.

FISCAL IMPACT:

CIP Support Operations funds in the amount of \$25,000 are budgeted for this project in FY 2006-07. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$21,000. A 10% contingency of \$2,100 would bring the total authorization to \$23,200, which is within the approved budget.

Prepared by:

Approved by:

Duncan L. Jones, P.E.
Public Works Director

Jerry Gruber
City Manager

Attachments: MacLeod Proposal

MACLEOD AND ASSOCIATES, INC.
CIVIL ENGINEERING • LAND SURVEYING

February 7, 2008

Duncan L. Jones
Public Works Director/City Engineer
Town of Atherton
93 Station Lane
Atherton, CA 94027

RE: Town of Atherton Civic Center

Dear Mr. Jones,

Thank you for the opportunity to submit this proposal to provide land-surveying services for the above-referenced property. Per your request, I propose to provide the following services:

- We will prepare a **Topographic Survey Plan** of the property. The general limits of the survey are indicated on the attached assessor's maps. The plan will be drafted in an AutoCAD format and will indicate the following:
 - Contours at a one-foot interval with spot elevations.
 - Visible utilities and underground utilities according to the records of the Town of Atherton, WestBay Sanitary District, California Water Service Company and PG&E. Rim and invert elevations will be determined for accessible sewer and storm drain manholes/inlets.
 - Location and elevation of existing structures (including trailers) with ground floor elevation, driveways, parking spaces, walks and other hardscape.
 - Sign posts, fences and other miscellaneous site improvements.
 - Tree locations and sizes for trees 6" diameter or greater with approximate driplines.
 - Fronting street edge of pavement and/or curb, gutter sidewalk.
 - Property line data and square footage of assessor's parcels per record data. (not a boundary survey, property corner pins will not be set).
 - Easements as described in a title report, if the Town provides one to us.

Existing topographic information already on-file from our previous work at the site will be utilized where appropriate.

Our fee for our services will be billed on a time-and-materials basis according to the attached fee schedule and will not exceed \$21,000.00. We can schedule work on the

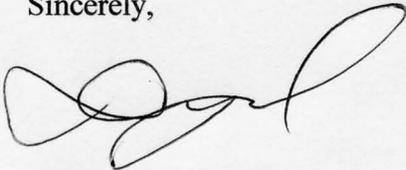
February 7, 2008

Duncan L. Jones
Public Works Director/City Engineer
RE: Town of Atherton Civic Center
Page 2 of 3

project upon execution of a contract. Please allow up to six weeks for completion of our services after receipt of the executed agreement. Upon completion, we will furnish you with signed prints of the survey plan and an AutoCad electronic file on cd-rom.

Thank you for your consideration. If you have any questions, or wish to discuss any aspect of this proposal, please don't hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel G. MacLeod", with a large, stylized flourish at the end.

Daniel G. MacLeod
Licensed Land Surveyor # 5304
Registered Civil Engineer #35048

February 7, 2008

Duncan L. Jones
Public Works Director/City Engineer
RE: Town of Atherton Civic Center
Page 3 of 3

**STANDARD FEE SCHEDULE
TIME AND MATERIALS CONTRACTS**

Effective January 1, 2008

Compensation of MacLeod and Associates, Inc. for work performed on a time and materials basis will be at the sum of the following items. All hourly rates will be increased by 3% on January 1st of each year.

1. Personal Services

Principal	\$165.00 per hour
Project Surveyor	117.00 per hour
Project Engineer	117.00 per hour
Engineering Technician	91.00 per hour
Survey Technician	91.00 per hour
CAD Drafting	91.00 per hour
1-Man Field Survey with Robotic Instrument or GPS	182.00 per hour
2-Man Field Survey Party	200.00 per hour
Secretarial	48.00 per hour

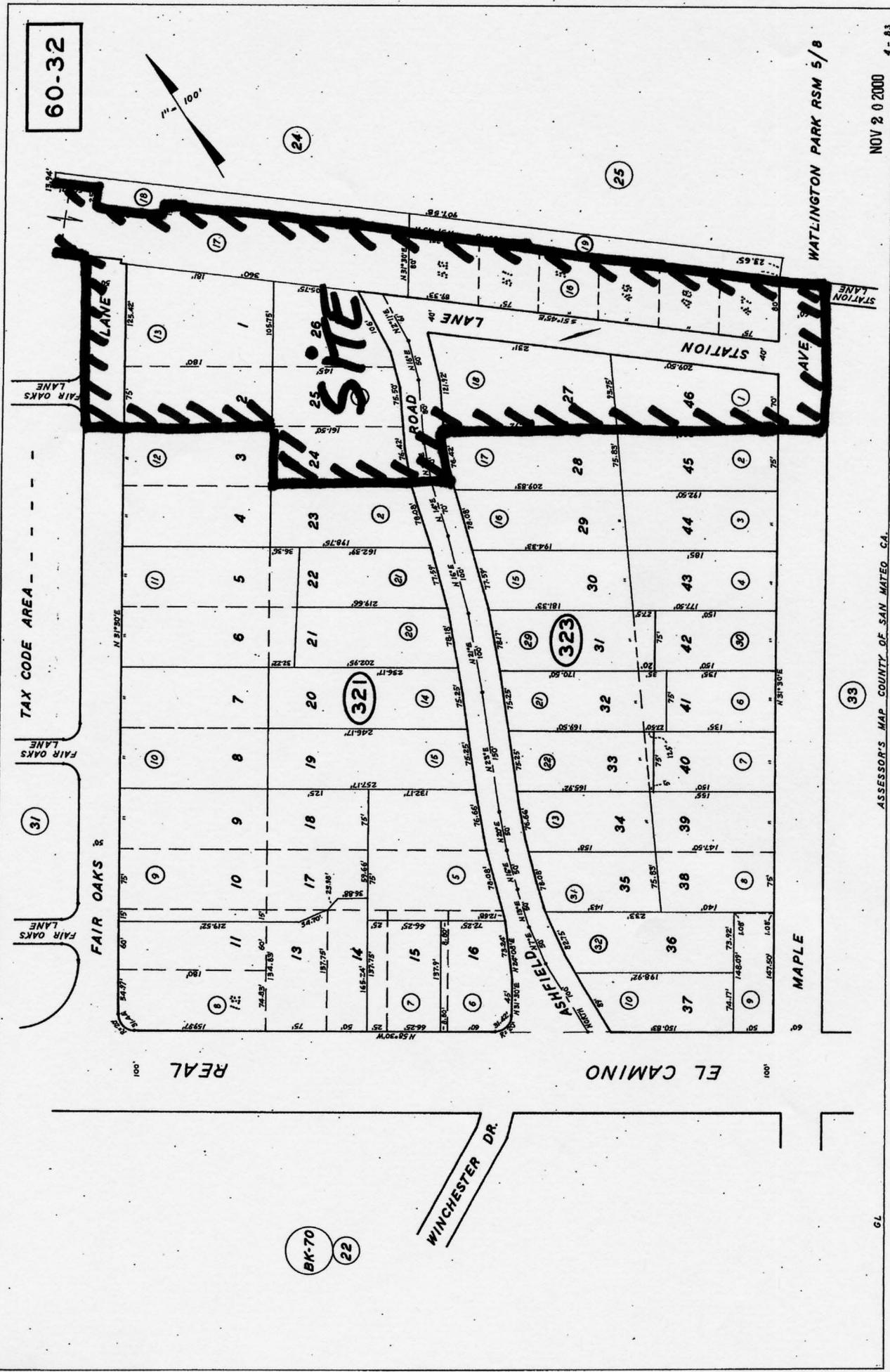
2. Reimbursable Items

A. Blueprinting/photographic reproduction	cost x 1.2
B. Shipping	cost x 1.2
C. Other outside services	cost x 1.1

3. Litigation

Services related to depositions, declarations, court and hearing appearances, expert witness testimony	\$280.00 per hour
---	-------------------

60-32



TAX CODE AREA - - - - -

FAIR OAKS LANE

FAIR OAKS LANE

FAIR OAKS LANE

FAIR OAKS

FAIR OAKS

FAIR OAKS

REAL

EL CAMINO

WINCHESTER DR.

ASHFIELD DR.

STATION LANE

STATION LANE

WATLINGTON PARK RSM 5/8

MAPLE

BK-70
22

33

ASSESSOR'S MAP COUNTY OF SAN MATEO, CA.

NOV 20 2000

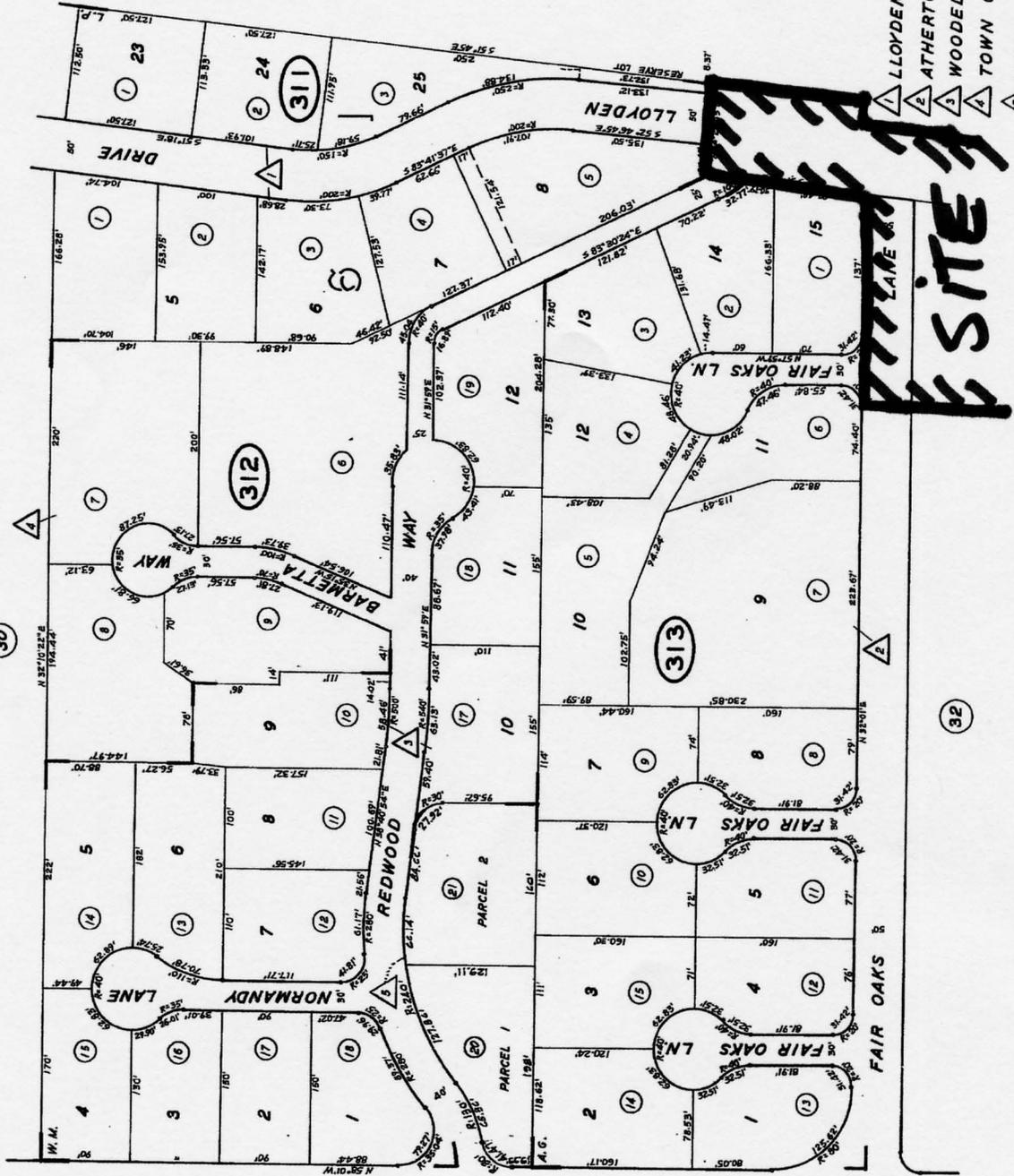
4-83

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60-31



TAX CODE AREA



- 1 LLOYDEN PARK RSM 16/29
- 2 ATHERTON GROVE RSM 47/27
- 3 WOODED MANOR RSM 24/45
- 4 TOWN OF ATHERTON
- 5 PARCEL MAP VOL 62/64-65

ASSESSOR'S MAP COUNTY OF SAN MATEO CA.

TUSCALOOSA AVE.

ATHERTON AVE.

EL CAMINO

REAL

BK-70 12



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: ANNUAL CITY COUNCIL COMMITTEE ASSIGNMENTS

RECOMMENDATION:

Approve the 2008 Council Committee assignments made by Mayor Jim Janz (attached).

BACKGROUND/ANALYSIS:

Section 9 of the City Council Rules of Procedure provides for the annual appointment by the Mayor of Council Members to various committees. The Mayor delayed making Committee Assignments until the City Manager/City Council Retreat took place on March 7 and 8, 2008. As a result of that workshop, three committees have been eliminated: 1) Atherton Channel Drainage District; 2) Emergency Preparedness Committee; and 3) Dumbarton Rail Corridor – Policy Advisory Committee. There are currently 6 standing sub-committees, 1 ad hoc subcommittee (Atherton Rail Subcommittee), and 11 other governmental and quasi-governmental committees requiring Council representatives.

Attachments: Committee Assignments List

ATHERTON CITY COUNCIL COMMITTEE ASSIGNMENTS

ATHERTON RAIL COMMITTEE

J. Carlson
J. Janz

BUILDINGS AND FACILITIES COMMITTEE

C. Marsala
J. Janz

ENVIRONMENTAL PROGRAMS COMMITTEE

C. Marsala
Jim Janz

FINANCE COMMITTEE

J. Carlson
J. Janz

GENERAL PLAN COMMITTEE

J. Carlson
J. Janz
K McKeithen (Alt.)

SCREENING COMMITTEE

C. Marsala
J. Carlson

TRANSPORTATION/TRAFFIC COMMITTEE

K. McKeithen
J. Carlson

OTHER GOVERNMENTAL COMMITTEE ASSIGNMENTS

ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG)

J. Carlson
J. Janz (Alt.)

CITY/COUNTY ASSOCIATION OF GOVERNMENTS – C/CAG

Janz
J. Carlson (Alt.)
K. McKeithen (2 Alt)
C. Marsala (3 Alt)

HOLBROOK-PALMER PARK FOUNDATION

C. Marsala
J. Carlson (Alt.)

LEAGUE OF CALIFORNIA CITIES

J. Carlson

LIBRARY JPA GOVERNING BOARD (SAN MATEO COUNTY)

C. Marsala
K. McKeithen (Alt.)

PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE

K. McKeithen
J. Carlson (Alt.)

SAN FRANCISCO AIRPORT/COMMUNITY ROUNDTABLE

K. McKeithen
J. Carlson (Alt)

SAN MATEO COUNTY EMERGENCY SERVICES COUNCIL

K. McKeithen
C. Marsala (Alt.)

SAN MATEO COUNTY SUB-REGIONAL HOUSING – POLICY ADVISORY COM.

J. Janz
J. Carlson (Alt)

GRAND BOULEVARD TASK FORCE

C. Marsla

PARKS FOR THE FUTURE

C. Marsala

ITEM NO. 22

**REPORT FROM KEVIN KIELTY, CONTRACT
ARBORIST, REGARDING LANDSCAPING AT 12 SELBY
LANE**

**This item was continued from the City Council meeting of
February 20, 2008.**



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 20, 2008

**SUBJECT: REPORT FROM KEVIN KIELTY, CONTRACT ARBORIST,
REGARDING LANDSCAPING AT 12 SELBY LANE**

RECOMMENDATION:

Review report by Arborist Kevin Kielty pertaining to replacement landscaping following improper heritage tree removal at 12 Selby Lane. Provide direction to Staff regarding replacement landscaping and expenditure of funds for this purpose.

BACKGROUND:

On or about July 5, 2006, four pine trees and one walnut tree were damaged when their roots were cut by workers in the process of installing a wall on the property located at 12 Selby Lane. The pine trees eventually had to be removed. The survivability of the walnut tree is doubtful.

The City Council authorized a lawsuit to be filed pursuant to the provisions of Chapter 8.10 of the Atherton Municipal Code. Case No. CIV 457574 was filed in the Superior Court of California, County of San Mateo on September 12, 2006. This case was settled by written agreement dated November 8, 2006. As part of the settlement, the owner agreed to plant five 15 gallon trees to be selected from a list provided by the Town Arborist and to plant seven evergreen shrubs to be selected by the owner and to enter into an agreement to maintain these plantings.

Attached to this Staff Report is a report prepared by Arborist Kevin Keilty with recommendations regarding additional landscape mitigation which the Council may wish to approve using some or all of the funds obtained from the 12 Selby Lane property owners in the settlement. Total funds received were \$20,000.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

Jerry Gruber
City Manager

Attachment



February 7, 2008

Town of Atherton
Attn: Marc Hynes
91 Ashfield
Atherton, CA

Dear Mr. Hynes,

Site: 12 Selby Lane, Atherton, CA

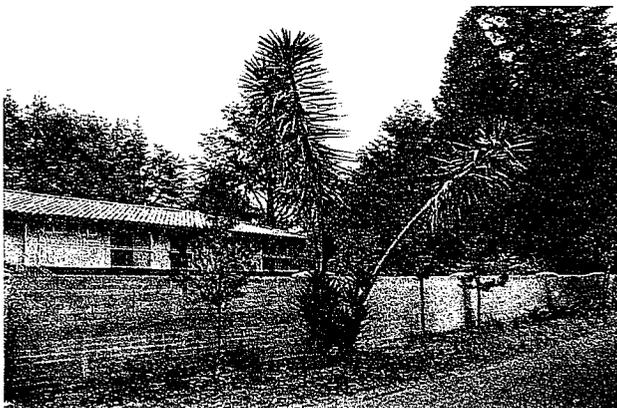
As requested by the Atherton Town Council, I visited the above site for the purpose of inspecting and commenting on the newly landscaped area. Protected trees were removed at this location and replacement trees were installed.

Assignment:

As assigned, I will provide recommendations for additional landscaping at this location. The neighbors have voiced their opinions as to the future of this strip of land. Several of the neighbors surrounding this site were interviewed, as were members of the Atherton Tree committee. The opinions of both groups will be considered in my recommendations.

Site:

The easement in question is a strip of land 200 feet long and 12 feet wide that runs parallel to Cebalo Lane. A new 6 feet tall block wall was recently installed along the north east edge of the easement. 5 replacement trees were installed in this strip of land due to the violation of the Town of Atherton's Heritage Tree Ordinance. The replacement trees chosen were Crape Myrtles, approximately 10 feet tall with a spread of 5 feet. The trunk calipers are less than 1 inch. The existing yucca palms have been over pruned or cut down to ground level and have re-



sprouted. The replacement trees installed and the existing yuccas do not provide screening of the new wall. Under story plants including cactus, agapanthus and raphiolepis have been installed, however, the newly planted shrubs do not contribute greatly to the site. An irrigation system for the newly planted trees and shrubs has also been installed.

The remainder of the property is lined with large redwoods, blue atlas cedars and incense cedars. The large trees are on the south and east portions of the property. The existing trees are 60 to 70 feet in height and provide shade to the entire property.

Methodology:

Letters were hand delivered or mailed to the neighbors allowing them to voice their concerns as to what they feel is needed to restore the property. All of the homes on Cebalo Lane and the neighbors on each side of 12 Selby Lane were included in the mailing. I received feedback from four residents of the area. I later met with 4 of the neighbors. The tree prices I am quoting are an average of the prices I gathered when visiting the following tree nurseries: Boething Tree Land, Pacific Nursery, Western Tree Nursery and Bonfante Nursery. I am also including information as to the height and spread of the species of trees that will be recommended. Advanced Tree Care provided estimates for the costs of planting the different sized trees.

Planting Possibilities:

The goal of this project is for 2 groups to come to an agreement on how to best screen the residence and wall of this site. I will summarize both groups' preferences, offer my recommendation as well as offer a compromise plan.

The interested neighbors of 12 Selby Lane have agreed that full screening of the wall and exposed house would be in their best interest. The installation of several large coast redwoods (*Sequoia sempervirens*) is their choice. The Atherton Tree committee would like to use deciduous trees in this location such as Ginkgos (*Ginkgo biloba*). The pros and cons of both plans will be discussed, as well as possible compromising alternatives. The estimated costs of the plans will also be included.

Thomas/Delnevo Plan - (Neighbor's Plan)

This plan is to use 7 - 48" or larger boxed trees to provide screening of both the new wall and house, which has a series of sliding glass doors visible from Cebalo Lane. The homeowner's existing irrigation system would provide the necessary water. The yuccas would be removed and the existing landscape would be relocated within the strip.

Pros: Complete screening of the wall and building, minimal maintenance.

Cons: As the redwoods mature the property will be shaded year round, water use will be average to high.

Cost: Tree installation \$17,000.00 -- Site work \$2,000.00 **Total:** \$19,000.00

Atherton Tree Committee Plan

This plan is to install 8- 24" boxed ginkgos, reuse the existing crape myrtle trees and hedge material. The installation of the ginkgos will be fairly water responsible and will provide the property with light in the fall and winter months.

Pros: Great fall color, water use will be low to average, light quality will be maintained. Relatively pest free.

Cons: Slow growing trees that will provide minimal screening.

Costs: Tree installation \$4,000.00 – Site work \$2,000.00 **Total:** \$6,000.00

Certified Arborist Recommendation

This plan is to install 8 – 36" boxed dawn redwoods (*Metasequoia glyptostoboides*). The dawn redwood is a deciduous redwood which loses leaves in late fall and foliates in the spring. In summer months the trees resemble the coast redwood with close to the same growth rate.

Pros: The trees will provide the desired vertical height, light quality will be maintained. Minimal maintenance. No known pests.

Cons: Water use will be average to high, 36" box is the largest size available.

Costs: Tree installation \$8,000.00 – Site work \$2,000.00 **Total:** \$10,000.00

Compromise Plan

This plan will utilize aspects of the neighbor's plan and the committee's plan.

Plant 5 - 48" boxed coast redwoods, spaced far enough apart that corridors of undiffused light will penetrate to the property. Alternating between the redwoods, 6 - 24" boxed ginkgos will be planted to provide fall color and will not cause shading in light corridors.

Pros: Provides vertical height, screening while driving, allows for light penetration.

Cons: Water use will be average, some shading will occur.

Costs: Tree installation \$15,500.00 – Site work \$2,000.00 **Total:** \$17,500.00

Summary:

The goal of this project is for 2 groups to come to an agreement on how to best screen the residence and wall of this site. The use of large trees will restrict light penetration to the property. Redwoods are proven to grow with no ill affects in street medians. The planting of large boxed trees in Atherton is common place. The homeowners should be informed prior to any final decisions.

The information included in this report is believed to be true and based on sound arboricultural principles and practices.

Sincerely,

Kevin R. Kielty
Certified Arborist WE#0476A



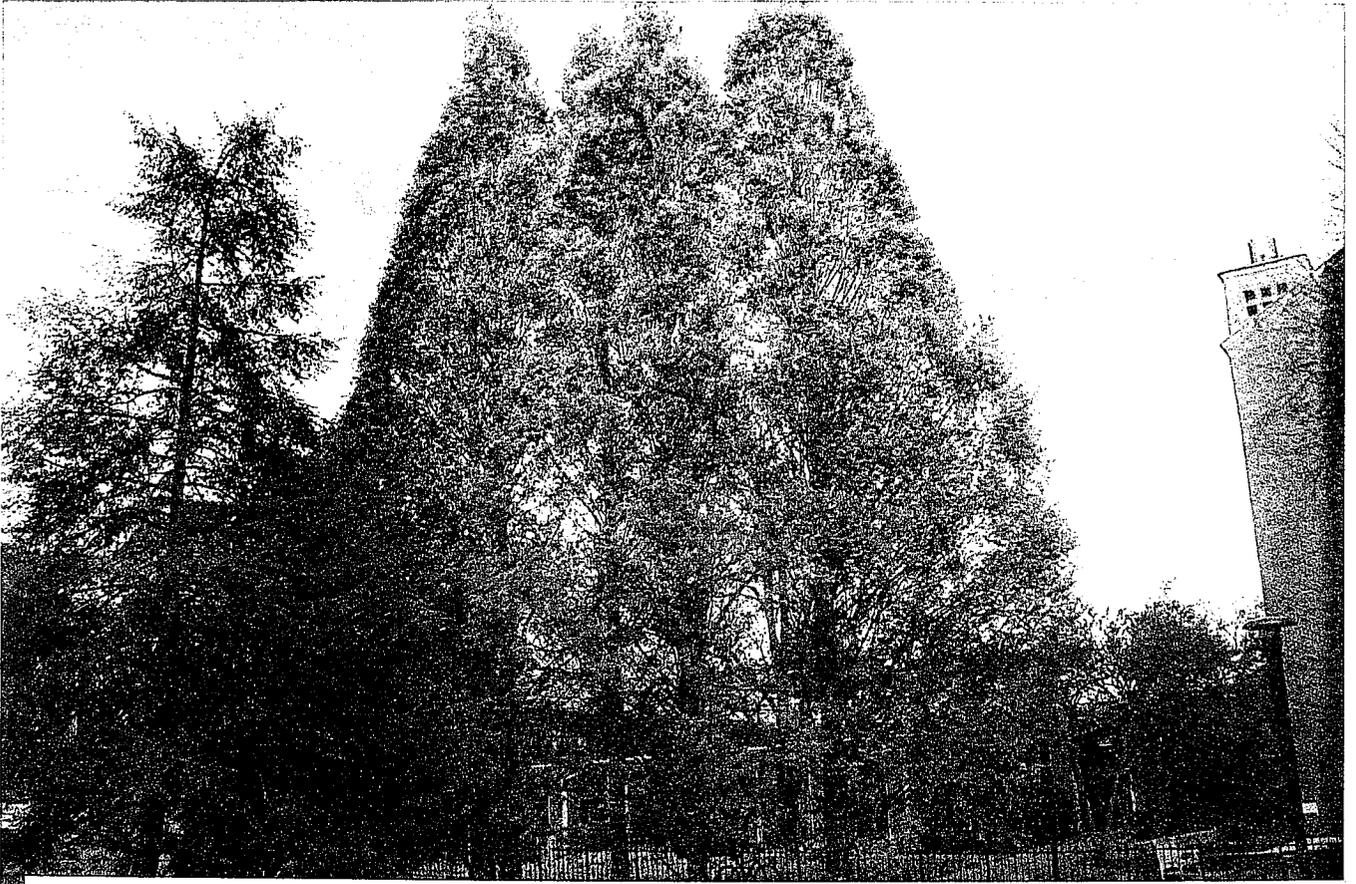
48" boxed coast redwood - Bonfante Nursery, Gilroy, CA



Redwood trees grown in island - El Camino Real, Belmont, CA



24" boxed ginkgo planted 2 years ago - Delaware Street, San Mateo, CA



Dawn redwood in fall color - Vanderbilt University, Nashville, TN



36" boxed dawn redwood - Pacific Nursery, Colma, CA

Kevin R. Kielty
CURRICULUM VITAE

EDUCATION

American Society of Consulting Arborists Academy, Rhode Island ■ 1999

College of San Mateo, San Mateo, CA

- **Pest Control Certification Program ■ 1983**
- **Environmental Horticulture Certification Program ■ 1981**

CREDENTIALS

- **Qualified Applicator's License, Department of Pesticide Regulations**
- **International Society of Arboriculture Certified Arborist, 1989 ■ WE #0476A**
- **International Society of Arboriculture Certified Tree Worker, 1986 ■ #124**

EXPERIENCE IN FIELD

Kielty Arborist Services, San Mateo, CA ■ 3/2007 to present

Mayne Tree Expert Company, San Carlos, CA ■ 3/1978 to 3/2007
Consulting ■ 6/1999 to 3/2008

Gardener, Marina Garden Apartments, San Mateo, CA ■ 6/1976 to 3/1978

ORGANIZATIONS AND ASSOCIATIONS

California Arborist Association, President, 2001, 2000, 1998, 1997
International Society of Arboriculture, Member
National Arborist Association, Member
American Society of Consulting Arborists, Member
Burlingame Lions Club, Member

RECEIVED
TOWN OF ATHERTON
Town of Atherton Tree Committee
91 Ashfield Road
Atherton, Ca 94027
2008 FEB 21 A 10: 57

February 6, 2008

Town of Atherton City Council
91 Ashfield Road
Atherton, Ca 94027

Dear Town of Atherton City Council:

This letter responds to the Town of Atherton City Council's request, during the City Council meeting held on Wednesday, November 14, 2007, that the Atherton Tree Committee recommend replacement trees for the Celballo Lane easement at 12 Selby Lane.

Replacement trees for Celballo Lane are being considered by the City Council based on a complaint from town resident Mr. John Thomas. It is the Atherton Tree Committees' understanding that the owner complied with the Town of Atherton directives by paying a significant fine for the removal of the heritage pine trees and planting replacement trees that were approved by town staff and the City Council. The owners planted crape myrtle trees.

The Town of Atherton Tree Committee recommends that:

1. Before replacement of the existing trees property owners at 12 Selby Lane consent in writing.
2. Proposed replacement tree species be approved in writing by property owner.
3. Neighboring residents should have limited influence on tree species a property owner chooses to plant.
4. Should the owner agree to replacement, the most important considerations are that they be appropriate to the site, benefit the environment and the community in the long term and meet good urban forestry practices.

Mr. Thomas has recommended that 48" box or 60" box coast redwood trees be planted at the site in question. The Atherton Tree Committee is of the opinion that coast redwoods would not be appropriate tree for the site because:

1. Coast redwoods are evergreen, growing to 100 to 150 feet. Situated on the south side of the residence, these trees would shade the house during winter months, increase home heating costs, than if deciduous trees had been planted.

2. Coast redwoods require significant water to thrive, have shallow roots and therefore do not tolerate the compacted soil conditions in an easement situation well.
3. Prefer a grove configuration rather than a line configuration. Grove configurations allow coast redwood trees to retain moisture in the air. Grown in a line in a street situation the trees will require more supplemental water than if grown in a grove.
4. A large container such as a 48" or 60" box requires more initial care than smaller container trees, are more susceptible to transplant shock and possible failure, require resources to plant, including additional crew and a boom crane. A 24" box tree will 'catch-up' to a 48" box tree within three to four years, a 36" box tree will catch up to the size of a 48" box within two to three years.

The Atherton Tree Committee recommends the following trees as possible replacements for the existing trees on the Ceballo Lane right of way:

- Quercus species such as Red oak, Scarlett oak or Shumardi oak.
- Sycamore (London Plane Tree)
- Gingko Biloba, a tree favored initially by the home owners.

The above listed species are proven to perform well in street conditions, develop good structure and therefore require little pruning when established, and provide seasonal color. As deciduous trees, they would not shade the residence in winter. Planting deciduous trees on the south side of a will provide shade in summer and allow sunlight in winter. This is a fundamental tenant to good environmental design.

The Atherton Tree Committee appreciates being consulted in this matter. Should you have any questions, please do not hesitate to call me, as Chairperson of the Atherton Tree Committee at 323-4714, or Denise Kupperman, member of the Atherton Tree Committee at 326-1693.

Sincerely,



Rachel Croft,
Chairperson of the Atherton Tree Committee

Cc: Kevin Kielty, Kielty Arborist Services
Kathy Anderson, Town of Atherton, City Arborist

RECEIVED
TOWN OF ATHERTON

2008 MAR 14 P 3: 19

JOHN M. THOMAS
78 Cebalo Lane
Atherton, CA 94027

March 14, 2008

Town of Atherton City Council
91 Ashfield Road
Atherton, CA 94027

Re: March 19, 2008 City Council Meeting Regular Agenda
Landscaping on Cebalo Lane Easement Adjoining 12 Selby Lane

Dear Honorable Council Members:

The following is written by the undersigned *in propria persona* as the owner of 78 Cebalo Lane with regard to the above-referenced matter in addition to my letter dated February 19, 2008 and in reply to the letter from Rachel Croft to the City Council dated February 6, 2008.

BACKGROUND:

The City Council unanimously passed a Resolution at its February 21, 2007 Council Meeting that included "direction to staff to evaluate the neighborhood around the offending property (Cebalo Lane) to determine if there are projects that would be feasible to spend the funds (\$20,000.00) on before spending the funds elsewhere in Town."

Per a copy of the Atherton Acting City Clerk tape recording of the November 2007 Town Council meeting nine months later the Town Council unanimously passed a Resolution "to spend the \$20,000.00 necessary to plant appropriate trees" at the violations site.

According to the Town tape recording, a second Motion was then made that the Interim Town Arborist for this project, "go back" (to the violation site) with the other ideas and re-look at the other possibilities with the input of the Cebalo Lane residents and the Tree Committee and return to the Council with a revised Plan decided by the Interim Town Arborist with the input of the Cebalo Lane residents and the Tree Committee." The Motion was unanimously passed.

The Interim Town Arborist reported back on Town stationery headed by the Official Seal of the Town of Atherton in a letter dated February 7, 2008. It contained the "Neighbors Plan", the "Tree Committee Plan", the "Recommendation" by the Interim Town Arborist for the Project and a final "Compromise Plan" decided by the Interim Town arborist for the project which incorporated the input from both the Neighbor Residents and the Tree Committee members as instructed by the Resolution of the Town Council. The Compromise Plan would result in a \$2,500.00 reserve that could be used for any additional maintenance expense above and beyond that already included in the Compromise Plan.

The written submission by the Tree Committee chairperson is dated February 6, 2008; whereas, the OFFICIAL Atherton Report by the Interim Town Arborist for this project was completed and not dated until February 7, 2008. This establishes unequivocally that Rachel Croft and Denise Kupperman (hereinafter sometimes referred to collectively as "the Objectors") have their own agenda and have not cooperated with the Interim Town Arborist for this project in his attempt to reach a resolution mutually agreed by all. They went direct with their letter to the City Council on February 6, 2008 rather than through the Interim Town Arborist for this project. They did not meet with the undersigned as requested both in person and by telephone call.

THE USE OF THE \$20,000 ASSESSMENT RECOVERED FOR DESTRUCTION OF HERITAGE TREES IS THE REAL AGENDA AND OBJECT OF THE CONCERN OF THE FORMER AND CURRENT CHAIRPERSONS OF THE TREE COMMITTEE:

The initial position of the Objectors resulted in only under \$200 worth of Crape Myrtles being planted in alleged mitigation of the destruction of the Heritage Trees.

The Objectors initially sought the confiscation of the entire \$20,000 assessment for their pet project. The residents of Cebalo Lane objected. An outside Interim Town Arborist, Kevin Keilty, was appointed by the Town for this project. He was instructed to study the site and report back to the Town Council first regarding what replacement trees could be accommodated at the site for restorative purposes. When the Tree Committee found his findings would return assessment funds to the site of the violation rather than for their offsite interests, the Objectors surfaced, complaining about his initial report.

.The Objectors/Croft Plan still only proposes that just \$6,000 of the \$20,000 assessment against the violators be spent at the site of the violations. This Plan was not voted on by the Tree Committee at their February 2008 meeting when the undersigned attended the Tree Committee meeting in an attempt to reach a mutual agreement to the Plan decided by the Interim Town Arborist for the project after he received the input of both the Neighbors and the Tree Committee members. The Tree Committee did not vote on either the Compromise Plan or even the Objectors Plan even though it was on their printed Regular Agenda. A copy of the agenda is attached

The Objectors are now recommending that only 3/10 of the \$20,000 assessment be spent on the site of the violations in order that they may divert the funds off site to plantings in an area that is not even on Town of Atherton property. Coupled with their refusal to attempt in good faith to come to an agreement with the damaged Cebalo Lane residents per the **FEASIBLE PLAN** by the Interim Town Arborist for accommodating replacement trees on site points to their mission as not being one of promoting and supporting Heritage Trees in the Town of Atherton residential area.

THE UNEQUIVICAL PROVISIONS OF ATHERTON MUNICIPAL CODE SECTION 8.1.060 MANDATE THAT THE ENTIRE FUNDS RECOVERED IN THE SETTLEMENT BY THE TOWN OF ITS CIVIL SUIT AGAINST THE VIOLATOR/OWNER BE USED TOWARDS THE PLANTING OF REPACEMENT TREES ON THE SITE ON CEBALO LANE:

Very large heritage trees can be accommodated on site according the appointed Interim Town Arborist for this project. He has determined in his February 7, 2008, report headed with the Official Seal of the Town of Atherton at the lower portion of page 2 that the Cebalo/Selby Neighbors Plan, which provides for seven (7) Coast Redwood Trees as the replacement trees can be accommodated on site.

This Plan most closely of all the proposed plans complies with the exact requirements of the controlling Code Section 8.10.060d.1.a . The Code Section mandates that:

“THE VIOLATOR SHALL REPLACE EACH UNLAWFULLY REMOVED TREE WITH ONE OR MORE NEW TREES WHICH CAN BE ACCOMODATED ON THE SITE OF THE VIOLATION ACCORDING TO THE TOWN ARBORIST AND, IN THE OPINION OF THE TOWN ARBORIST, WILL PROVIDE EQUIVALENT VALUE IN TERMS OF COST...”

Arborist Kathy Hughes Anderson calculated the value of the removed butchered trees at \$22,980. A true and correct copy of her calculated is attached. The Code Section does not provide that the Tree Committee makes the call.

The Heritage Trees towering over 60 feet high had been there for generations before their roots were slaughtered by a back hoe followed up by a large power saw. The replacement trees to be planted on the Cebalo easement are “community trees”. The easement is the dominant servitude of the 12 foot by 210 foot right of way strip of land owned by the Town of Atherton.

THE LETTER DATED FEBRUARY 6, 2008, SIGNED BY MS. RACHEL CROFT IS WITHOUT MERIT:

The first paragraph claims that it is written at the City Council’s “...request ...that the Atherton Tree Committee recommend replacement trees for the Ceballo (sic) Lane easement at 12 Selby Lane.” The City Council by Resolution instructed the Interim Town Arborist for the project obtain input from the Cebalo Lane Neighbors and from the Tree Committee and then to decide on a Plan that incorporates this input. That Plan is the Final listed Compromise Plan set forth in his February 7, 2008 report.

Next it is contended the complaint regarding the failure to provide for proper replacement trees was only from the undersigned. All of the residents on Cebalo Lane want proper replacement Evergreen Trees planted at the violations site.

Next it is contended that the violator complied with "Town of Atherton directive by paying a substantial fine...and planting replacement trees that were approved by town staff and the City Council..." The "replacement trees" so called by the Objectors technically and factually are shrubs.

According to Canopy Tree Library Crape Myrtles have the potential of growing to a height when fully mature of only 1/15 to 1/8 the size of the Coast Redwood. The crape Myrtles when fully mature will never grow to the size of a Heritage Tree.

The planted Crape Myrtles are classified as a "shrub" with the potential of growing to a height of ten (10) feet when fully grown and require "medium water". They can be purchased on line for \$39.95 per shrub the size that the violator's staff planted in the easement for a total of cost of under \$200 for the replacement plantings that the violator substituted for all of the butchered Heritage Trees apparently with the past blessing of the Objectors.

The City Council did not give their approval prior to the execution of the settlement Agreement, nor prior to the payment of the \$20,000.00, nor prior to the planting of the shrubs and not even prior to now. The litigation brought by the Town against the violator was a subject of closed session of the City Council in 2006. However, there was no settlement approval as indicated by the Town Minutes that establish that the closed session discussion of the litigation outcome was not reported by the City Attorney nor voted on in the open session that followed or ever.

A separate 'Agreement' regarding the maintaining of the shrub plantings later voted on months after the execution of the settlement agreement as a "ministerial act" was signed by the Mayor in order to be recorded by the County Recorder was. However, a search of the Town Closed and Open Council Agendas and Minutes has not turned up the settlement agreement containing the seven (7) line settlement agreement containing the \$20,000.00 assessment and other terms of the settlement ever having been discussed in Closed nor voted upon in any Open Council Sessions.

Atherton Municipal Code Section 8.10.060.D.1.b.i provides:

"Where replacement trees cannot be accommodated onsite according to the town arborist" ...to the extent that a cash payment is required for any portion or all of the value of the removed tree, **SUCH PAYMENT SHALL BE DOUBLED TO REFLECT THE ESTIMATED INSTALLATION COSTS THAT WOULD BE INCURRED IF REPLACEMENT TREES WERE PLANTED.** (Emphasis added)."

The Town Arborist's calculation of the cost/value of the butchered trees is \$22,987.00. The \$20,000.00 assessment was not double that of the cost/value of the butchered trees.

Therefore, the settlement could not be based upon “replacement trees cannot be accommodated on site” because for that to be the case the assessment would have been at least \$40,000.00.

The Interim Town Arborist for this project, the Cebalo Lane neighbors and the members of the Tree Committee have all concluded that replacement trees can not only be “physically” but also “feasibly” and “practically” “accommodated on site”.

Moreover, the settlement agreement provides that the case be and only be dismissed “**WITHOUT PREJUDICE**”. Hence, the San Mateo Superior Court case could simply be reopened and subject the violators to unwanted penalties and legal expenses should they interfere with the replacement being permanently maintained.

In the “Atherton tree news”, described as the “Atherton Tree Committee Newsletter”, Summer 2006 edition, it is printed at the bottom of page 2:

“At their May meeting, the City Council approved revisions to the Heritage tree Ordinance...in Section 8.10.060, ‘Violations, Penalties and Remedies.’ The amendment establishes certain remedies related to planting of replacement trees where a heritage tree has been removed in violation of Town regulations...Any person required to plant replacement trees o-site **MUST POST A BOND TO ENSURE THAT THE REPLACEMENT TREES ARE PERMANENTLY MAINTAINED IN GOOD CONDITION FOR PERMANENT ESTABLISHMENT. WE APPLAUD THE CITY COUNCIL FOR MAKING THESE CHANGES TO STRENGTHEN OUR HERITAGE TREE ORDINANCE.** (Emphasis added)”

This mandatory Municipal Code provision “must post a bond” was ignored by staff before the next issue of “The Atherton tree news” was due to be published in the winter. When the SEVEN (7) line settlement Agreement was executed on November 18, 2006, the bond requirement was omitted.

It would be disingenuous to argue that this omission self-effectuated the provision when “trees can not be accommodated on site” on the alleged basis that the maintenance was allegedly impractical or not feasible (not unreasonable or impossible) when the Tree Committee had so recently lauded the City Council for approving the bond remedy. This contradictory position is so that the assessment could be seized by the Objectors to the extent that they could get away with attempting to spend it offsite on property not owned by the Town. The Code requires that it be spent at the violation site in the local community easement where the violations occurred that resulted in the assessment. Such a convoluted interpretation of “can be accommodated on site” would constitute a linguistic nullification of the clear mandate of the Code.

Objection is made to the February 6, 2008 letter in its entirety because it sets forth opinions on subjects that there has been no qualifications established for the person expressing the opinions and on the ground that the basis of the opinions are not set forth. No license has

been set forth nor has any license been found entitling the expression of professional opinions on subjects in the letter that do not pertain to the personal rights and or property of the writer.

Also, objection is made to the letter on the grounds that it is vague and ambiguous. For example, it concludes that a "36" box tree will catch up to the size of a 48" box within two to three years." No species is set forth. The Interim Town Arborist Report contains a photograph of a 36 inch box tree after two years growth. It does not come within the years of growth increase in size of the 48" large crop Coast Redwoods that the Interim Town Arborist for this project located as set forth in his February 7, 2008 report. A photograph of this boxed tree is contained in his report.

Moreover, the Cebalo Lane residents should not have to wait any longer for the replacement trees to grow to a shorter height than the larger box trees would have grown. The residents already have been forced to wait several years for the assessment funds to be used to plant the best trees all of the \$20,000.00 can provide at the violations site.

The February 6, 2008, Croft letter makes four (4) recommendations. The first three have nothing to do with the specific functions of the Tree Committee set forth on the Town website. Rather these recommendations prove the special agenda of the former and current Chairpersons of the Committee. (1) and (2) are that before replacement of the existing trees property owners at 12 Selby Lane consent in writing, including the tree species. **THE OBJECTORS ARE VIOLATING THE PRINCIPLES, MISSION AND GUIDELINES OF THE COMMITTEE BY ADVOCATING THE RIGHTS OF THE VIOLATOR RATHER THAN THE VICTIMS DAMAGED BY THE VIOLATORS WHO THEY ARE SEEKING TO PROTECT WHO CAUSED THE DESTRUCTION OF THE HERITAGE TREES.**

The **EXISTING** trees, shrubs and plantings are not going to be replaced under any of the proposed plans contained in the Interim Town Arborist report dated February 7, 2008. Instead, **ADDITIONAL** trees are to be planted according to the project instructions by the Council to the Interim Town Arborist appointed for this project. Therefore, these 2 items are not an issue. Number (4) also is not an issue because it is contingent upon inapplicable (1) and (2).

The City Attorney was asked by the Council at the November 2007 Council meeting whether the Town would be subject to litigation exposure by the violator if additional large potential Heritage Trees are planted in the Town's easement. The City Attorney advised the Council that the Town would have no liability exposure.

The landscape representative for the owner of 12 Selby Lane specifically has stressed to the undersigned that the owner of 12 Selby Lane would prefer taller trees such as the numerous very tall Coast Redwoods that exist throughout the subject property. Also, the Interim Town Arborist for this project in his February 7, 2008, report found that the existing trees already shade the entire property.

Atherton Municipal Code Section 8.10.060.D.1.b.i provides:

“Where replacement trees cannot be accommodated onsite according to the town arborist” ...to the extent that a cash payment is required for any portion or all of the value of the removed tree, **SUCH PAYMENT SHALL BE DOUBLED TO REFLECT THE ESTIMATED INSTALLATION COSTS THAT WOULD BE INCURRED IF REPLACEMENT TREES WERE PLANTED.** (Emphasis added).”

The Town Arborist’s calculation of the cost/value of the butchered trees is \$22,987.00. The \$20,000.00 assessment was not double that of the cost/value of the butchered trees. Therefore, the settlement could not be based upon “replacement trees cannot be accommodated on site” because for that to be the case the assessment would have been at least \$40,000.00.

Also, it is admitted in the Objectors letter in the middle of page 2 that another tree was “favored initially by the home owners (sic).” That would have been before the owner was offered an “off the hook” settlement that at a minimum more than cut in half the financial cost of the violations by not having to pay the double the cost/value of the butchered trees. The initial plan favored by the owner called for at least 48 inch boxes of three separate species as is shown by the drawing by the Town Arborist before the Settlement agreement was entered into. A copy of said drawing by Kathy Hughes Anderson that was received in a document production by the Town is attached to my February 20, 2008 letter.

That leaves Item (3), the first phrase of which is indicative of the special agenda of the writer of the letter. Item (3) advocates that “Neighboring residents should have limited influence on tree species a property owner chooses to plant.” This very bold claim by the Objectors reflects their personal agendas and claim to the right to have privileged undue influence as pr with regard to the governing of the Town of Atherton. “The damaged Cebalo Lane neighbors are not second fiddle residents.

In addition, the Objectors expression at the Town Council February 2008 meeting favor of the Gingko species as a replacement tree because it originated in the foreign country of origin of the violator/owner shows more than bad judgment. It demonstrates the willingness to discriminate based upon the ethnicity of the violator. This should not be about special influence efforts by residents outside the affected neighborhood acting like an Architectural Review Committee. This also is contrary to the public policy of the Town of Atherton. The public policy against architecture review boards is a tradition treasured by Atherton residents

The Objectors February 6, 2008 letter recommends as replacement trees the Quercus species such as Red oak, Scarlett oak or Shumardi oak. The Interim Town Arborist in his November 7, 2007 specified as replacement trees that can be accommodated on site 48’ boxed Valley Oaks with an initial height of 20’ and Coast Live Oak 60 ‘ box with a height of 18’ and a spread of 11’.

The Croft letter also recommended the Sycamore, which she admitted at the February 2008 Council meeting is a swamp tree.

The Tree Committee is classified by the Town of Atherton as an "ADVISORY STUDY COMMITTEE." The Town Advisory Committee definition of an "ADVISORY STUDY COMMITTEE" is a "Committee that acts as an advisory resource to the community on matters related to its particular interest." "Its" seems to have been misunderstood as an advisor resource as to the Chairperson's and/or the former Chairperson's "particular self-interest. "Its particular interest" obviously should mean the particular interest of the affected part of the community.

Since the February 2008 Council meeting, further efforts have been made by the Neighbor Residents to resolve the attempted resistance by the Objectors. The undersigned attended the February 28, 2008, Tree Committee meeting. The Regular Agenda states that the first item on the "Regular Agenda" was "Approval of Letter from the Tree Committee to the City Council Regarding 12 Selby Lane Tree Mitigation." A copy of their REGULAR AGENDA is attached hereto.

No letter was ever discussed or voted upon by the Committee during their entire meeting. Apparently the Objectors had intended to obtain an *ex post facto* approval by the Tree Committee at this February 28, 2008 meeting by the Tree Committee at this meeting of the February 6, 2008 letter that they had composed, allegedly filed and attempted to present to the Council at the February 20, 2008 Council Meeting.

The Objectors have not budged from their stance. This refusal was notwithstanding my pleas to the Tree Committee to accept the Cebalo Lane neighbors proposed Plan, and, if not, at the very least accept the Compromise Plan proposed by the Interim Town Arborist for this project. The Objectors did not even submit their letter dated February 6, 2008, to the Committee for a vote or even discussion even though it was the first item on the Regular Agenda.

The Chairperson did not even open for discussion the next item on their Regular Agenda, the Trees for El Camino Tree Planting Project date for Charette (Number 2).

The methodology of the Objectors calls into question whether the Committee leadership is in compliance with the Brown Act.

Other Members of the Tree Committee privately have encouraged me "to hang in there" and to "not give up".

The Atherton "Advisory Study Committee" statement for the Tree Committee specifies that the "Authority" of the Tree Committee is described as "Self-directed." This seems de facto to be the case at least in the actions of the Objectors. The Tree Committee "Funding" is described as "Self-funded through donations". That does not include fines and assessments unless perhaps the fine or assessment is for damage to property that is owned entirely by the

Town of Atherton, such as Holmby-Palmer Park, Town Hall and all other property wholly owned by the Town of Atherton.

The Objectors February 6, 2008 letter next objects to the Coast Redwood species setting forth four (4) specious claims set forth below in quotes followed by my response:

(1) "Coast redwoods are evergreen, growing to 100 to 150 feet". There are more than 50 evergreens existing on the violator's property none of which reach this height. The letter further claims "...these trees would shade the house during winter months," claiming higher heating costs "than if deciduous trees had been planted." Apparently the Tree Committee currently is prejudiced against Heritage evergreens and is biased in favor of deciduous non-Heritage trees.

(2) "(C)oast redwoods require significant water to thrive..." This objection also is defeated by the fact that numerous lilies in the easement are flourishing. Also contrary to this objection is the second species recommended in this letter, the Sycamore, which is a swamp tree, as admitted by Ms. Croft at the February 2008 Council Meeting.

(3) They allegedly "prefer a grove configuration rather than a line configuration". Selby Lane and El Camino Real are lined with single file Coast Redwoods that are not in a grove and also are flourishing.

(4) "A large container...requires more initial care...are more susceptible to transplant shock and possible failure, require more resources to plant..." The nurseries mentioned in the Interim Town Arborist February 7, 2008, report provide a survival guaranty. Moreover, the price quoted in that report includes all transportation, all equipment such as booms, and planting costs.

The Objectors letter claims that a "36" box tree will catch up to the size of a 48" box within two to three years." That is diametrically contradictory to the statement of Denise Kupperman at the November 2007 Council Meeting, per the Town tape recording by the Acting City Clerk, that it takes ten (10) years for the trees they are recommending to grow to the same size as a larger box..

The ten (10) years is consistent with the lower end of the range stated by Kathy Hughes Anderson at the initial open City Council Meeting on this project on February 21, 2007. A transcript of agenda Item 25 of the Council Meeting of Agenda item 26 by the Acting City Clerk on the next to last page states she was questioned by Council Member Marsala "And how many years, would we gain several years of growth by being able to do that by being able to do that (use larger box trees) ?" She answered "Right, and in you know, 10 to 15 years..."

It would be twelve plus (12+) years with the two year delay to date from the destruction of the Heritage Trees for the replacement trees to reach one-fourth of the height of the destroyed Heritage Trees. The Code does not call for the replacement destroyed Heritage Trees not to be equivalent value until a future date and but to at the time of their destruction to discount the value until a decade and a half after their destruction Justice delayed to the residents would be justice denied.

The Interim Town Arborist's February 7, 2008 Report contains a photograph of a 36 inch box tree of their recommended species after two years growth. It would take more two decades of growth for the smaller box tree to reach the present size of the 48" large crop Coast Redwoods that the Interim Town Arborist located, the photograph of which is contained in his report. The Code does not provide for a present cash value discount correlated to the life expectancy tables for the residents because the replacement equivalency should be as soon as feasibly possible. The Cebalo Lane residents are entitled to the Heritage Trees restoration to the maximum extent possible with all the assessment funds.

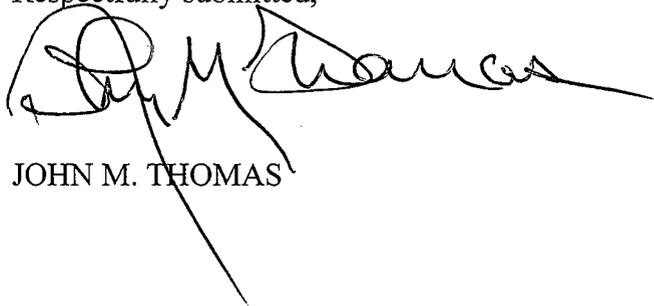
Moreover, Denise Kupperman at the November 2007 Council Meeting actually claimed "fast growing trees tend not to live as long" as slower growing trees! The Coast Redwood species is among the species of trees that are presently the oldest living in the world even though it also is one of the fastest growing trees in the world.

The gross understatements and overstatements by the objectors is repeated in the gross overstatement of the amount of water needed for a Coast Redwood and also the claimed unsuitability of the site for large tree plantings because of the soil and water conditions. Towering Heritage Trees flourished there for generations. The lilies in the easement are flourishing which indicates great water conditions.

CONCLUSION:

It is more than merely feasible that the entire assessment of \$20,000.00 be spent on Heritage Tree restoration of the damaged site. It is requested that based upon the facts and reasons set forth above that the City Council approve the fair and just Cebalo Lanes Neighbors Plan or, only if the objectors agree rather than object, at the very minimum the "Compromise Plan" submitted as the final suggestion by the Interim Town Arborist appointed by the City Council for this project could then be approved. This would achieve the agreed disposition by taking into consideration the input of the Cebalo Lane residents and the Tree Committee that has been sought by the Town Council.

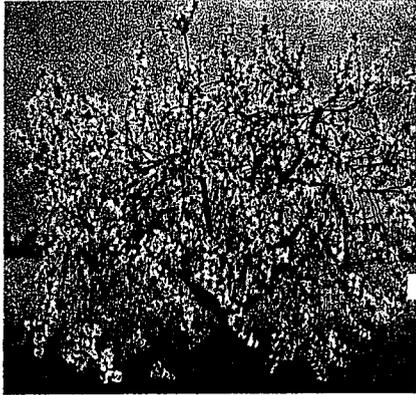
Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Thomas", written over a horizontal line. The signature is fluid and cursive.

JOHN M. THOMAS

Attachments

atherton12selbylane031408



**Atherton Tree Committee
91 Ashfield Road
Administrative Offices
February 28, 2008 – 4:00 pm**

REGULAR AGENDA

- I. ROLL CALL:**
- II. APPROVAL OF MINUTES:**
Approval of the minutes of the January 24, 2008.
- III. PUBLIC COMMENTS:**
- IV. STAFF REPORTS:**
- V. COMMITTEE REPORTS:**
- VI. REGULAR AGENDA:**
 - A. Approval of Letter from the Tree Committee to the City Council Regarding 12 Selby Lane Tree Mitigation**
 - B. Trees for El Camino Tree Planting Project
Date for Charette**
 - C. Tree Committee Newsletter / Athertonian Articles**
 - D. Arbor Day**
 - E. Consideration and Approval of Sending a Letter to PG&E from the Tree Committee Regarding the Use of Spikes by Asplundh Crews**
- VII. Set Date for Next Meeting:**

RECEIVED
TOWN OF ATHERTON

2008 MAR 14 P 3: 18

JOHN M. THOMAS
78 Cebalo Lane
Atherton, CA 94027

February 20, 2008

Ms. Kathi Hamilton, Acting City Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Re: February 20, 2008 City Council Meeting Regular Agenda Item No. 23
Landscaping on Cebalo Lane Easement Adjoining 12 Selby Lane

Dear Ms. Hamilton:

The following is written by the undersigned *in propria persona* as the owner of 78 Cebalo Lane with regard to the above-referenced matter.

The February 7, 2008, report by Arborist Kevin Kielty to be reviewed by the City Council contains Four (4) "Planting Possibilities". The following is an analysis of the four presented alternatives.

Cebalo/Selby Lanes Neighbors Plan:

All of the interested neighbors on Cebalo and Selby Lanes have agreed that not just "**SEVERAL**" but rather as many large Coast Redwoods that the Twenty-Thousand (\$20,000.00) Dollar fine will purchase and install should be planted in the subject 200 foot strip of land.

The Arborist informed me that a very large crop of 48 inch boxes of Coast Redwoods that are almost **THIRTY (30) FEET** in height were available with a Performance Guaranty. Using the Arborist's Pricing Schedule in his November 7, 2007 Report to the Staff for Installed 48 inch boxes of \$2,500.00 per tree, there are sufficient funds to purchase and install Eight (8) **THIRTY (30)** Foot Coast Redwoods. Or seven (7) 48 inch box Coast Redwoods could be purchased and installed, leaving a \$2,500.00 reserve for maintenance and site work replanting the existing ¼ inch caliper 10 foot crape maples at the industrial sliding solid iron door entrance through the block wall.

The Arborist February 7, 2008 Report states that "the property will be shaded year round, water use will be average to high". However, on the direct opposite side of 12 Selby Lane paralleling Cebalo Lane on the El Camino Real side there are Twelve (12) fully mature giant Coast Redwoods almost all in a row inside the 12 Selby Lane fence where there is southeast sun exposure. In addition there are NINE (9) fully mature giant Coast Redwoods in front of the residence at 12 Selby Lane inside the subject recently constructed wall.

Moreover, directly across from 12 Selby Lane at 13 Selby Lane and 8 Gresham in addition to other very tall trees there are TWENTY-SIX (26) giant Coast Redwoods spaced approximately TEN (10) Feet apart in front of and on the side of the house with northwest exposure. The house has great quality of light both in the afternoon and in the morning. Furthermore, there are NINE (9) more giant Coast Redwoods and additional other very large trees running in a majestic row from 13 Selby Lane to the corner of Gresham and Selby. This is the Selby Lane side of 8 Gresham directly across from 12 Selby Lane. The Cebalo Lane/Selby Lane neighborhood landscaping essentially has been a vertical Urban Forest, but it has a hole cut in and through it due to the butchering of the row of five Heritage Trees on the southeast side of Cebalo Lane.

Watering of the Performance Guaranteed Coast Redwoods will be very short and temporary as proven by the rapid growth of many feet each year of many varieties of random natural conifer seedlings in the neighborhood with only rainwater and no irrigation and no maintenance during the TWENTY (20) plus years I have lived at 78 Cebalo Lane..

Kupperman Plan:

The "Atherton Tree Committee Plan" is a misnomer. I have seen no Minutes of the Atherton Tree Committee that approves this Plan that was proposed after the January 2008 Tree Committee meeting. The Tree Committee Minutes are not on file at the Atherton Public Library with other Town Minutes. Nor are the Tree Committee Meetings and Agendas posted along with Meetings and Agendas for the Town of Atherton Council, Town of Atherton Commissions and Town of Atherton Committees that are on a clipboard in the lobby of the Town of Atherton Library under a vinyl wrapped Face Sheet. A copy of the Face Sheet is attached hereto. The February 2008 Tree Committee meeting has not yet been held.

This "Plan" proposes using 24 inch box Gingkos. A 24 inch box Gingko is just EIGHT (8) feet in height and has a TWO (2) INCH caliper according to Boething Tree Land. 24 inch box Gingkos, therefore, would be smaller in height than the existing crape myrtles.

I was informed earlier this month that the Kupperman plan was to plant Sycamores. After I objected to the Arborist that the Sycamore is a Class Four tree, Ms. Kupperman's recommendation changed back full circle again to Gingko trees. However, the size of the Gingko boxes were slashed in half from the 48 inch box Gingkos that their Co-committee Chairperson originally recommended in writing down to 24 inch box Gingkos. The Drawing is attached hereto. This drawing surfaced after a document request.

The 48 inch box Gingkos recommendation also was verbally represented to the neighbors as the Town Arborists initial selection. However, within a matter of days with no notice to the neighbors there was a switch to the 15 gallon crape myrtles in return for the Town allowing the owner of 12 Selby Lane to complete the construction of the block wall. The Town let the owner of 12 Selby Lane "off the hook" when the case was settled by the City with the owner of 12 Selby Lane without a prior noticed open public Council meeting.

The Tree Committee was thereby enabled to attempt to use the fine proceeds for one of their favored projects rather than the restoration of the damage that occurred to the neighborhood.

The damage resulted from the failure of the Town staff to require a landscape plan before the permit was issued to build a block wall with a footing trench to be dug by a backhoe. The Building Department representative at the beginning of the trenching claimed that it was debris rather than cut roots that I pointed out were visible in the trench. The trees were butchered over my numerous agonizing objections to the Building Department, the Town Arborist and the Atherton Police Department.

Arborist Preliminary "Academic" Offer:

The "Arborist Recommendation" is for 36 inch boxed Dawn Redwoods. A listed "Con" in the Report was that **"...THE 36 INCH BOX IS THE LARGEST SIZE AVAILABLE."** Nowhere in the Report is there stated the height and/or spread sizes of a 36 inch box Dawn Redwood. Therefore, on February 19, 2008 I contacted all four of the nurseries listed in the Arborist report as having been visited by the Arborist. I could not get an answer from each nursery because they all stated that there were **NO (0)** boxed Dawn Redwoods available. This stated "Possible Plan" is an **IM**possible Plan to execute. Therefore, it is an inherently unacceptable unrealistic Plan.

The Pacific Nursery representative stated on February 19, 2008 that they had no boxed Dawn Redwoods at Pacific Nursery. He said that they only had a 15 gallon Metasequoia Glyptostro (Dawn Redwood) and no boxed Dawn Redwoods. I was advised by one of the other named nurseries that the reason why there were no boxed Dawn Redwoods available in the area is because there is no demand in the area for Dawn Redwoods. He stated that the only use for a Dawn Redwood was for a Japanese style garden

An Article entitled "Amazing Redwood Trees written by the Sempervirens Fund contrasts the Dawn Redwood as a "veritable **MIDGET** (emphasis added)" in relation to the Giant Coast Redwood. A close look at the photo attachment to the Staff Report of the "no longer in stock" Dawn Redwood represented as taken at the Pacific Nursery illustrates its barren stick look. This is even accentuated more when juxtaposed with the California Coast Redwood photos attached to the Report.

It is noted in a "Gardeners' Notes" on the "Dave's Gardens" website under "Plant Files: Detailed Information on Dawn Redwood" that "All year 'round it (Dawn Redwood) was dropping something. The leaves were always all over the deck, and didn't disappear on their own...It did not do well after our summer of drought, and was always dropping dead branches, and attracting nuisance, if harmless, carpenter bees."

Another comment was "Just a warning... Tent Worms LOVE this tree! I have been fighting them for three years and had never had them before."

Since the Dawn Redwood is a new discovery by Mr. Keilty when recently attending an arborist convention in Tennessee, a California experiment with it in California on Cebalo Lane could be a disaster.

“Split the Baby” Possibility:

The “Compromise Plan” has merit insofar as the neighborhood plan component. However, there is no need to cut back on the number and size of the Coast Redwoods for the Kupperman component of the “Compromise Possibility” for the reasons addressed, supra.

The Arborist “Summary” states that “the goal of this project is for the 2 groups to come to an agreement on how to best screen the residence and wall of this site”. It was my understanding that the 2 groups would at least actually “meet and confer”. I again attempted to initiate this after the November 2007 Council meeting. I tried to talk to the Tree Committee Chairwoman and Ms. Kupperman in order to come to a resolution. Although I provided them again with my contact information, they never contacted me. I already personally had called the Chairwoman of the Tree Committee in an attempt to reach a resolution. I left a message to please call back. Even though the chairwoman later acknowledged that the message was received, I did not receive a return call.

One of the Cebalo residents, Mrs. Alberta Delnevo, attended a Tree Committee charette. The Tree Committee would not discuss the use of the fine to replace the Heritage trees.

Earlier this month I did find Ms. Kupperman and Ms. Rachel Croft meeting with the Arborist at the Site as I was driving home. I had not been invited to attend the meeting. I parked my car and attempted to meet with Ms. Kupperman and Ms. Croft. However, they refused and entered their vehicles. Flabbergasted, I stood there with the Arborist as they drove away.

Cebalo Lane has a cull de sac at the end. Therefore, all the residents are further down the Lane than the southwest side of 12 Selby Lane property. We are forced to drive by the Site where the trees were butchered over our objections as we drive both away from and to our residences. There is no other way out. In addition, there is a void in the skyline when I am in my backyard and when I look out the sliding glass windows and the French doors from the back of my residence when attempting to look at the Landscape Athertonians value so much.

Ms. Kupperman expressly admitted at the November 2007 Council meeting as reflected in the Minutes that she “understood Mr. Thomas’ concern and discontent”. Nonetheless, she wants the neighbors to wait another 10 to 20 years to get to the point where the fine funds would allow us to be right now. This is so that the funds could be used elsewhere on her project rather than in the damaged neighborhood. Also, her proposed trees would not be the choice of the Cebalo/Selby neighbors who have been hurt. After 20 more years the trees proposed by Ms. Kupperman would be just a small fraction of the size of the four 80 to 100 feet tall Heritage pine trees and the large Heritage walnut tree. The fine was generated as the result of the butchering of these trees that need to be replaced.

The selection of trees for restorative purposes that have been illegally butchered is not one of the stated purposes of the Tree Committee according to The Atherton Tree Committee link on the Town website states under “Atherton Tree Preservation Guidelines. The Committee failed to meet the express “missions and goals to educate residents on the proper care and selection of trees”.

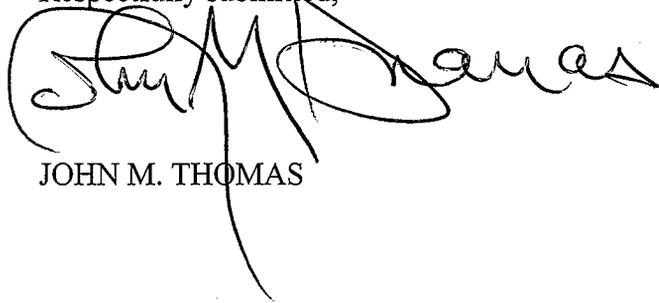
The Guidelines specifically limit the Tree Committee's role in the "plant)ing) of trees on public and private land (to those) that have been LOST DUE TO OLD AGE OR DISEASE (emphasis added)". This does not include the replacement of deliberately butchered trees. The Cebalo/Selby neighbors do not want the Tree Committee to ASSIST itself to the proceeds from the fine in order to promote any other project of the Tree Committee outside the damaged neighborhood.

There is no basis for any claim that the use of 24 inch box Gingkos complies with the stated Atherton Tree Preservation Guideline that states that "The Atherton Tree Committee is dedicated to improving the quality of life in our community by inspiring our residents to plant and perpetuate a healthy urban forest."

Conclusion:

It is requested that based upon the facts and reasons set forth above that the City Council approve the fair and just Cebalo/Selby Lanes proposed Plan.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Thomas", written in a cursive style. The signature is positioned above the printed name "JOHN M. THOMAS".

JOHN M. THOMAS

Attachments

12selbylane letter022008#2

Town of Atherton

Meetings and Agendas

City Council

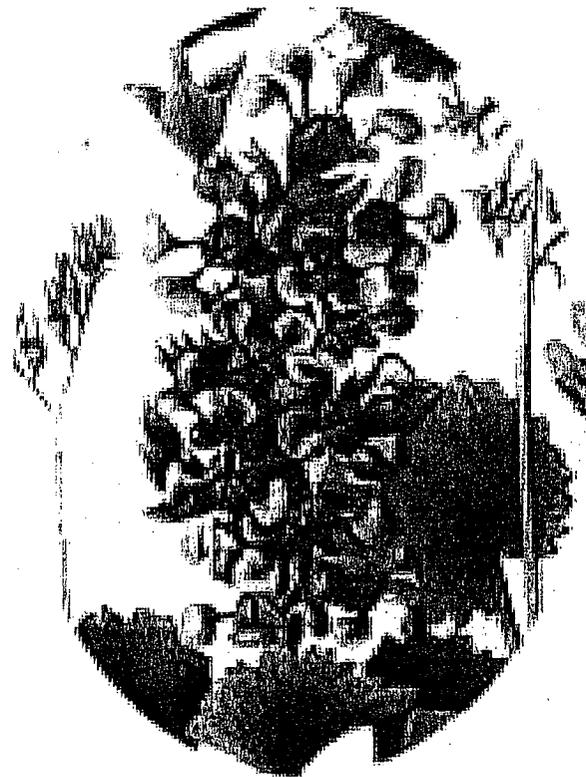
Planning Commission

Park and Recreational Commission

Arts Committee

Transportation Committee

General Plan Committee



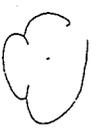
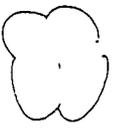
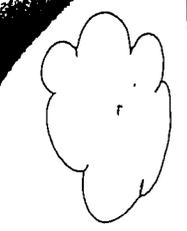
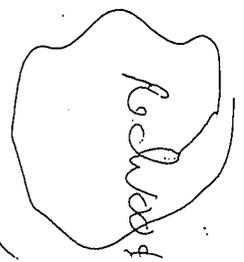
Ginkgo
 Red maple - *Acer rubra*
 Red oak - *Quercus rubra*

Dear Mr. Hynes:

This is the drawing
 from Kathy Hughes-Arnlsson
 for 12 Selby Lane
 Planting trees.

Thanks

5 48" Ginkgo biloba



main - 6' from edge of pavement



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JEROME GRUBER, CITY MANAGER**

FROM: BILL YEOMANS, CONTRACT FINANCE OFFICER

DATE: FOR THE MEETING OF MARCH 19, 2008

SUBJECT: MID-YEAR BUDGET FOLLOW-UP REPORT, FISCAL YEAR 2007-2008

RECOMMENDATION:

Adopt the Resolution increasing the Budget for fiscal year 2007-2008.

INTRODUCTION:

The Mid-Year Budget report was presented at the City Council meeting of February 20, 2008, (attached). The Council deferred action to the March 19 meeting and referred the report to the Finance Committee. The Finance Committee met March 6 and made several comments and questions that are embodied in the changes recommended in this follow-up report.

HIGHLIGHTS:

Changes in the Resolution:

1. City Attorney Department
 - a. Recoding of Historical Urns Case to City Attorney Department
With the City Attorney's concurrence, actual costs related to this case (\$44,233) have been moved from the Building Department to the City Attorney Department and will be coded there for the rest of the fiscal year. Consequently \$50,000 in budget estimates has been moved between the budget adjustments as well.
 - b. Recent billing
A further billing of 457,939 was recently received; therefore, \$60,000 has been added to the mid-year budget request.
2. Reductions in Budget estimates.
 - a. The repairs to the Town Home have been reduced from the \$100,000 maximum to \$72,000. Any repairs to the patio will be deferred until a later date.
 - b. The Management Recruitment budget estimate of \$60,000 has been reduced by packaging the three recruitments into a single contract estimated at \$46,000.

3. Changes discussed at the last meeting
 - a. Reduction in cost and revenue for plan check at Sacred Heart
 - b. Reduction in Planning Consulting by \$10,000

The Finance Committee also recommended rescinding the transfer from the Parcel Tax Fund (201) to the General Fund (\$650,000) to allow the entire capital improvement program to move forward this fiscal year. That action is included in the revised resolution.

Staff also looked at the request for backup systems for Police Dispatch. This request comes from our Information Technology (IT) support consultants who believe there is risk that the dispatch system will go down due to two vulnerabilities: the distribution panel supporting the PCs in dispatch is a weak link that would be detoured around by a new Uninterrupted Power system link; the transfer switching between regular electrical power (PG&E) and the emergency generator puts more pressure on these systems. Staff also looked at whether this cost could be absorbed in the Police budget. This request came from IT, and the Police Department is already at 68% of budget, so there seems to be little slack to absorb this cost.

Other General Fund departments, such as Building and disaster preparedness, requesting adjustments do not have available funds to absorb these increases. Special funds requesting adjustments, Park Well (411) and Tree committee (715), have no established budgets; the Parcel Tax (201) capital improvements are being reviewed separately.

Additional clarification of the use of the Contingency account needs to be established as part of the FY 2008-09 Budget process to determine the City Manager's discretionary use of this account.

FISCAL IMPACT:

The proposed resolution increases the FY08-09 Budget by \$567,200, of which \$493,000 is in the General Fund and rescinds the Parcel Tax Transfer.

Prepared by:

Approved by:

William Yeomans
Contract Finance Officer

Jerome Gruber
City Manager

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
MID-YEAR BUDGET REVISIONS**

RESOLVED, by the City Council of the Town of Atherton, State of California, that

WHEREAS, the City Council has received and considered a report from the Interim Finance Director supporting recommendations for a mid-year adjustment of the Town's adopted budget;

NOW, THEREFORE, the City Council of the Town of Atherton hereby resolves as follows:

Section 1. Budget Adjustment. The Fiscal Year 2007-2008 budget shall be increased in amounts and for the respective accounts as set out and shown in Exhibit A attached here and incorporated by this reference.

Section 2. Transfer Rescinded. The budget transfer of \$650,000 from the Parcel Tax Fund to the General Fund in Fiscal Year 2007-2008 is rescinded.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of _____ 2008, by the following vote:

*AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:*

James R. Janz, MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

MID-YEAR BUDGET ADJUSTMENTS
Fiscal Year 2007-2008

Dept.	Purpose	Account Number	Description	Amount	Increased Revenue
Attorney	Attorney Fees	101 16 3103 161	Unanticipated Litigation -- HR, Planning	285,000	
Building	Plan Check	101 25 3165 125	Sacred Heart Science Bldg	30,000	40,000
	Contract Software	101 25 3165 127	New software -- further costs	12,000	
	Contract Legal	101 25 3165 125	Legal etc. (94 Tallwood)	40,000	
	Planning Consulting	101 25 3165 126	Historical Artifacts, Zoning Code Update	46,000	
	Contract Planner	101 25 3108 126	Increased activity	55,000	
Admin	Election Expenses	101 12 3351 123	June 2008 Election	10,000	
	Contract -- Recruitments	101 12 3165 123	Management Recruitments	46,000	
Council	Contract Facilitator	101 11 3165 000	Council Team Building	8,000	
	Travel & Meetings	101 11 3306 000	Sustainable SMC--Indicators Publication	3,000	
PW	Tree Committee	740 00 3165 000	Set up Budget	2,200	
	Town House	401 00 3165 403	Repairs	72,000	
Police	Uninterrupted Power	101 40 3513 143	UPS for Backup	18,000	
Contingency		101 00 3702 000	from General Contingency	(51,134)	
	Contract Services	101 25 3165 126	Public Outreach	5,000	
	EDAW Report	101 25 3165 126	Consultant to Prepare Report (AB939)	4,200	
	Disaster Preparedness	101 12 3305 121	Neighborhoods CERTS	23,000	
	Environmental Programs	101 25 3165 126	Environmental Report (ICLEI required)	3,000	
	EOC Generator	101 50 3511 559	Water Tank	4,100	
	EOC Generator	101 40 3305 143	Phone Lines	500	
	Well DP	411 00 3165 000	Water Treatment	4,834	
	Special Events	101 12 3350 123	Employee Recognition Event	6,500	
TOTAL				<u>627,200</u>	<u>40,000</u>
		101	General	553,000	40,000
		401	Capital Improvement	72,000	
		101	Transfer to Park Well	(4,834)	
		411	Transfer from General	4,834	
		740	Tree Committee	2,200	
TOTAL				<u>627,200</u>	<u>40,000</u>



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JERRY GRUBER, CITY MANAGER**

FROM: BILL YEOMANS, INTERIM FINANCE OFFICER

DATE: FOR THE MEETING OF FEBRUARY 20, 2008

SUBJECT: MID-YEAR BUDGET REPORT, FISCAL YEAR 2007-2008

RECOMMENDATION:

Adopt the Resolution increasing the Budget for fiscal year 2007-2008.

INTRODUCTION:

This report reviews the Town's financial status for the first half of the fiscal year at December 31, 2007, and estimates all revenues and expenditures for the second half of the year to project financial results for all funds to the end of the fiscal year, June 30, 2008.

HIGHLIGHTS:

The beginning balances (Column 3 attached) are the results of the audit process for June 30, 2007. These audited balances exceed the FY2007-08 Budget beginning balance by 18.7% (\$1,549,987) in the GF and 16.3% (1,965,650) for all funds.

Revenue estimates for all funds for the entire fiscal year are in Column 4 and those estimates are broken down by General Fund category (rows) and by budget, year-to-date and Mid-Year Estimate (columns) on Page 2 attached. Although the Mid-Year Estimate is not as cautious as the original Budget estimates, I am comfortable that the final results in the General Fund will meet or exceed the new estimate. Revenues in the General Fund are 4.5% (\$405,897) greater than the original Budget Estimate.

Expenditure estimates are in Column 5 and are broken down by department and fund on Page 3. Some departments will exceed their original budgets by yearend as a result of circumstances that

have arisen during the last seven months, and so will need Council budget authorization to continue spending.

1. As a result of unanticipated litigation in personnel and planning disputes, the City Attorney's budget will need an additional \$175,000.
2. The Building Department will need an additional \$288,000 for legal disputes, zoning code update, historical artifacts consulting, permitting software, our contract planner, and plan check. The extra activity for plan check will be offset by building revenues of \$100,000 and general revenues of \$110,000.
3. Additional repairs to the Town Home up to \$100,000.
4. The City Council budget will increase by \$11,000 to cover a team building facilitator and the Sustainable San Mateo County Report.
5. The Administration Department will be organizing the June 2008 Election (\$10,000) and hiring a consultant to recruit for key department managers (\$60,000).
6. The general contingency account has been untapped so far this year and will be used for
 - Disaster Preparedness projects requiring water treatment at the well and setting up phone lines and a water tank at the Emergency Operations Center (\$10,000) in addition to the \$23,000 approved at your last meeting for the CERTS program.
 - An employee recognition event (\$6,500).
 - Authorization for the Tree Committee budget (\$2,200).
 - Uninterrupted Power Source for backup of computers in Police (\$18,000)
 - Required environmental program reports on local response to global warming (\$3,000) and waste management (\$4,200).

Most of these adjustments are a consequence of one-time needs which should not carry into the following years. All of these requests are detailed by account and amount in the attached proposed resolution.

Resulting Balances

As a result, the estimated revenues and expenditures (operating result) in the General Fund will be almost equal. The ending fund balance (\$9,843,880) also demonstrates that the Town of Atherton is in strong financial condition. Of that balance \$5,300,000 is reserved for economic uncertainties, cash flow needs, contingencies and potential disasters. Those reserves are particularly important now due to present risks:

- The housing and mortgage crisis that will reduce the growth of property tax, the Town's primary source of revenue
- The State Budget deficit of \$14 billion, that is already causing cash payment delays and reconsideration of programs for local support.
- The expiration of the Special Parcel Tax in June 2009 which is used for the largest portion of the Town's Capital Improvement Program.

Budget Process for FY2008-09

Looking ahead to next year, Staff is planning a budget with more description and explanation of Town activities. The document will demonstrate more of the management process through town-wide and departmental goals. A proposed Calendar of Activities is attached. Staff requests that Council Members provide input to the City Manager for next year's Budget.

FISCAL IMPACT:

The proposed resolution increases the FY08-09 Budget by \$664,200, of which \$562,000 is in the General Fund. The total impact of that increase, prior year results, and revenue estimate increases is an increased General Fund Balance of 19.4% or \$1,601,321.

Prepared by:

Approved by:

William Yeomans
Interim Finance Officer

Jerome Gruber
City Manager

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
MID-YEAR BUDGET REVISIONS**

RESOLVED, by the City Council of the Town of Atherton, State of California, that

WHEREAS, the City Council has received and considered a report from the Interim Finance Director supporting recommendations for a mid-year adjustment of the Town's adopted budget;

NOW, THEREFORE, the City Council of the Town of Atherton hereby resolves as follows:

Section 1. Budget Adjustment. The Fiscal Year 2007-2008 budget shall be increased in amounts and for the respective accounts as set out and shown in Exhibit A attached here and incorporated by this reference.

Section 2 Effective Date. This Resolution shall be effective immediately upon adoption.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of _____ 2008, by the following vote:

<i>AYES:</i>	<i>Council Members:</i>
<i>NOES:</i>	<i>Council Members:</i>
<i>ABSENT:</i>	<i>Council Members:</i>
<i>ABSTAIN:</i>	<i>Council Members:</i>

James R. Janz, MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

MID-YEAR BUDGET ADJUSTMENTS
Fiscal Year 2007-2008

Dept.	Purpose	Account Number	Description	Amount	Increased Revenue
Attorney	Attorney Fees	101 16 3103 161	Unanticipated Litigation -- HR, Planning	175,000	
Building	Plan Check	101 25 3165 125	Sacred Heart Science Bldg	75,000	100,000
	Contract Software	101 25 3165 127	New software -- further costs	27,000	
	Contract Legal	101 25 3165 125	Legal etc. (94 Tallwood)	50,000	
	Planning Consulting	101 25 3165 126	Historical Artifacts, Zoning Code Update	56,000	
	Contract Planner	101 25 3108 126	Increased activity	80,000	
Admin	Election Expenses	101 12 3351 123	June 2008 Election	10,000	
	Contract -- Recruitments	101 12 3165 123	Management Recruitments	60,000	
Council	Contract Facilitator	101 11 3165 121	Council Team Building	8,000	
	Travel & Meetings	101 11 3306 121	Sustainable SMC--Indicators Publication	3,000	
PW	Tree Committee	740 00 3165 000	Set up Budget	2,200	
	Town House	401 00 3165 403	Repairs	100,000	
Police	Uninterrupted Power Sou	101 40 3513 143	UPS for Backup	18,000	
Contingency		101 00 3702 000	from General Contingency	(51,134)	
	Contract Services	101 25 3165 126	Public Outreach	5,000	
	EDAW Report	101 25 3165 126	Consultant to Prepare Report (AB939)	4,200	
	Disaster Preparedness	101 12 3305 121	Neighborhoods CERTS	23,000	
	Environmental Programs	101 25 3165 126	Environmental Report (ICLEI required)	3,000	
	EOC Generator	101 50 3511 559	Water Tank	4,100	
	EOC Generator	101 40 3305 143	Phone Lines	500	
	Well DP	411 00 3165 000	Water Treatment	4,834	
	Special Events	101 12 3350 123	Employee Recognition Event	6,500	
			TOTAL	664,200	100,000
		101	General	562,000	100,000
		401	Capital Improvement	100,000	
		101	Transfer to Park Well	(4,834)	
		411	Transfer from General	4,834	
		740	Tree Committee	2,200	
			TOTAL	664,200	100,000