



AGENDA
Town of Atherton
CITY COUNCIL
July 16, 2008

5:00 P.M.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

Special Meeting

5:00 P.M. 1. ROLL CALL J. Carlson, Marsala, Janz, McKeithen

5:02 P.M. 2. PUBLIC COMMENT

REGULAR AGENDA

5:10 P.M. 3. ADOPTION OF A RESOLUTION DECLARING THE RESULTS OF THE SPECIAL ELECTION HELD ON JUNE 3, 2008, TO FILL AN UNEXPIRED TERM ENDING IN NOVEMBER 2010

5:15 P.M. 4. ADMINISTER THE OATH OF OFFICE – JAMES “JIM” DOBBIE

5:30 P.M. 5. ADJOURNMENT

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)



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: KATHI HAMILTON, ACTING CITY CLERK

DATE: FOR THE SPECIAL CITY COUNCIL MEETING OF JULY 16, 2008

**SUBJECT: ADOPTION OF A RESOLUTION DECLARING THE RESULTS OF THE
SPECIAL ELECTION HELD ON JUNE 3, 2008, TO FILL AN
UNEXPIRED TERM ENDING IN NOVEMBER 2010**

RECOMMENDATION

Adopt a Resolution declaring the results of the Special Municipal Election held on June 3, 2008, The Official Certification of the Results by the San Mateo County Election Official are attached.

ANALYSIS

Due to the resignation of Council Member Alan Carlson on December 10, 2007, a vacancy was created for the remainder of his term expiring in November 2010. Pursuant to Government Code Section 36512 (b), the Council called a special election to be held on June 3, 2008, to fill the vacancy for the remainder of the term.

The Special Election was held on June 3, 2008, and the San Mateo County Election Office canvassed the election. On July 2, 2008, Chief Elections Official Warren Slocum certified the results of the election. The Official Certification of the Results is attached. Section 10262 of the California Elections Code requires that upon certification of the results of an election by the County Election Department, the City Council shall meet to declare the results of the election. This action may be taken at the next regular Council meeting or at a Special meeting called for that purpose. The Council is required to adopt a resolution in accordance with Sections 10262 and 10264 of the Elections Code, and the City Clerk is required to enter into the minutes a statement of the results.

Prepared by:

Approved by:

Kathi Hamilton
Acting City Clerk

Jerry Gruber
City Manager

Attachments: Resolution
Certification of Results

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
DECLARING THE RESULTS OF THE SPECIAL ELECTION
HELD ON JUNE 3, 2008**

WHEREAS, a special election was held within the Town of Atherton on June 3, 2008; and

WHEREAS, the conduct of said election was duly delegated to the County Election Officer/Clerk of the County of San Mateo, and

WHEREAS, the said County Election Official/Clerk has now certified the results of said election, and said results are truly reflected in the Certificate of the County Clerk dated July 2, 2008, a full, true and correct copy of which is attached hereto and by this reference incorporated herein,

NOW THEREFORE, BE IT RESOLVED, by the City Council of the Town of Atherton, acting pursuant to Section 10262 of the California Election Code, that the City Council hereby finds and declares the following named person received the highest number of votes for the office, member of the City Council, and further declares said person to be elected to a short-term member of the City Council, to wit:

James "Jim" Dobbie

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to enter a certified copy of this Resolution and its attachment, reflecting all the matters specified in California Elections Code Section 10264, in the official records of the Town of Atherton.

* * * * *

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 16th day of July, 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 Hynes, City Attorney



Warren Slocum

Chief Elections Officer & Assessor-County Clerk-Recorder

555 County Center
Redwood City, CA 94063
phone 650.363.4988 **fax** 650.363.1903
email wslocum@smcare.org
web www.smcare.org

July 2, 2008

Ms. Kathi Hamilton, Interim City Clerk
Town of Atherton
91 Ashfield Rd.
Atherton, CA 94027

Subject: Certificate of the Chief Elections Officer for the Town of Atherton Municipal
Election held June 3, 2008

Dear Ms. Hamilton:

Attached hereto is the Chief Elections Officer's Certification in connection with the subject
election held on June 3, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "WSlocum", written over a horizontal line.

Warren Slocum

Enclosures

CERTIFICATE OF THE CHIEF ELECTIONS OFFICER

In the Matter of the CANVASS OF VOTE CAST)
at the ATHERTON MUNICIPAL)
ELECTION held on June 3, 2008)

I, **WARREN SLOCUM**, Chief Elections Officer of the County of San Mateo, State of California hereby certify;

THAT an election was held within the boundaries of the ATHERTON on Tuesday, June 3, 2008 for the purpose of electing one (1) member to the Town Council for two (2) year term and I caused to have processed and recorded the votes from the canvass of all ballots cast at said election within the boundaries of the ATHERTON.

I **HEREBY FURTHER CERTIFY** that the record of votes cast at said election are set forth in Exhibit "A" attached hereto and incorporated herein by reference as though fully set forth at length.

IN WITNESS WHEREOF, I hereunto affix my hand and seal this 2nd day of July, 2008, and file this date with the Interim City Clerk of the ATHERTON.



WARREN SLOCUM
Chief Elections Officer &
Assessor-County Clerk-Recorder

June 03, 2008

Early Voting Totals 61	TOWN OF ATHERTON MEMBERS, CITY COUNCIL														
	Registration	Ballots Cast	Turnout (%)		TOWN OF ATHERTON ELIZABETH LEWIS, NP	JAMES "JIM" DOBBIE, NP									
14TH CONGRESSIONAL DISTRICT	5,188	8	0.2		0	7									
21ST ASSEMBLY DISTRICT	5,188	8	0.2		0	7									
3RD SUPERVISORIAL DISTRICT	5,188	8	0.2		0	7									
11TH SENATORIAL DISTRICT	5,188	8	0.2		0	7									
BOARD OF EQUALIZATION DISTRICT	5,188	8	0.2		0	7									
SAN MATEO COUNTY	5,188	8	0.2		0	7									
TOWN OF ATHERTON	5,188	8	0.2		0	7									
Early Voting Totals	5,188	8	0.2		0	7									

Juror 03, 2008

Absentee Totals 61	TOWN OF ATHERTON MEMBERS, CITY COUNCIL														
	Registration	Ballots Cast	Turnout (%)		TOWN OF ATHERTON	ELIZABETH LEWIS, NP	JAMES "JIM" DOBBIE, NP								
14TH CONGRESSIONAL DISTRICT	5,188	1,348	26.0		532	742									
21ST ASSEMBLY DISTRICT	5,188	1,348	26.0		532	742									
3RD SUPERVISORIAL DISTRICT	5,188	1,348	26.0		532	742									
11TH SENATORIAL DISTRICT	5,188	1,348	26.0		532	742									
BOARD OF EQUALIZATION DISTRICT	5,188	1,348	26.0		532	742									
SAN MATEO COUNTY	5,188	1,348	26.0		532	742									
TOWN OF ATHERTON	5,188	1,348	26.0		532	742									
Absentee Totals	5,188	1,348	26.0		532	742									

Grand Totals 61	TOWN OF ATHERTON MEMBERS, CITY COUNCIL														
	Registration	Ballots Cast	Turnout (%)		TOWN OF ATHERTON ELIZABETH LEWIS, NP	JAMES "JIM" DOBBIE, NP									
14TH CONGRESSIONAL DISTRICT	5,188	2,039	39.3		813	1137									
21ST ASSEMBLY DISTRICT	5,188	2,039	39.3		813	1137									
3RD SUPERVISORIAL DISTRICT	5,188	2,039	39.3		813	1137									
11TH SENATORIAL DISTRICT	5,188	2,039	39.3		813	1137									
BOARD OF EQUALIZATION DISTRICT	5,188	2,039	39.3		813	1137									
SAN MATEO COUNTY	5,188	2,039	39.3		813	1137									
TOWN OF ATHERTON	5,188	2,039	39.3		813	1137									
Early Voting Totals	5,188	8	0.2		0	7									
Absentee Totals	5,188	1,348	26.0		532	742									
Election Day Totals	5,188	683	13.2		281	388									
Grand Totals	5,188	2,039	39.3		813	1137									



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
JULY 16, 2008
5:30 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

5:30 P.M. ROLL CALL J. Carlson, Marsala, Janz, McKeithen

5:32 P.M. PUBLIC COMMENTS

5:35 P.M. CLOSED SESSION

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

**John P. Johns vs. the Town of Atherton, Superior Court of California,
San Mateo County, CIV 473834**

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

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant
to Government Code Section 54957(b)(1)
Title: City Manager**

Title: City Attorney

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN

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AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JULY 16, 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** Dobbie, J. Carlson, Marsala, Janz, McKeithen
- 7:05 P.M. 3. **PRESENTATIONS**
- LAFCO REPORT – Municipal Services Review – Martha Poyatos**
- 7:25 P.M. 4. **PUBLIC COMMENTS** (only for items which are not on the agenda – limit of three minutes per person)
- 7:35 P.M. 5. **REPORT OUT OF CLOSED SESSION**
- 7:40 P.M. 6. **CITY MANAGER’S REPORT**
- 7:50P.M. 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed by Resolution No. 99-6)
- 7:50 P.M. **CONSENT CALENDAR** (Items 8-21)

(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.)

8. **APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING AND SPECIAL CITY COUNCIL MEETING OF JUNE 11, 2008; THE SPECIAL CITY COUNCIL CLOSES SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF JUNE 18, 2008**

9. **APPROVAL OF BILLS AND CLAIMS FOR JUNE IN THE AMOUNT OF \$896,006**
10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JUNE 2008**
11. **APPROVAL OF FY 2008-09 INVESTMENT POLICY**

Recommendation: Approve the Investment Policy as shown in Attachment A to this staff report.

12. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE AND AWARD STREET RECONSTRUCTION PHASE 4 PROJECT, PROJECT NO. 08-001**

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Street Reconstruction Phase 4 Project, Project No. 08-001; Authorize the City Manager to award the contract for the Street Reconstruction Phase 4 Project, Project No. 08-001, for an amount not to exceed the Engineer's Estimate of \$424,489.20.

13. **AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS CAPE SEAL PROJECT, PROJECT NO. 07-012**

Recommendation: Award the contract for the Alameda de las Pulgas Cape Seal Project, Project No. 07-012, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.

14. **AWARD OF CONTRACT FOR 2008 PARK PATH MICRO-SURFACING PROJECT, PROJECT NO. 08-003**

Recommendation: Award the contract for the 2008 Park Path Micro-Surfacing Project, Project No. 08-003, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.

15. **AUTHORIZATION TO AWARD THE STEVICK DRIVE RECONSTRUCTION PROJECT, PROJECT NO. 08-002**

Recommendation: Authorize the City Manager to award the contract for the Stevick Drive Reconstruction Project, Project No. 08-002, for an amount not to exceed the Engineer's Estimate of \$546,815.29 based on the August 7, 2008 bids opening.

16. APPROVAL OF THE POLICE DEPARTMENT PURCHASE OF A POLICE VEHICLE FOR FY 2008-09

Recommendation: Staff recommends that Council authorize the Town to “piggy back” on the City and County of San Francisco’s bid in order to purchase one marked police vehicle for the fiscal 2008-2009 budget cycle for a total cost not to exceed \$24,228.61.

17. SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING CHAPTERS 2.37 AND 2.40 OF THE ATHERTON MUNICIPAL CODE PERTAINING TO THE GENERAL PLAN COMMITTEE AND THE PARK AND RECREATION COMMISSION

Recommendation: Adopt ordinance repealing Chapters 2.37 and 2.40 of the Atherton Municipal Code pertaining to the General Plan Committee and Park and Recreation Commission.

18. FIFTH AMENDMENT TO AGREEMENT FOR MARC HYNES

Recommendation: Approve Fifth Amendment to City Attorney's Agreement between Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.

19. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY

Recommendation: Consider proposed revisions to paragraph 11 of “miscellaneous rules” of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures.

20. ADOPTION OF SECONDARY GOALS AND OBJECTIVES FROM THE MAY 2, 2008, COUNCIL WORKSHOP

Recommendation: Approve lower-priority goals and objectives based on availability of staff time, resources, and a philosophy of a “pay-as-you-go” budget for fiscal year 2008/2009.

PUBLIC HEARINGS (Items 21-22)

7:55 P.M. 21. APPEAL OF THE PUBLIC WORKS DIRECTOR’S DECISION REGARDING 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT PERMIT TO MADRONE ROAD

Recommendation: Staff recommends that the City Council conduct the public hearing, deny the appeal, and uphold the decision of Staff for the reasons outlined in this report.

8:30 P.M. 22. ADOPTION OF A RESOLUTION FOR PLANNING FEE INCREASE

Recommendation: Staff recommends that the City Council adopt the attached resolution approving new planning fees.

REGULAR AGENDA (Items 24-25)

8:50 P.M. 23. APPROVAL OF PROCESS FOR PREPARATION OF THE 2007-14 HOUSING ELEMENT UPDATE INCLUDING APPROVAL OF THE NEAL MARTIN & ASSOCIATES SCOPE OF WORK AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE (Continued from the City Council meeting of June 18, 2008)

Recommendation: Approve the proposed process for preparation of the 2007-14 Housing Element Update including the items listed below: Approval of the Neal Martin & Associates Scope of Work (attached). Approval of the Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the Update (attached).

9:10 P.M. 24. DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER

Recommendation: Discuss setting aside General Fund (101) and Facilities Construction Fund (406) balances for a new Town Center.

9:30 P.M. 25. DISCUSSION AND POSSIBLE CANCELLATION OF AUGUST MEETING

9:35 P.M. 26. COUNCIL REPORTS

9:45 P.M. 27. PUBLIC COMMENTS

10:00 P.M. 28. ADJOURN

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DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
June 11, 2008
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Janz at 5:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

There were no public comments.

**CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to
Government Code Section 54957.6**

**Agency Negotiator: Glenn Berkheimer, I.E.D.A.; Jerry Gruber, City Manager
Current and Upcoming Labor Negotiations**

RECONVENE TO OPEN SESSION

Report of action taken.

**City Attorney Marc Hynes reported out of Closed Session that no reportable action
was taken.**

ADJOURN

The meeting was adjourned by Mayor Janz at 5:55 p.m.

Respectfully submitted,

James R. Janz
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
JUNE 11, 2008
7:00 P.M.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

Special Meeting

Mayor Janz called the meeting to order at 7:10 p.m.

ROLL CALL

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

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

PUBLIC COMMENTS

Council Member McKeithen noted Atherton resident John Sisson passed away on Sunday, June 8, 2008. He loved the Town and gave a lot of himself to it.

PUBLIC HEARINGS (Items 1-3)

1. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION ADOPTING THE FY 2008-09 OPERATING AND CAPITAL BUDGET

Mayor Janz stated Council anticipated the meeting to be more of a workshop on the budget and would most likely be continued to the June 18, 2008, meeting for adoption.

City Manager Jerry Gruber thanked the Finance Committee and the Finance Department for their work on the budget, as well as all the senior management staff.

Interim Finance Officer Bill Yeomans presented the 2008/09 Budget. The uncertain economy was affecting many communities. The income tax was seriously affecting the State budget, which was down \$17 billion. Atherton was more protected than in the past due to Prop 1A. The primary revenue source of Atherton's General Fund was property taxes. The County estimated a 6.6% property tax increase; however, Interim

Finance Officer Yeomans estimated 6% due to the possibility the numbers could be adjusted downward. After discussions with the Finance Committee, the City Manager's budget was recommending that Parcel Tax funds be used entirely for capital improvements. In the past, \$650,000 of the \$1.8 million went for public safety. Additionally, a number of cuts were implemented to tighten the budget, totaling \$724,000, or about 6% of the budget. With regard to the Building Facilities Fund, no transfer was recommended at this time; the money was to remain in the General Fund. Balances and Reserves looked to break even for the current year. The General Fund total balances would be over \$9 million. Reserves were to be maintained to at least \$5.3 million; therefore, just under \$4 million in unreserved balance was available in the General Fund. The Budget Adjustment List, if approved by Council, would be added to the detail for the final budget. Looking to next year, Interim Finance Officer Yeomans indicated the intention to review all fees for potential increases and ultimately incorporate them into a Master Fee Schedule. With the sunset of the Parcel Tax in 2010, staff would work with the Council to study alternate funding sources.

Council Member McKeithen said the Finance Committee's fundamental precept was a balanced budget without going into reserves. Although, the reserves appeared to be large and not designated for any particular purpose, the Town did have unfunded liabilities related to PERS. Secondly, the \$650,000 Parcel Tax funds would be used solely for capital improvements. Next, the Finance Committee concentrated on where the budget could be cut: 1) Eliminate the \$100,000 Contingency Fund; 2) Eliminate \$5,000 of the training budget in three areas; 3) Eliminate \$30,000 for new audio equipment in the Council Chambers; 4) Reduce litigation expenses to \$25,000; 5) Do not increase Code Enforcement by \$10,000; 6) Do not raise 1/2-time position to 3/4-time in the Finance Department; 7) Reduce the Police Department Budget by \$350,000; 8) Examined the Public Works Department regarding traffic studies budget; 9) Eliminated one request for a trailer in Public Works; 10) Painting costs of \$32,000 were put off, along with re-carpeting needs.

Vice Mayor Carlson, Finance Committee Member, said having a balanced budget was key, i.e., General Fund expenses could not exceed revenues. At mid-year, \$650,000 in Parcel Tax funds were taken from the General Fund and given to capital improvement projects. Revenue estimates in the past were very conservative and by putting Parcel Tax funds in the General Fund meant there were no funds available for infrastructure improvements. Regarding the Building Facilities Fund, he believed a better way to approach it would be to look at a portion of the unallocated reserves and setting aside some portion of it for Town facilities. The Police Department increased its budget from 2007 to mid-year 2008 by \$350,000. The projection for the current year was that the Police Department would overrun its budget. However, Police Chief Brennan indicated an overrun would not occur and he would keep the upcoming budget in line with the mid-year numbers. There was a need to look for opportunities for additional revenues. The Planning Department was looking at ways to bill its time to third-party users. The Business License fee needed to be reviewed from a structure standpoint as well as a fee standpoint. Appropriate rates needed to be set for Town services for all departments. In May 2000, by using the internal Administration Fund, 20% of a pool of money was allocated to the Building Department to provide a transfer of overhead

to the Building Department to recover through permit fees. That overhead allocation process should apply to all departments.

Police Chief Bob Brennan said during his eight-year tenure, the Police Department came in under budget and he expected that would be the case for the current year. He did not believe that the projection of \$100,000 in excess expenses for 2007/08 was accurate. He believed the Interim Finance Officer factored that into next year's budget to reach the \$4.6 million request. He believed an accurate projection would be 3% for salaries, 3% other contract services, 2% office supplies, and some allocation for handguns, long guns, etc. There were 22 police officers and he did not want to lose any positions. He believed with his requested budget, the positions could be retained. Additionally, for the past eight years, \$200 to \$400,000 had been received in grant monies, totaling approximately \$1.8 million. He believed the Town would receive the \$100,000 from the COPS Fund but would lose the \$68,000 from Sequoia Union High School District for the SRO officer. The Police Department had seen a low attrition rate during the past eight years. He believed creating opportunities for outside duties for officers to be creative, to learn, and to become better police officers was critical to retention of officers. Eighteen months of training and \$150,000 was the cost for a new hire. Losing the specialty positions would encourage police officers to go elsewhere. The Town would either pay now or pay later. He firmly believed the Police Department did not need to cut any positions. There were some items that could be cut, such as a radar trailer or cameras in the intersections. He emphasized the need to retain the \$12,000 for long guns. Chief Brennan responded to Council questions.

Building Official Mike Wasmann said the increase in salaries and benefits for the Building Department was a result of the newly created Permit Tech position. He had a concern regarding contract services, which had been lumped into one category but were line-itemed in the new budget document, e.g., Plan Review, Code Enforcement, and Building Inspection. Regarding the economy, there was no slow down for the Building Department. The recruitment for a Senior Building Inspector was in process and included in the 2008-09 Budget. He expressed concern for the projected Planning cuts, as that person was in the department on Tuesdays and Thursdays, answers questions for realtors, developers, and contractors and included counter time for plan review for zoning review. Depending on the cuts, service for the Building Department would be jeopardized. Turn-around time would be extended. He responded to Council questions.

Vice Mayor Carlson believed the planning function was performing to sets of duties: 1) supporting the Building Department; and 2) responding to third-party requests. With regard to the second set of duties, the Town should be billing, collecting revenues, to offset them. He did not recall recommending cuts. He would like to see a separation of the Building Department from the Planning Department in terms of how the budget was presented. Additionally, he would like to see Environmental Programs be a separate program. With the addition of the new software, he suggested including management indices, e.g., tracking the volume of business and/or measuring efficiency.

Council Member McKeithen said over-the-counter services should remain at their highest level and were never intended to be reduced. The intent was to cost out what could be cost out, e.g., responding to a resident's request for information. Additionally, the City Manager needed to look for greater efficiency regarding the Contract Planner's time to ensure time was not being spent for routine services.

Deputy Town Planner Lisa Costa Sanders said her budget request included a more cost-effective approach for her and her staff. A part-time Assistant Planner was hired to assist in the Building Department, as well as to prepare and present staff reports to the Planning Commission. A part-time Administrative Assistant was hired to prepare minutes. Recently, she was able to hire an Assistant Planner on an as-needed basis to assist with vacation coverage or a heavier workload. With these new additions, costs should come down. One additional task being done was lot-line adjustments, which were numerous the past year. She and the City Manager spoke regarding the handling of additional requests from the Council for projects referred to the General Plan Committee; she would return to Council with a budget, fiscal impact, associated with the request. In 2003, she requested through the Finance Director, the ability to collect a deposit. With the amended fee resolution in 2007, the deposit was somehow lost. She wanted to reinstate the ability to collect a deposit and increase all the planning fees. Comparison research for other jurisdictions indicated Atherton's fees were probably the lowest. Recommendations for planning fee increases, the ability to collect a deposit, and cost recovery for staff research time would be presented to Council at its meeting in July. She responded to Council questions.

City Manager Jerry Gruber expressed reluctance for anticipating revenues that have not yet been implemented. He suggested waiting until the mid-year budget review when more accurate numbers would be available.

Council Member McKeithen understood the concern, as well as the need for a balanced budget. She suggested cutting \$50,000 from the contract fees instead of from over-the-counter services, which could be reinstated as soon as \$50,000 was realized from increased revenue.

Discussion ensued and Deputy Town Planner Costa Sanders indicated she would be comfortable with a \$25,000 reduction, not \$50,000. She said the Interim Finance Officer estimated planning revenues at \$30 to \$40,000 currently. She believed those could be doubled to bring in a net increase of \$50,000.

Council Member McKeithen did not understand that the \$50,000 was a projected revenue increase that was not yet approved. She said the intent of the Finance Committee was to cut back the ever-increasing cost of Planning services, not over-the-counter services.

Deputy Town Planner Costa Sanders stated that her firm provided two days per week over-the-counter planning services. Part of the increase in the contract planner budget was reflective of that.

Council Member McKeithen suggested separating out the elements of the contract.

Council Member Marsala suggested the Environmental Programs, the Housing Element, and the Historic Artifact Ordinance should be separated from the Building Department.

Public Works Director Duncan Jones said the Public Works budget was over \$2 million, an increase of a little over \$400,000 from last year. The only increase to the Operations budget was to salaries and benefits, partly due to additional part-timers needed for Holbrook-Palmer Park, to an increase of events at the Pavilion, for assistance with maintenance of the buildings. Additionally, a reallocation was done to the staffing matrix to more accurately reflect what staff was actually doing. He noted a request for the Maintenance I – II position be upgraded to a Lead Worker position, which was not reflected in the budget and was an attempt to retain good workers. The remainder of the increases were requests for: 1) \$50,000 for traffic studies (Finance Committee recommended \$20,000); increase to the grading and drainage consultant contract; 3) \$28,000 additional facility repairs; 4) \$30,000 in inspection and testing and other contract services related to capital improvements; 5) \$48,000 for the two trailers (Finance Committee recommended funding one; 6) \$138,000 for building improvements (Finance Committee recommended removing \$82,000). The remainder of the Operations budget was maintaining the same budget as the previous year. He clarified on the Capital Improvement Budget that the additional monies reflected the proposed \$650,000 in Parcel Tax funds, \$250,000 from deferring two projects, moving \$200,000 from next year into the current year for a large drainage project for a total of \$1.1 million. Additionally, \$600,000 of additional drainage projects were moved up to the current year. The department needed a new backhoe, a necessary piece of emergency equipment, for \$92,000.

Council Member Marsala noted he served on the San Mateo County Library Commission for the past five years where funds were available for Library upgrades. With the ERAF windfalls, the Town had \$2.5 million in reserves in the Library fund. He suggested spending \$70 to \$90,000 to perform a site evaluation, a needs assessment, and to develop a conceptual plan on needed improvements. Atherton's Library staff would need to be consulted as well.

City Manager Gruber said that Council Member Marsala was requesting that \$90,000 be added to the budget to begin the process. In order to upgrade the Library, the San Mateo County Library required the above-mentioned evaluations and assessments. Several libraries had been built through the same mechanism: Brisbane, Burlingame, Belmont, and Foster City.

Council Member McKeithen was in favor of authorizing the funds; however, she believed the Council should have oversight rather than the Facilities Committee.

Council Member Marsala emphasized that the Facilities Committee could work with the City Manager in between Council meetings to expedite the process and report back to the Council. The research and vetting of what other cities were doing would be time-consuming.

A deliberation ensued regarding the pros and cons of the Facilities Committee vs. Council having oversight.

Vice Mayor Carlson did not view the item as a presentable budget document and suggested it be revised before the budget was adopted. He questioned the maintenance aspect.

Public Works Director Jones clarified that Town staff performed routine maintenance and charged that labor to the Library fund. The Library did not have staff to maintain the building.

Vice Mayor Carlson said the Finance Committee recommended reducing the amount of funds spent on landscaping at the Park. There was approximately \$200,000 in revenues and \$585,000 on the expense side for Park programs and Park maintenance; the \$385,000 difference, plus capital outlays of \$105,000, resulted in a sizable Town investment in the Park of \$490,000.

City Manager Jerry Gruber responded to Vice Mayor Carlson that obtaining long-term approval of a financing mechanism for the Town was not necessarily implementation by June 30, 2009, but to ascertain what the citizens would or would not support, e.g., a utility users tax.

Vice Mayor Carlson noted that goal setting in conjunction with the budget was a significant cultural change. His concern was the June 30, 2009, timeline and believed the only goals should be those that could really be accomplished by that date. His opinion was the goals would result in the criteria to assess the City Manager's performance. When the goals were finalized, they needed to be realistic.

Interim Finance Officer Yeomans said staffing was of concern in the Finance Department. Having a ½-time assistant resulted in the Assistant Finance Director performing a good deal of clerical work. He suggested redrafting the Library budget as some of the strategic questions were addressed and to include Library staff's requests. Thirdly, PERS was requiring the Town to pay a higher portion of retiree health benefits. A meeting was being planned to discuss the issue.

Mayor Janz opened the public hearing.

Denise Kupperman, Atherton, was concerned with the reduction of \$10,000 in Code Enforcement as the Town needed to enforce its ordinances, e.g., the Heritage Tree Ordinance, dogs off leach in the Park, etc. She asked for clarification on Parcel Tax funds. She also believed that the amount of funds spent on the Park were infinitesimal in comparison to other capital improvement projects. She would like to see more of her property tax dollars used there.

Interim Finance Officer Yeomans said the plan was to spend all the funds on capital improvements.

Council Member McKeithen noted that over \$55,000 was authorized for the Code Enforcement Officer. She also noted numerous projects were approved for the Park.

Public hearing closed.

Vice Mayor Carlson was interested in: 1) How staff was going to get the budget in balance; 2) Setting aside unallocated reserves up to \$1 million for the Town Center; 3) Addressing a long-term finance plan for the Town and what role the Finance Committee would have in looking for alternative means of financing; 4) Looking at actuarial numbers for unfunded liabilities; 5) Developing a Record Retention Policy; 6) Setting goals for the Human Resources and City Clerk areas; 7) Developing a formal evaluation process for the City Manager/City Attorney by using an outside facilitator. Additionally, he wanted a budget for the Environmental Programs Committee.

Mayor Janz called for a recess 10:05 p.m. The meeting was reconvened at 10:12 p.m.

Council Member Marsala agreed with moving \$1 million from reserves for new Town facilities. He would like to consider reinstating funds for a speaker system for the Chambers. He noted Measure O (Park funding) failed for a second time. He agreed with Ms. Kupperman that an allocation of the budget should go toward the Park. On a side note, he noted that Sandy Ferrando's husband passed away.

Council Member McKeithen said she would not agree to setting aside \$1 million for Town facilities that evening but would consider it at another time

Mayor Janz wanting Police Department staffing restored. If needed, he would recommend sacrificing the Narcotics Office before the SRO. He also agreed with setting aside \$ 1 million of reserves for facilities, believing that was the intent of the Council in 2000. He asked about the budget for the Environmental Programs Committee.

Interim Finance Officer Yeomans indicated the net budget, included in the Building Department, was \$21,900; \$8,000 in revenues, resulting in \$29,900.

Mayor Janz asked for an information item added to the budget regarding staff time for committees.

City Manager Gruber clarified staff needed \$190,000 more: \$100,000 in revenues for Planning and the Planning contract, \$90,000 from the Library fund. He clarified Council was in favor of including the projected raise in Planning fees.

Setting aside the \$1 million for Town facilities would be considered separately.

2. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION APPROVING THE FISCAL YEAR 2008-09 APPROPRIATIONS LIMIT AND CALCULATIONS

Recommendation: Adopt a Resolution approving the Fiscal Year 2008-09 Appropriations Limit and Calculations

The item was continued to the City Council meeting of June 18, 2008.

3. CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION ESTABLISHING A SPECIAL TAX FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2008-2009

Recommendation: Open public hearing, receive testimony, and close public hearing. After consideration, adopt a Resolution establishing a Special Tax for Municipal Services for the Fiscal Year 2008-2009 as set forth in Ordinance No. 555.

NOTE: Ordinance No 555 approved by the voters on June 7, 2005, provided for the authorization to levy a Special Tax for Municipal Services and Capital Improvements and for the expenditure of the funds derived from the tax. The Special Tax was to commence in FY 2005-2006 and continue through June 30, 2010. Each year, following the adoption of the Budget, it is necessary to hold a Public Hearing and adopt a Resolution levying a Special Tax for Municipal Services and instructing the Tax Collector of the County of San Mateo to collect the tax rates as identified within the Adopted Resolution.

The item was continued to the City Council meeting of June 18, 2008.

4. ADJOURN

Mayor Janz adjourned the meeting at 10:27 p.m.

Respectfully submitted by:

**Kathi Hamilton
Acting City Clerk**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
June 18, 2008
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Janz at 5:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

There were no public comments.

CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

**Agency Negotiator: Glenn Berkheimer, I.E.D.A.; Jerry Gruber, City Manager
Current and Upcoming Labor Negotiations**

RECONVENE TO OPEN SESSION

Report of action taken.

City Manager Jerry Gruber reported out of Closed Session that no reportable action was taken.

ADJOURN

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

Respectfully submitted,

James R. Janz
Mayor

Minutes Prepared by:
Kathi Hamilton

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)



DRAFT MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JUNE 18, 2008

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

REGULAR MEETING

Mayor Janz called the meeting to order at 7:06 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**
3. **PRESENT** Jerry Carlson
Charles E. Marsala
James R. Janz
Kathy McKeithen

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

4. **PRESENTATIONS**

Carolyn Williams, Principal, Selby Lane School, updated the Council on activities and programs at Selby Lane School. Enrollment for the year was 700 students in Kindergarten through 8th-Grade. The school had attained the title of an International Baccalaureate School with the Middle-Year Programs, grades 6, 7, and 8. She appreciated the support from the Police Department for assistance with students as well as special functions. There were several state and federal guidelines for public schools. Selby Lane School received some federal funding by meeting Adequate Yearly Progress (AYP) standards. A state guideline is the Academic Performance Index (API), and Selby Lane School's API is 719, up 150 points from 7 years ago. The goal was to reach 800. She thanked Council for its support. She distributed a brochure from the Selby Lane Education Foundation.

5. **PUBLIC COMMENTS**

Bill Grove, Atherton, Member of the ACIL and its Disaster Preparedness Committee, spoke regarding the limited routes in and out of west Atherton in case of wild fire. He urged Council to approve the Menlo Park Fire Protection District (MPFPD) working with residents to develop exit routes.

City Manager Jerry Gruber said a meeting took place the previous day. Police Chief Bob Brennan was working on an evacuation plan as well as working with the Circus Club to develop a staging area. The MPFPD plan was being worked on with residents of west Atherton and was a collaborative effort. The next meeting was July 29 and meeting with residents would occur in between.

Shirley Carlson, Atherton, announced that the Holbrook-Palmer Park Foundation and Atherton Dames were kicking off “Swing in the Park” on Sunday, September 7, 2008, from 2:00 p.m. until dusk. She encouraged everyone to attend and was looking for volunteers. She thanked Public Works Director Duncan Jones and Park staff for all the work on the City Manager’s home.

John Ruggeiro, Atherton, noted the passing of John Sisson, President of the Lloyden Park Homeowners’ Association and a past member of the San Mateo County Grand Jury. He said John had been a war hero receiving the Purple Heart, Bronze Star, and Silver, Star.

5. REPORT OUT OF CLOSED SESSION

City Manager Jerry Gruber said no reportable action was taken regarding the Closed Session:

CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

Agency Negotiator: Glenn Berkheimer, I.E.D.A.; Jerry Gruber, City Manager Current and Upcoming Labor Negotiations

6. CITY MANAGER’S REPORT

City Manager Jerry Gruber introduced his wife Melanie, who was officially an Atherton resident. The City Manager’s home was almost finished and he thanked staff for their hard work. He noted that Watkins Avenue would be closed from June 20-23 and June 27-30 for repairs. He said that Police Chief Bob Brennan was being honored that evening as one of the “Top Cops” in San Mateo County. He reported on several meetings he attended during the month. He also updated Council and the residents regarding the Town’s website improvements to foster better communications and a new and approved *Athertonian*.

Council Member Marsala announced a “Welcome Party” for the City Manager would take place on Tuesday, July 15, from 5 to 7 p.m. in the Pavilion.

In response to Vice Mayor Carlson, City Manager Gruber talked about the recruitment processes. Applications were received for Police Chief (55), Assistant City Manager (45) and Finance Director (17). He hoped to fill the positions by the middle of August or early September.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Atherton Heritage Association

Marion Oster, President, Atherton Heritage Association, said Sally Bush established the Association in the early 1990s and had spent 10 years collecting materials. Currently, there were 12 members, 7 of whom were working members, and there was always a need for new members. The Heritage Room was open on Tuesday mornings from 10-12 and included books, maps, newspaper clippings, yearbooks, etc. She spoke regarding how things were acquired for the Heritage Room. She noted that Nancy Lund and Pamela Gullard were writing a history of the Town of Atherton, which was about a year away from completion.

CONSENT CALENDAR (Items 8-22)

Council Member McKeithen commented on Item Nos. 9, 11, 13, 18, 20, and 21. She asked whether she should recuse herself from Item No. 15 since she lived nearby. City Attorney Marc Hynes stated the item was ministerial in that it was setting the date for a public hearing. When the item was heard, he recommended she step down. She asked that Item No. 14 be removed for discussion.

Mayor Janz commented on Item Nos. 15 and 18.

Vice Mayor Carlson had questions on Item No. 11 regarding the status of management's responses, on Item No. 12, and Item No. 13. He requested that Item No. 18 be removed for discussion.

MOTION – to approve the Consent Calendar as presented, with the exception of Item Nos. 14 and 18, which were removed and placed at the end of the Regular Agenda for discussion.

M/S McKeithen/J.Carlson

Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF MAY 21, 2008

9. APPROVED BILLS AND CLAIMS FOR MAY IN THE AMOUNT OF \$ 842,363

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR MAY 2008

Received the Monthly Financial Report for May 2008.

11. ACCEPTANCE OF THE FINAL AUDIT MANAGEMENT LETTER FOR FISCAL YEAR 2006-07

Received and filed the Report to Town Council and Management for the year ended June 30, 2007.

12. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH REDWOOD CITY TO PROVIDE THE TOWN WITH INFORMATION TECHNOLOGY SERVICES

Authorized the Mayor to execute an agreement with Redwood City for Information Technology services.

13. AMENDMENT TO CONTRACT FOR SERVICES WITH NEAL MARTIN & ASSOCIATES

Approved the proposed rate increase.

~~**14. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR GOLDFARB (HOUSING ELEMENT)**~~

~~**Recommendation: Approve the attached Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the 2007-14 Housing Element Update. (Removed and placed on the Regular Agenda for discussion.)**~~

15. SET A DATE FOR A PUBLIC HEARING FOR AN APPEAL OF THE PUBLIC WORKS DIRECTOR'S DECISION REGARDING 99 DE BELL

In accordance with Atherton Municipal Code Section 17.64, the City Council set the date for the public hearing for the City Council meeting of July 16, 2008.

16. ADOPT A RESOLUTION APPROVING A NO STOPPING ZONE ON SELBY LANE OPPOSITE SELBY LANE SCHOOL

Adopted Resolution No. 08-17 approving a "No Stopping" zone on Selby Lane opposite Selby Lane School, fronting 165, 171 and 177 Selby Lane. This will be a modification to an existing "No Stopping" zone to adjust the sign legend and time limits.

17. ADOPT A RESOLUTION APPROVING A NO STOPPING ZONE ON EDGE ROAD BETWEEN LOWERY DRIVE AND LAUREL SCHOOL

Adopted Resolution No. 08-18 approving a "No Stopping" zone on Edge Road between Lowery Drive and Laurel School.

~~**18. APPROVAL OF RESPONSE TO THE GRAND JURY REPORT**~~

~~**Recommendation: Consider response to Grand Jury report and provide direction regarding any additions or revisions. (Removed and placed on the Regular Agenda for discussion.)**~~

19. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC., FOR CODE ENFORCEMENT

Approved an Amendment to the Professional Services Agreement with CSG Consultants, Inc., to provide Code Enforcement Services to the Town of Atherton in the amount of \$53,000.

20. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC., FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS

Approved an Amendment to the Professional Services Agreement with CSG Consultants, Inc., for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$100,000 for Fiscal Year 2008-09.

21. ADOPTION OF RESOLUTIONS PERTAINING TO THE NOVEMBER 2008 GENERAL MUNICIPAL ELECTION

Recommendation: 1) Adopted Resolution No. 08-19 calling for a General Municipal Election for the purpose of electing two (2) members of the Atherton City Council and requesting consolidation with the County Elections Office; and 2) Adopted Resolution No. 08-20 requiring candidates to pay the prorated cost of publication and distribution of the Statement of Qualifications and specifying the length of the Statement.

22. CONSIDERATION OF DESIGNATING A VOTING DELEGATE AND ALTERNATE FOR THE 2008 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

Appointed Vice Mayor Jerry Carlson as a voting delegate and Council Member Marsala as an alternate to the League of California Cities Annual Conference and Annual Business Meeting to be held in Long Beach from September 24 through September 27, 2008.

Mayor Janz moved Item No. 26 from the Regular Agenda forward to be heard before Item No. 23, Public Hearing.

26. SIDEWALK REPAIRS FOR LLOYDEN PARK

Public Works Director Duncan Jones said one reason the initial remediation to the sidewalks was performed was because the Town's insurer (ABAG) gave the Town \$5,000 per year for sidewalk remediation. A program was being implemented to inspect the sidewalks every two years in order to have the entire cost covered by ABAG. The subject repairs were addressing those portions of the sidewalk that were in too much disrepair to do simple remediation. In all seven instances, the repairs were due to tree roots pushing up on the sidewalks, resulting in the need for the tree root to be pruned, which had a potential impact on the tree and was most often on private property. A waiver of liability was needed in order for the Town to take over

the responsibility, giving the option to the homeowners of signing or electing to do the work themselves. In conjunction with state law, the Atherton Municipal Code states the responsibility for sidewalk repairs lies with the homeowner.

On advice from the City Attorney, Mayor Janz recused himself from the item because he lived in Lloyd Park. Vice Mayor Carlson presided over the item.

Council Member McKeithen had a report written by John Sisson shortly before his death regarding arguments in favor of the Town assuming responsibility for repairing sidewalks including: 1) the Town already paid for many of the sidewalk displacements, i.e., 10 out of the 17 sites were ground down and 7 were not, making the Town involved in some but not in others; 2) everyone paid the Parcel Tax, so the Town should pay the \$35,000 for repair of the only sidewalks in Town; 3) the damage might not be caused by the homeowner's tree, but that of a neighbor; 4) Sidewalks were used as much by passer-bys as residents; 5) Palo Alto paid for emergency sidewalk repairs including cement pushed up by the roots; an insurance claim caused by sidewalk upheaval would be costly to the Town. His report went on to discuss other items that the Lloyd Park Homeowners' Association did at its own cost and asked that the Town consider the request to pay the cost of the sidewalk repairs. Council Member McKeithen thought the cost was small, hoped that ABAG would continue to pay the cost of remediation, the potential cost to the Town was considerable; the risk to the Town was considerable, and the the sidewalks were used by all.

Richard Moore, Atherton, had met with John Sisson before his death. Lloyd Park was the only area in the Town that had sidewalks. He believed the Town was responsible, and the liability would ultimately rest with the Town either way. He strongly supported Alternative 2.

Janet Simonds, Atherton, showed a picture of the sidewalk in front of her home. Homes in Lloyd Park were 50 to 60 years old and in need of maintenance. Some residents were widows, young couples, or singles and the cost to repair the sidewalks would be a hardship. She urged the Town to fix the sidewalks.

Stuart Awbrey, Atherton, lived by a sidewalk that had a serious tree problem. She thought the Atherton Municipal Code Section 12.06.020 regarding the issue might have been written before the sidewalks were in Lloyd Park and pertained to the rest of Atherton. Sidewalks were an impervious surface, i.e., incapable of being passed through or penetrated.

James Dobbie, Atherton, had previously lived in Palo Alto for many years. Someone fell and sued the City of Palo Alto and won a large judgment. He urged the Town to fix the sidewalks

Nancy Smee, Atherton, appreciated others' comments. She encouraged the Town to fix the problem. She was a single owner and the cost would be hardship.

Elizabeth Lewis, Atherton, believed the Town was responsible to repair the sidewalks in Lloyd Park. Section 12.06.020 stated the public right-of-way was to be safe.

During her campaign, she sent out a survey and residents responded that safe streets and right-of-ways being blocked by stumps or boulders, etc., were of concern.

James Janz, Atherton, recalled when Richard Moore was city manager 15 or 20 years prior, there was a project to replace sidewalks in Lloyd Park, including in front of his home. One tree in front of his home had raised the sidewalk, the roots were pruned, and the tree was fine to the present.

Council Member Marsala asked whether \$35,000 was an accurate figure.

Public Works Director Jones believed the figure was conservative and would actually be less.

MOTION – the Town to assume complete maintenance of the sidewalks in Lloyd Park with a right-of-entry and waiver of liability required from each property owner to allow required root pruning of the property tree; if the property owner was unwilling to grant the right-of-entry and waiver of liability, he/she could elect to root prune his/her own tree, or to perform the reconstruction without root pruning, assuming responsibility for ongoing maintenance from continued growth of the roots

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

Mayor Janz returned to the meeting and called a recess at 8:45 p.m. The meeting was reconvened at 8:53 p.m.

PUBLIC HEARINGS (Items 23-26)

23. **ADOPTION OF A RESOLUTION ADOPTING THE FY 2008-09 OPERATING AND CAPITAL BUDGET** (*Continued from June 11, 2008*)

Interim Finance Officer Bill Yeomans noted the changes from the last meeting. The Police Department Vehicle Replacement Fund was adjusted to reflect what the actual cost would be, as well as replacing one vehicle instead of two. The change generated enough funds to restore the SRO officer and to restore some of the Planning contract. An additional \$35,000 would be needed for the sidewalk repair in Lloyd Park, which could come from the unexpended Parcel Tax funds. He distributed a sheet, which highlighted the changes from the last meeting. Changes were made to the Vehicle Replacement Fund, a new budget was added for the Library Fund, and the most recent changes were shown on the budget summary. Detail pages would be adjusted later.

Vice Mayor Carlson thanked staff for taking Council's suggestions and balancing General Fund expenditures with revenues. He asked whether the Administrative Service fees would be reviewed.

Interim Finance Officer Yeomans said staff was reviewing a number of fees in Planning and Public Works. Generally, all department heads would be reviewing their fees. Overhead charges were more complicated and would be reviewed as part of a Master Fee Schedule.

Vice Mayor Carlson received clarification on the \$75,000 for contract services in the Library fund, as well as the Five-Year Financial Plan, and unfunded liabilities regarding PERS.

Council Member Marsala had several concerns. As the Town moved forward with the Historic Artifact Ordinance, i.e. designating Lindenwood as a Historic District, he asked whether monies were available in the budget for that purpose.

Deputy Town Planner Lisa Costa Sanders indicated Council had authorized PMC to look at the ordinance and money was in the budget, as well as funds for a historical consultant to review any requests for modifications to a wall or a gate.

City Manager Jerry Gruber emphasized the 2008-09 budget was “pay-as-you-go.” If money had not been allocated, Council would have to authorize allocating money from some fund.

Council Member Marsala asked whether the City Manager’s area had enough staff to support upcoming elections, etc.

City Manager Gruber said the City Clerk’s position was 960 hours per fiscal year currently. Acting City Clerk Kathi Hamilton would remain until the end of 2008. In discussions with Acting City Clerk Hamilton, he believed there was a need for a full-time City Clerk. If he found the needs of the Council were not being met, he would return to Council with a request.

City Attorney Marc Hynes responded to Council Member Marsala that the legal budget was reactive and hard to predict; however, he believed the cuts that were made, could be met.

Public Works Director Jones responded to Council Member Marsala that there was enough money to perform speed studies that were needed to enforce the speed laws with radar. There was a number of traffic studies requested that would not be done.

Council Member Marsala wanted the money for a new sound system for the Chambers to be reinstated. Additionally, he wanted to address the funds that were to be set aside for Town facilities. Resolution No. 00-13 from the year 2000 authorized the setup of the fund.

City Manager Gruber indicated an item was placed on the agenda schedule for the next month.

A discussion ensued regarding the Police Department staffing and the possibility of interest savings related to paying down unfunded liabilities related to PERS. With the two vacant positions and the Narcotics Officer returning to patrol, staffing would result in 21 out of 22 positions. The unfunded liability pay down was a one-time occurrence, i.e., saving the interest earnings one time. A position could not be sustained over a long period of time.

Council Member McKeithen said there were two fundamental precepts: 1) a balanced budget, and 2) working with what you had. Regarding the Contingency Fund, the Finance Committee regarding it as a “slush” fund, i.e, too much ability to say it’s in the Contingency so spend it. The Finance Committee wanted the accountability to explain why the money was needed. With regard to litigation, the Council adopted a policy that said litigation would be avoided where possible and reduced the budget to the 2004 level. Regarding the Police Department budget, Chief Brennan said he was able to keep the increase at the 2007 level. Additionally, using reserves to pay down the unfunded liability related to PERS would be reviewed for its feasibility. She believed the budget was transparent and far more understandable than previous budgets.

Mayor Janz stated the budget was balanced without the use of Parcel Tax funds, which was a good thing. However, he wanted to be clear that he did not think it was a bad thing to use Parcel Tax funds in the General Fund because when the public voted on it, it was presented that a percentage would be used for operating funds and a larger percentage used for capital funds. He thought the Contingency Fund was a good idea; however, the City Manager and department heads had the ability to shift funds from one area to another.

Mayor Janz reopened the public hearing.

Jim Dobbie, Atherton, asked whether the Sheriffs Department had been asked to share in the SRO costs for Menlo-Atherton High School.

Police Chief Bob Brennan said the City of Menlo Park had been asked. The Sheriff’s Department had not; however, he would follow up.

Mayor Janz suggested talking to the City of East Palo Alto as well.

Randy Lamb, Atherton, asked what the actual General Fund revenues vs. expenses were. He asked for clarification for some documents included on the website, as well as unfunded liabilities.

Interim Finance Officer Yeomans responded the total revenues in the General Fund were \$10,392,000, transfers in \$250,000, expenditures \$10,638,000. The documents on the website appeared to be preliminary documents and would be reviewed. The unfunded liability was a complicated calculation received from PERS and changed from year to year.

Rose Hau, Atherton, had questions regarding litigation costs. If the \$25,000 budget were exceeded, she asked where the funds would come from to pay the excess charges. She also believed the Police Department was the most important function of the Town and any cuts should be scrutinized.

Vice Mayor Carlson indicated the \$25,000 was a built-in mechanism to cause Council to look at the whole process of litigation. If a situation arose that there was no other

Council Member Marsala clarified that the finding did not bind the Town to only use the funds for capital improvements.

In response to Council Member Marsala, Mayor Janz clarified there was a tacit policy not to assess the maximum levy in the past.

Mayor Janz opened the public hearing. No one came forward to speak, and the public hearing was closed.

MOTION – to adopt Resolution No. 08-22, “A RESOLUTION OF THE TOWN OF ATHERTON ESTABLISHING A SPECIAL TAX FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2008-2009;” further add a finding as a whereas to the resolution that states, “the City Council determines that the appropriations in the FY 2008-09 Budget and the uncompleted capital improvements in the Pavement Management Program and the Town-wide Drainage Study exceed the projected revenues from other sources by more than the tax to be levied for FY 2008-09”

M/S McKeithen/Janz

Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

REGULAR AGENDA (Items 26-29)

27. ADOPTION OF GOALS AND OBJECTIVES FROM MAY 2, 2008, COUNCIL/STAFF WORKSHOP

City Manager Jerry Gruber said staff and Council ultimately narrowed the 17 goals and objectives to 5 that were before Council to approve. Many of the resources adopted in the budget reflected the goals and objectives and how staff would accomplish them. One of the recommendations of Carl Neu was to develop a work plan to accomplish the goals and objectives, which would be brought to Council for approval. The Goals were: 1) Obtain approval from residents for a long-term finance mechanism for the Town (Council 3/7 Staff in support); 2) Obtain the Atherton Housing Element state certification (Council 4/6 Staff support); 3) Determine the feasibility, politically, economically, and operationally, of a new or remodeled Atherton Town Center and implement recommendations from the Feasibility Study (Council 4/7 Staff support); 4) Fund and build quad gates at train crossing, implement a quiet zone, and get Caltrain to accommodate Atherton’s concerns regarding high-speed rail through Atherton (Council 3/2 Staff support); 5) Determine the feasibility of annexation for commercial and residential and, if feasible, pursue annexation of designated area (Council 3/2 Staff support). A more detailed analysis would be required of Items 1, 3, and 5. Item 2 was incorporated into the 2008-2009 Budget, and Item 4 was funded by Caltrain. A more detailed financial analysis would be required of Items 1, 3, and 5. Item 2 was incorporated into the 2008-2009 Budget, and Item 4 was funded by Caltrain.

Mayor Janz clarified for voting purposes, the maximum for any item was four Council and seven staff. If the maximum vote was not registered for any item, it did not necessarily mean there was opposition. Out of the 17 possible goals, there were a limited number one could support. Regarding Item 4, Caltrain was working to put

quad gates at one crossing, and the Town was seeking assistance for another quad gate, which would assist in obtaining a quiet zone. Neither Caltrain nor the Town had control regarding high-speed rail.

Valerie Gardner, Atherton, asked whether any goals related to environmental goals were considered.

City Manager Gruber said one of the original 17 goals was to implement a Green Building program, as well as an Environmental Element in the General Plan.

Mayor Janz said there were minor goals that were discussed and should be brought back for approval.

William Grindley, Atherton, asked whether there was plan to make the document public. The goals and objectives were an important set of directions and he wanted to see maximum exposure.

Mayor Janz said the top five goals were the top five but not necessarily in order 1 to 5.

MOTION – to adopt the five major goals as outlined in the staff report; further, to consider at a future meeting approving secondary goals, with goals to be published on the Town’s website and next *Athertonian*

M/S McKeithen/J.Carlson

Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

28. ADOPTION OF MASTER RESOLUTION REGARDING COMMITTEE/COMMISSIONS

City Attorney Marc Hynes said the most recent version, as amended from the last Study Session, was before the Council. The biggest discussion involved the Environmental Programs Committee, which was shown in bold for added language and strikeout for deleted language. The provision for annual reports could be a global requirement; therefore, the annual report from the Parks and Recreation Commission could be eliminated. If Council adopted the resolution, there were additional actions to be adopted.

Vice Mayor Carlson suggested adding the term “Appointed official” should be added to the title of the resolution. Additionally, he thought training for new members was essential regarding the Brown Act, etc. A formalized process for all appointed Town officials should occur.

Mayor Janz wanted the provision for the annual report for the Park and Recreation Commission to remain.

City Attorney Marc Hynes suggested one way to ensure a training policy would be to include it in the Council’s Rules of Procedure.

Vice Mayor Carlson said the recommendation was for direction to be given on the matter. One of the elements he thought important that was not addressed in the memo was the safeguarding of the independence of the Town management team. One way to safeguard it was to put a formal evaluation process in place in order for real or perceived issues from the Council or staff to be addressed. Additionally issues should be discussed more frequently in the interim and not wait for yearend. Procedures should be revised where necessary to make them more effective. Members of the Council, staff and appointed officials should carefully consider the ramifications of public pronouncements when sensitive Town matters were being investigated. The topic could be revisited when the City Council Rules of Procedure were discussed.

Council Member McKeithen clarified that the Rules of Procedure would be addressed in July.

Mayor Janz had minor comments regarding the exhibits. Mayor Janz made the following motion:

MOTION – to approve the response to Grand Jury Report

Vice Mayor Carlson made the following amendment, which was seconded by Council Member Marsala:

AMENDMENT --to incorporate Vice Mayor Carlson’s comments: 1) Safeguarding the independence of the Town management team by implementing a formal evaluation process so that real or perceived issues from the Council could be addressed and to address issues that might arise in the interim more frequently; 2) Revise those procedures, where necessary, to make them more effective; and 3) Advise members of the Council, Town staff, and appointed officials to carefully consider the ramifications of public pronouncements when sensitive Town matters were being investigated

The Maker and Secunder accepted amendment.

MOTION AS AMENDED/S Janz/McKeithen Ayes: 4 Noes: 0 Absent: 0 Abstain: 0

14. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR GOLDFARB (HOUSING ELEMENT)

Council Member McKeithen said the approach recommended by staff to prepare the Housing Element was to have Neal Martin prepare the draft and to have Goldfarb & Lipman review it. The Town had worked on a draft Housing Element for years with revisions in accordance with comments from Housing and Community Development (HCD). She was confused as to what draft was being discussed.

Deputy Town Planner Lisa Costa Sanders said the current Housing Element was sent to Goldfarb & Lipman to pre-review it. Barbara Kautz was very familiar with state law, the HCD, and had spoken to may organizations. The Town was required to prepare a substantial Housing Element Update based on current census data and projections.

Council Member McKeithen thought \$40,000 was a substantial sum.

Deputy Town Planner Costa Sanders said the \$40,000 included one Town-wide meeting, two General Plan Committee meetings, a Planning Commission meeting, and City Council consideration. Additionally, responses would be needed when the document came back from the state.

Council Member McKeithen wanted to see a proposal regarding the scope of work. She thought \$40,000 was too much. She was concerned that Goldfarb & Lipman had already begun working on it before Council approved the item.

Deputy Town Planner Costa Sanders said the sum was small, \$2,000. She said staff was looking that evening for authorization for Goldfarb & Lipman. Staff could return to Council with a more detailed proposal on how to approach the Housing Element Update. The item was time-sensitive in that it needed to be approved by the state by June of next year.

Discussion ensued. Council Member McKeithen said a strategy needed to be developed regarding which cities/towns had been certified, what consultant was used, what the cost was, etc. A review was needed of those cities that were successful in having their Housing Element approved, e.g., Portola Valley, Woodside, and Hillsborough.

Vice Mayor Carlson said the consultant was well known in the industry and possessed many of the answers. Having someone with that expertise made a lot of sense.

Council Member Marsala said each city/town was unique and thought having an expert made sense.

Jim Dobbie, Atherton, had been involved in the Housing Element as a member of the General Plan Committee. Fundamental decisions needed to be made regarding the Housing Element before hiring someone, i.e., how to meet the requirements of the Housing Element. The Town needed to do its homework first.

Mayor Janz said the money was already in the budget and Barbara Kautz was an expert who discussed the Housing Element on a countywide basis. One benefit of San Mateo County working together was that HCD promised one reviewer for all the cities. He believed Ms. Kautz knew what she was doing.

Valerie Gardner, Atherton, asked Council to look at a bold and environmentally positive and effective Housing Element that could be incorporated into the possible annexation of areas into the Town to fulfill the Housing Element.

Vice Mayor Carlson was very impressed with Ms. Kautz and was ready to approve the item.

Council Member Marsala deferred to Mayor Janz and Vice Mayor Carlson and trusted their judgment.

Council Member McKeithen insisted on waiting a while and suggested scheduling a Special meeting while staff further reviewed what other options cities had taken to successfully achieve their Housing Element certification. She would not vote in favor of the item.

Mayor Janz said Ms. Kautz' billing rate was low and she was clearly an expert. Loosening the second dwelling unit ordinance had been discussed, as well as the housing availability on school campuses, as a means to having the Housing Element approved. He was in favor of approving the item.

Council Member McKeithen was concerned costs would escalate. She wanted to know that Goldfarb & Lipman was the best out there.

After further debate, the item was continued to the City Council meeting of July 16, 2008.

30. COUNCIL REPORTS

- **Council Member Marsala said the Environmental Program Committee had a lengthy meeting including the review of the Grand Jury report. An error was discovered regarding Ox Mountain closing by 2020; in actuality, Ox Mountain would be operational until at least 2030. An evening meeting in August was discussed in order to solicit more community input. The City of Palo Alto did a "Green Fest" with local high schools, and the EPC was looking to do the same. Jill Boone performed a carbon footprint and goals needed to be set regarding reduction. He attended a meeting of the County Library JPA and received feedback regarding funding library improvements. He attended the League of Cities Employee Relations Subcommittee in Sacramento. A recommendation was to pre-fund pension plans. Measure O failed with 61% of the vote where 66.6% was needed. Additionally, he noted when the Parcel Tax was passed, it was to add two police officer. He wanted to ensure residents' expectation of level of service was maintained.**
- **Council Member McKeithen said she would attend the Peninsula Congestion Relief Alliance and the OES the next day. She would meet with Rich Lanier regarding NASA standards on noise from aircraft next week, and two meetings would take place the next day regarding the PERS actuarial. The San Francisco Airport Roundtable met and discussed that larger and larger aircraft potentially would be coming into San Francisco. Older aircraft had been phased out; however, new aircraft, although oftentimes larger, were actually quieter. Even with the largest aircraft, it would be less noisy.**
- **Vice Mayor Carlson said there were parking problems around schools, e.g. M-A High School and Encinal School. He was attending the multi-jurisdictional task force meetings. Additionally, Union Pacific said their right-of-way could not be used by high-speed rail. The County Grand Jury report regarding Dumbarton Crossing raised serious questions regarding Santa Clara County putting up**

funds. He attended the San Mateo County Council of Cities where John Boyle from Menlo Park was selected as the ABAG alternate and a panel discussed County homeless shelters.

- Mayor Janz said Union Pacific was also indicating it needed more right-of-way for increased railroad freight traffic. A State Legislature committee report was also highly critical of the High-Speed Rail Commission's estimate of ridership, the cost, the risks involved, etc. He heard rumors that the Governor and Senator Feinstein would jump on the support of the High-Speed Rail Bond; however, it had not happened. Considerable repairs to Atherton's train station due to the fire had been completed, as well as other repairs. Caltrain promised allocating \$100,000 in its budget for north station repairs.

31. PUBLIC COMMENTS

Rose Hau, Atherton, revisited Item No. 14. She had worked on the Housing Element when she was a member of the Planning Commission. The Commission exhausted all the alternatives. She suggested seeking a third-party for a new outlook.

Valerie Gardner, Atherton, asked whether high-speed rail had been considered to go over the Hwy 101.

Mayor Janz said he had advocated the 280 Corridor because it was very logical and would not disrupt any local corridors. He suggested that high-speed rail come up from the southern approach through the Pacheco Pass to downtown San Jose to the Diridon Station, follow the Caltrain corridor two blocks, come up Interstate 280 (in a median, one side or the other, or elevated) run to Interstate 380 where it could head back down the hill and join the Caltrain route to go into San Francisco, the airport, etc.

32. ADJOURN TO CLOSED SESSION

The meeting was adjourned to a Closed Session by Mayor Janz at 11:15 p.m.

Mayor Janz called the Closed Session to order at 11:20 p.m.

- 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

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:

One (1) potential case

- C. 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 said no reportable action was taken on Items A, B, and C.

33. FINAL ADJOURNMENT

Mayor Janz adjourned the meeting was at 11:50 p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**

TOWN OF ATHERTON
CLAIMS LIST
 June 2008

Payroll Checks	11536 – 11669	\$ 12,866
Electronic Transfers		353,017
A/P Checks	26407 – 26571	530,123
		TOTAL \$ 896,006

I, Jerome Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 11536 - 11669 (payroll) and 26407 - 226571 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$896,006; are true and correct, and that there are sufficient funds for payment.

 Jerome Gruber
 City Manager

The above claims, check numbers 11536 – 11669 (payroll) and 26407 - 26571 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$896,006; are true and correct, and are authorized for payment.

 James R. Janz
 Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$455,122
105	Tennis	
201	Special Parcel Tax	52,040
202	Transportation	-
203	Gas Tax	-
210	Road Construction Impact Fees	-
211	Park Grants	-
213	Library	1,994
401	General Capital Projects	9,000
403	Atherton Channel District	3,358
411	Park Well	-
610	Vehicle Replacement	-
611	Computer Maint. & Replacement	4,290
612	Administrative Services	3,919
715	Evans Estate	-
740	Tree Committee	400
TOTAL		\$530,123



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 JULY 16TH, 2008

SUBJECT: MONTHLY FINANCIAL REPORT, JUNE 2008

RECOMMENDATION:

Receive the Monthly Financial Report for June 2008.

INTRODUCTION:

The attached schedules show revenues and expenditures for all funds as of June 30, 2008.

HIGHLIGHTS:

Revenues in the General Fund are at \$9,900,355, which is 110% of the original Budget Estimate after twelve months (110%). When compared to the mid-year estimate, these revenues are at 104%. June revenues in the General Fund were \$339,870.

Expenditures in the General Fund at the end of June are \$10,674,393, which is 101% of the revised Budget, or \$97,438 over the revised budget. June expenditures were \$1,139,459. Departments that went over budget are

1. The City Attorney at 118% of budget, over budget by \$84,719.
2. City Council is at 132% of budget (\$46,386) due to a strategic planning retreat; however the separate contingency fund remains at \$48,866 unspent.
3. Planning exceeded the revised budget by \$70,292 (122%).
4. A check run of \$172,059 (\$156,933 General Fund) in July 2007 had not been posted to the General Ledger, so it was posted this month. The major impacts were July payments for retirement and health benefits, primarily impacting the largest departments, Police and Public Works.

For all funds, revenues are at \$15,116,892 (110%) and expenditures are at \$12,648,726 (86%).
The Library Fund received the annual payment of \$600,000 in June.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

William Yeomans
Temporary Finance Officer

Jerome Gruber
City Manager

TOWN OF ATHERTON
Revenue Summary
for the Month Ended June 30, 2008

Fund	Revenue source	2007-08 Budget	Current Period Revenue	Year to date Revenues	% received
	Property Tax	4,286,303	0	4,440,834	104%
	Sales & Use Tax	147,756	10,035	226,283	153%
	Other Taxes	1,162,774	35,805	1,403,371	121%
	Licenses & Permits	2,128,188	177,656	1,823,168	86%
	Fines & Forfeitures	35,000	3,980	42,100	120%
	Revenue from Other Agencies	414,500	84	775,566	187%
	Charges for Services	293,808	88,142	684,682	233%
	Investment & Rental Income	489,478	11,988	444,051	91%
	Other Revenues	5,000	12,180	60,300	1206%
	Total General Fund Revenues	8,962,807	339,870	9,900,355	110%
	Interfund (Operating Transfers) In	250,000		250,000	
101	General Fund Total	9,212,807	339,870	10,150,355	110%
	Special Revenue Funds				
105	Tennis	8,000	750	6,498	81%
201	Special Parcel Tax	1,858,000	0	1,689,729	91%
202	Transportation	265,000	0	256,769	97%
203	Street Improvement (Gas Tax)	150,000	0	113,141	75%
208	Police on the Street Grant		0	151	
209	State COPS Grant	100,000	0	101,997	102%
210	Road Construction Impact Fees	1,132,102	100,690	1,002,918	89%
211	Grants Fund	104,800	0	422,984	404%
213	Library	284,000	600,000	686,289	242%
	Total	3,901,902	701,440	4,280,476	110%
	Capital Project Funds:				
401	Capital Improvement	2,000	0	8,801	440%
402	Storm Drainage	1,000	0	1,376	138%
403	Channel Drainage District	46,000	0	76,536	166%
406	Facilities Construction	-	0	2,341	
411	Park Well	4,834			
	Total	53,834	0	89,054	248%
	Internal Service Funds:				
610	Vehicle Replacement	104,049	0	114,527	110%
611	Information Technology	109,637	0	159,034	145%
612	Administrative Services	312,599	0	316,008	101%
614	Workers Compensation Insurance				
	Total	526,285	0	589,569	119%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500	0	5,448	38%
740	Tree Committee	1,400	-400	1,990	142%
	Total	15,900	-400	7,438	38%
	Total Revenues	13,710,728	1,040,910	15,116,892	110%

TOWN OF ATHERTON
Expenditure Summary
for the Month Ended June 30, 2008

Fund	Description	2007-08 Budget	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	35,122	1,122	46,386	132%
	12 City Manager	650,706	68,241	616,931	95%
	16 City Attorney	482,728	34,343	567,447	118%
	18 Finance	445,758	-13,946	434,650	98%
	25 Building	1,692,674	201,306	1,759,855	104%
	40 Police	4,905,087	560,043	4,989,209	102%
	50 Public Works	2,316,014	288,350	2,259,915	98%
	Contingency	48,866	0	0	0%
	Total General Fund Expenditures	10,576,955	1,139,459	10,674,393	101%
	Interfund (Operating Transfers) out	4,834			
101	General Fund Total	10,581,789	1,139,459	10,674,393	
	Special Revenue Funds				
	105 Tennis	5,521	0	2,157	39%
	201 Special Parcel Tax	1,506,535	88,377	514,785	34%
	202 Transportation	229,500	0	30,000	13%
	203 Street Improvement (Gas Tax)	145,000	0	28,765	20%
	209 Law Enforcement (State COPS)	100,000	0	100,001	100%
	210 Road Construction Impact Fees	1,000,000	-138,725	544,545	54%
	211 Grants	306,710	0	114,026	37%
	213 Library	78,326	2,088	21,238	27%
	Total	3,371,592	-48,260	1,355,517	40%
	Capital Project Funds:				
	401 Capital Improvement	167,755	0	94,279	56%
	402 Storm Drainage	21,394	0	2,963	14%
	403 Channel Drainage District	55,000	3,358	38,028	69%
	411 Park Well	4,834	-13,639	0	0%
	Total	248,983	(10,281)	135,270	54%
	Internal Service Funds:				
	610 Vehicle Replacement	64,060	0	58,422	91%
	611 Information Technology	108,304	4,615	83,942	78%
	612 Administrative Services	351,532	65,965	335,523	95%
	Total	523,896	70,580	477,887	91%
	Trust and Agency Funds:				
	715 Evans Creative Design	11,500	0	4,520	39%
	740 Tree Committee	2,200	0	1,139	52%
	Total	13,700	0	5,659	41%
	Total Expenditures	14,739,960	1,151,498	12,648,726	86%

FUND BALANCES
June 30, 2008 Cash Close

Fund	Start Balance 7/1/2007	Revenues YTD	Transfers YTD	Expenditures YTD	End Balance 6/30/2008
101 General	9,853,933	9,900,355	250,000	10,674,393	9,329,895
105 Tennis	29,450	6,498		2,157	33,791
201 Special Tax	60,712	1,689,729	(150,000)	514,785	1,085,656
202 Transportation	42,470	256,769		30,000	269,239
203 Gas Tax	130,709	113,141	(100,000)	28,765	115,085
208 Police on the Street	4,455	151			4,606
209 COPS(Law Enf.)	11,807	101,997		100,001	13,803
210 Road Const Impact Fee	34,408	1,002,918		544,545	492,781
211 Grants	39,486	422,984		114,026	348,444
213 Library	2,564,923	686,289		21,238	3,229,974
401 GF Projects (Cap. Impr.)	270,200	8,801		94,279	184,722
402 Storm Drainage	42,381	1,376		2,963	40,794
403 Atherton Channel District	78,578	76,536		38,028	117,086
406 Facilities Construction	69,447	2,341		0	71,788
411 Park Well	-	-		-	-
610 Equipment Operations	304,332	114,527		58,422	360,437
611 Computer Services	80,400	159,034		83,942	155,492
612 Administrative Services	185,742	316,008		335,523	166,227
715 Evans Estate (AAC)	121,919	5,448		4,520	122,847
725 Lindenwood Gate Trust	250				250
727 Colley Trust Fund	-				-
730 Park Improvement	5,851				5,851
731 MA Little League	-				-
740 Tree Committee	41,520	1,990		1,139	42,371
TOTALS	13,973,108	14,866,892	-	12,648,726	16,191,274



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 JULY 16TH, 2008

SUBJECT APPROVAL OF FY 2008-09 INVESTMENT POLICY

RECOMMENDATION

Approve the Investment Policy as shown in Attachment A to this staff report.

DISCUSSION

Pursuant to Government Code Section 53600 et seq. each municipality is required to review and, if necessary, update its investment policy at annual intervals. At this time, staff does not recommend any change in the Investment Policy approved by the City Council in FY 2006-07.

This policy allows for investments in the California State Treasurer's Pool, called the Local Agency Investment Fund (LAIF), and the San Mateo County Investment Pool. The policy also allows for Certificates of Deposit (CDs) in California financial institutions, but no money is currently invested in CDs.

Atherton is also investigating the possibility of using funds to pay down retirement liabilities at CalPERS; however, this is not within the scope of the Investment Policy.

FISCAL IMPACT

Approval of the attached Investment Policy will not require any adjustment to appropriations or estimated revenues.

Prepared by:

Approved by:

Bill Yeomans
Interim Finance Officer

Jerome Gruber
City Manager

Attachment

Attachment A

Town of Atherton Investment Policy FY 2008-09

OBJECTIVES

In accordance with the Section 53600 et seq. of the California Government the primary objectives of the Town of Atherton investment policy is as follows:

- **Safety** To safeguard principal against loss in value.
- **Liquidity** To maintain an adequate cash flow to fund operations and meet present and future expenditures of the Town.
- **Yield** To obtain the maximum return possible within the range of permissible investments authorized to provide security and liquidity of funds.

These procedures are also intended to adhere to the prudent investor standard as is codified in statute. Additionally, these investment policies are designed to provide assurance that available cash balances in non-interest bearing checking accounts is minimized and to ensure that all transactions involving cash and cash equivalents are subject to adequate internal controls.

PROCEDURES

Investment Instruments: Authorized investment instruments for the Town of Atherton are: 1) State of California Local Agency Investment Fund (LAIF); 2) San Mateo County Investment Pool; and, 3) Certificates of deposit in California financial institutions.

1. **LAIF** Authorizes transfer to and from the Town of Atherton checking and savings accounts or other authorized investment instruments. Transfers are initiated by the City Manager or the Finance Director. A written authorization to LAIF, signed by the City Manager, is required to make changes to employees holding the title of City Manager and Finance Director or to change investment instruments. Summary copies of the investment information will be included with the Treasurers report to Council on a quarterly basis.
2. **SAN MATEO COUNTY INVESTMENT POOL** Authorizes transfer to and from the Town of Atherton's checking and savings accounts or other authorized investment instruments. Only the City Manager or the Finance Director initiates transfers. Written authorization that specifies bank accounts and authorized signatures will be signed by the City Manager and kept on file with both the

Town and the County Treasurer's Office. Summary copies of the investment information will be included with the *Finance Director's* report to Council on a quarterly basis.

3. **INVESTMENT PORTFOLIO COMPOSITION** No more than two-thirds of available cash balances should be held in deposit with either the State of California Local Agency Investment Fund or the San Mateo County Investment Pool. Additionally, no more one third of available cash balances should be held as direct investments with any single bank or other financial institution.
4. **RESTRICTIONS** No investment will be made directly by staff in financial futures, financial option contracts, derivatives or repurchase agreements. Repurchase agreements and reverse repurchase agreements will be allowed by third parties (Local Agency Investment Fund and San Mateo County Investment Pool).
5. **ANNUAL UPDATE** The Town Council will annually review, evaluate and adopt an investment policy by no later than the quarter ended September 30th of each fiscal year.

RESPONSIBILITIES

CITY MANAGER Has overall responsibility for monitoring investment activity and insuring compliance to the Investment Policy. The City Manager will authorize all investment documents on behalf of the Town and verify that investments are accurately reported to the City Council on a quarterly basis.

FINANCE DIRECTOR Has responsibility for initiating investments, insuring compliance with the Investment Policy, reporting to the City Manager changes in the financial status of investments and institutions, and executing all investment documents on behalf of the Town.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND
AUTHORIZATION TO ADVERTISE AND AWARD STREET
RECONSTRUCTION PHASE 4 PROJECT, PROJECT NO. 08-001**

RECOMMENDATION:

Approve the plans and specifications and authorize advertisement for bids for the Street Reconstruction Phase 4 Project, Project No. 08-001.

Authorize the City Manager to award the contract for the Street Reconstruction Phase 4 Project, Project No. 08-001 for an amount not to exceed the Engineer's Estimate of \$424,489.20.

INTRODUCTION:

The FY 2008-09 adopted Capital Improvement Program includes funds for constructing the Street Reconstruction Phase 4 Project. The need for this project resulted from the pavement condition surveys conducted in the summer of 2005.

ANALYSIS:

The Town hired EIS, Inc., using a Metropolitan Transportation Commission grant to survey all the streets in Atherton. The report recommends that all streets with a Pavement Condition Index (PCI) between 0 and 25 should be reconstructed. The streets to be included in Phase 4 are:

Rebecca Lane

Juniper Drive

Selby Lane cul-de-sac (350-380)

The project was to include Lupin Lane, but the residents petitioned the Town to defer the project until the summer of 2009 in order that the construction of a large house at the end of the cul-de-sac could be completed without damaging the new street.

The Street Reconstruction Phase 4 Project is budgeted for construction in Fiscal Year 2008-09. Staff prepared the design for the project. The plans and specifications are ready to be advertised for construction.

Project bids are scheduled to be received on July 31, 2008. The City Council may cancel the August City Council meeting, which would mean the normal award of contract would not be until September. This is a 60-working-day contract, which is about 3 months. An award on September 17 would result in construction well into December. For this reason, staff is requesting that the City Manager be authorized to award the contract to the lowest responsible bidder from the July 31, 2008, bid opening. This will allow work to begin no later than mid-August, with completion anticipated by mid-November, the anticipated beginning of the rainy season.

FISCAL IMPACT:

The Engineer's Estimate for the Street Reconstruction Phase 4 Project is \$424,489.20. In addition, a 10% construction contingency of \$42,448.92 would bring the total estimated authorization to \$466,938.12. \$340,000 from Road Impact Fee funds and \$160,000 in Measure A funds are budgeted for the project in FY 2008-09. The project is scheduled to receive bids on July 31, 2008, and the City Manager will award the contract immediately thereafter if the bids are at or below the Engineer's Estimate, which is within the project budget.

Should the bids exceed the Engineer's Estimate, the award of the project would be brought to the next City Council meeting, either the regular August meeting, if held, the regular September meeting, or a special meeting if determined to be advisable.

Prepared By:

Approved by:

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

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: AWARD OF CONTRACT FOR ALAMEDA DE LAS PULGAS
CAPE SEAL PROJECT, PROJECT NO. 07-012**

RECOMMENDATION:

Award the contract for the Alameda de las Pulgas Cape Seal Project, Project No. 07-012, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.

INTRODUCTION:

This project entails performing a Cape Seal along north and south Alameda de las Pulgas from Stockbridge Avenue to Camino al Lago including intersections and bicycle paths. It also includes replacement of all striping, raised pavement markers, and other associated pavement markings within the project boundaries.

A Cape Seal is a treatment process where a heated polymer modified asphalt emulsion (oil) is applied to a cleaned street and scrubbed in with brooms. A 3/8" aggregate (chip) is immediately applied over the oil and is rolled into place with a rubber tired roller. The excess rock is then swept away. The next process follows a few days later. A micro-surface (oil and sand mixture) is applied over the top of the chips, and once again rolled into place with rubber tired rollers. Upon curing, the result is a street that is impervious to water as well as having about 1/2" of new wearing surface added to the top. This surface will remain flexible for years, and as cracks work their way up from the sub-base of the road, they are filled by the pliable material.

This project falls under the Town's preventative maintenance program which assures that good streets (streets with a pavement condition index of 60+) receive treatments which will greatly lengthen their lifespan. These treatments, when used on the correct streets at the correct times, can prolong the need for costly and disruptive street rehabilitation projects almost indefinitely.

ANALYSIS:

The project bid opening was delayed to give prospective contractors additional time to prepare and submit their bids. Bids will be received on July 11, 2008. A separate staff report will be prepared for distribution at the City Council meeting to convey the bid results.

FISCAL IMPACT:

The engineer's estimate prepared by staff for this project is \$165,000. This money is allocated in the 2007-2008 Street Maintenance program.

Prepared By:

Approved:

/s/ Duncan L. Jones

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

Jerry Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: AWARD OF CONTRACT FOR 2008 PARK PATH
MICRO-SURFACING PROJECT, PROJECT NO. 08-003**

RECOMMENDATION:

Award the contract for the 2008 Park Path Micro-Surfacing Project, Project No. 08-003, to the low bidder on the July 11, 2008, bids and authorize the City Manager to sign the contract on behalf of the Town.

INTRODUCTION:

This project entails performing micro-surfacing along the entire walking path (approximately 4230') inside Holbrook-Palmer Park, as well as the eastbound bicycle lane along Encinal Avenue from Felton to Middlefield Road (approximately 875').

This preventative maintenance project will extend the life of the walking path by sealing all small cracks and rejuvenating the existing asphalt.

ANALYSIS:

The project bid opening was delayed to give prospective contractors additional time to prepare and submit their bids. Bids will be received on July 11, 2008. A separate staff report will be prepared for distribution at the City Council meeting to convey the bid results.

FISCAL IMPACT:

The engineer's estimate prepared by staff for this project is \$29,000. This money is allocated in the 2008-2009 Park/Street Maintenance programs.

Prepared By:

Approved:

/s/ Duncan L. Jones

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

Jerry Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: AUTHORIZATION TO AWARD THE STEVICK DRIVE
RECONSTRUCTION PROJECT NUMBER 08-002 FOR AN
AMOUNT NOT TO EXCEED \$546,815.29**

RECOMMENDATION:

Authorize the City Manager to award the contract for the Stevick Drive Reconstruction Project, Project No. 08-002 for an amount not to exceed the Engineer's Estimate of \$546,815.29 based on the August 7, 2008 bids opening.

INTRODUCTION:

The FY 2008-09 adopted Capital Improvement Program includes funds for constructing the Stevick Drive Reconstruction Project. The need for this project resulted from the pavement condition surveys conducted in the summer of 2005. The project was originally scheduled for construction last year, but was postponed until completion of two large residential development projects at the top of the cul-de-sac.

ANALYSIS:

The Town hired EIS, Inc., using a Metropolitan Transportation Commission grant to survey all the streets in Atherton. The report recommends that all streets with a Pavement Condition Index (PCI) between 0 and 25 should be reconstructed. Stevick Drive is one of those streets. Originally included in Phase 4, Stevick Drive was separated out due to the geotechnical and drainage issues that made it a more complex project.

The Stevick Drive Reconstruction Project is budgeted for construction in Fiscal Year 2008-09. Staff prepared the design for the project. The plans and specifications are ready to be advertised for construction.

Project bids are scheduled to be received on August 7, 2008. The City Council may cancel the August City Council meeting, which would mean the normal award of contract would not be until September. This is a 45-working-day contract, which is about 2½ months. An award on September 17 would result in construction well into December. For this reason, staff is requesting that the City Manager be authorized to award the contract to the lowest responsible bidder from the August 7, 2008, bid opening. This will allow work to begin in mid-August, with completion anticipated by early November, the anticipated beginning of the rainy season.

FISCAL IMPACT:

The Engineer's Estimate for the Stevick Drive Reconstruction Project is \$546,815.29. In addition, a 10% construction contingency of \$54,681.53 would bring the total estimated authorization to \$601,496.82. \$400,000 from the Proposition 1B grant funds and \$100,000 in Road Impact Fee funds are budgeted for the project in FY 2008-09. The remaining budget of \$101,500 is available from the 2008-09 Street Reconstruction budget, also funded by Road Impact Fees. The project is scheduled to receive bids in early August 2008 and the City Manager will award the contract immediately thereafter if the bids are at or below the Engineer's Estimate.

Should the bids exceed the Engineer's Estimate, the award of the project would be brought to the next City Council meeting, either the regular August meeting, if held, the regular September meeting, or a special meeting if determined to be advisable.

Prepared By:

Approved:

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

Jerome D. Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: POLICE CHIEF ROBERT BRENNAN

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: APPROVAL OF THE POLICE DEPARTMENT PURCHASE OF A
POLICE VEHICLE FOR FY 2008-09**

RECOMMENDATION:

Staff recommends that Council authorize the Town to “piggy back” on the City and County of San Francisco’s bid in order to purchase one marked police vehicle for the fiscal 2008-2009 budget cycle for a total cost not to exceed \$24,228.61.

INTRODUCTION:

The history of replacing vehicles in the Police Department has been to rotate out the patrol car(s) with the highest mileage or maintenance cost. The mileage mark of replacing vehicles has been at approximately 75,000 miles. During the last seven years, the Police Department has reduced the number of vehicles in the fleet by five. The current rotation and mileage requirements have reduced the need of replacement from the historic three cars per year to only two cars per year. In light of current fiscal concerns, the Police Department (PD) is only requesting to purchase one patrol car at this time. If PD experiences a vehicle failure(s) during this fiscal year, we may submit another staff report to purchase a second vehicle.

ANALYSIS:

Our current #3 patrol car has more than 89,000 miles on it. Additionally, this vehicle is experiencing significant transmission problems that the Redwood City Corp Yard is unable to repair without replacing the entire transmission in the vehicle. Upon the

replacement of this vehicle it will be removed from the existing patrol fleet and ultimately will be designated for surplus.

FISCAL IMPACT:

The cost to the Town of Atherton for this police vehicle including tax and tire fees will not exceed \$24,228.61.

Prepared By:

Approved by:

Robert Brennan
Chief of Police

Jerry Gruber
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: KATHI HAMILTON, ACTING CITY CLERK

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE OF THE
CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING
CHAPTERS 2.37 AND 2.40 OF THE ATHERTON MUNICIPAL CODE
PERTAINING TO THE GENERAL PLAN COMMITTEE AND THE
PARK AND RECREATION COMMISSION**

RECOMMENDATION:

Adopt ordinance repealing Chapters 2.37 and 2.40 of the Atherton Municipal Code pertaining to the General Plan Committee and Park and Recreation Commission.

BACKGROUND:

The City Council has introduced the ordinance at its June 18, 2008, meeting. With the adoption of the Master Resolution Governing Committees and Commissions, removing the General Plan Committee and Park and Recreation Commission from Atherton's Municipal Code was necessary. The ordinance may be adopted by a majority vote of the Council. It will take effect thirty days following adoption.

FISCAL IMPACT.

None.

Prepared by:

Approved by:

Kathi Hamilton
Acting City Clerk
Attachment

Jerry Gruber
City Manager

ORDINANCE

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REPEALING CHAPTERS 2.37 AND 2.40 OF THE ATHERTON MUNICIPAL CODE
PERTAINING TO THE GENERAL PLAN COMMITTEE AND THE PARK AND
RECREATION COMMISSION**

WHEREAS, the City Council has provided for the creation, maintenance and description of powers and duties of Town committees and commissions by resolution;

NOW, THEREFORE, the City Council of the Town of Atherton does hereby ordain as follows

SECTION 1: Chapters 2.37 and 2.40 of the Atherton Municipal Code are hereby repealed.

SECTION 2: Upon the effective date of this Ordinance repealing Chapters 2.37 and 2.40, the terms and provisions of Resolution No. 08-24 governing Town committees and commissions adopted by the City Council on June 18, 2008, shall become operative.

SECTION 3: The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts 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 18th day of June, 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 G. 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 JULY 16, 2008

SUBJECT: FIFTH AMENDMENT TO CITY ATTORNEY CONTRACT

RECOMMENDATION:

Approve Fifth Amendment to City Attorney's Agreement between Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.

BACKGROUND:

The City Attorney provides services to the Town for a monthly retainer and reimbursement for attendance at a League of California Cities Conference. The Fifth Amendment increases the amount of the retainer from an amount of \$8,500.00 per month which had been in effect since August 1, 2007, to an amount of \$9,000.00 per month. This rate will remain in effect for the next year.

An adjustment is made relative to expense reimbursement for the League of California Cities Conference. The amount of reimbursement has not changed. However, the conference which is most valuable for City Attorneys is the Spring Conference generally held in May of each year rather than the general Fall Conference held in September/October. The proposed change authorizes reimbursement for the Spring Conference, but not the Fall Conference.

FISCAL IMPACT:

Increase in the retainer will result in a \$6,000.00 per year increase in City Attorney services.

Prepared by:

Approved by:

/s/ Marc Hynes
Marc G. Hynes
City Attorney
Attachment

Jerome Gruber
City Manager

FIFTH AMENDMENT TO
CITY ATTORNEY'S AGREEMENT
BETWEEN
TOWN OF ATHERTON
AND MARC G. HYNES OF ATKINSON-FARASYN, LLP

This Fifth Amendment to the City Attorney's Service Agreement between the Town of Atherton and Marc G. Hynes, Esq. of Atkinson-Farasyn, LLP dated August 1, 2000, is hereby amended by revising the retainer amount in paragraph I. B. to read as follows:

"I. BASIC SERVICES – RETAINER

B. The retainer fee for basic services is \$9,000.00 per month, effective August 1, 2008 and continuing through July 31, 2009." In addition to the retainer, the City Attorney shall be reimbursed in an amount not to exceed One Thousand Dollars (\$1,000.00) for documented expenses for attendance at the Spring League of California Cities Conference generally held in the month of May. The retainer shall be paid monthly beginning on the fifteenth day of each month.

All other provisions of the agreement between the Town of Atherton and Marc G. Hynes dated August 1, 2000, except as amended above, shall continue to remain in effect.

Dated: July _____, 2008.

TOWN OF ATHERTON

By: _____
Mayor

City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN
CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING
TOWN POLICY**

RECOMMENDATION:

Consider proposed revisions to paragraph 11 of “miscellaneous rules” of City Council Rules of Procedure. Alternatively, or in addition, consider revisions to the Town of Atherton Code of Conduct and Procedures.

BACKGROUND - ANALYSIS:

The City Council Rules of Procedure have been established under authority of California Government Code section 36813 for the conduct of meetings. Paragraph 11 contains several miscellaneous rules regarding conduct at City Council meetings.

In view of the Council’s recent adoption of a resolution governing Town Committees and Commissions and its provisions set out in Section 2 regarding representation by committee or commission members speaking on behalf of the Town, similar provisions may be considered for inclusion in City Council Rules of Procedure. Alternatively, or in addition, these provisions may be added to the Town of Atherton Code of conduct and Procedures for members of the City Council, Commissions, Committees, and Staff (Exhibit A).

Attached as Exhibit B are proposed revisions to the miscellaneous rules of the Rules of Procedure upon this subject. Similar language as to Town Commissions and Committee Members as well as Town Staff could be added as Section 100.09.5 set out in Exhibit A. The Council may wish to consider these revisions in more detail at a separate workshop.

FISCAL IMPACT: None.

Prepared by:

Approved by:

/s/ Marc Hynes

Marc G. Hynes

City Attorney

Jerome Gruber

City Manager

Attachment: Exhibit A. Town of Atherton Code of Conduct and Procedures
Exhibit B. (1) City Council Rules of Procedure Revisions
(2) Town of Atherton Code of Conduct Revisions

EXHIBIT B

1. City Council Rules of Procedure.

11.7 Representations of Town and/or City Council policy

Council members shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

2. Town of Atherton Code of Conduct and Procedures

100.09.05 City Council Members, Members of the Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

Exhibit A TOWN OF ATHERTON

CODE OF CONDUCT AND PROCEDURES

for members of

Atherton City Council, Commissions, Committees and City Staff

Preamble

The citizens of Atherton are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. In keeping with the Town of Atherton's Commitment to Excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, and city employees, comply with both the letter and spirit of the laws and policies affecting the operations of government;
 - public officials, both elected and appointed, and city employees, be independent, impartial and fair in their judgment and actions;
 - public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Atherton City Council has adopted a Code of Conduct and Procedures for members of the City Council, City committees and commissions and City staff to assure public confidence in the integrity of local government and its effective and fair operation.

The Code of Conduct and Procedures shall be discussed at least annually, in either a regular meeting or a study session by the Council, Commissions, Committees and staff as an on-going means of developing a thorough understanding of the Code of Conduct and Procedures and the Brown Act.

RELATIONSHIP BETWEEN CITY COUNCIL AND TOWN STAFF

Town staff members, except for the City Attorney, work for the City Manager, who in turn works for the City Council. Staff can be used by Council as a resource for routine information on ongoing projects and programs. Contacts should be channeled through the City Manager for continuity purposes. If the City Manager is absent, the request should be directed to the Acting City Manager for processing purposes. The Acting City Manager will inform the City Manager upon his/her return of the request and what action was taken.

A more formal procedure should be followed if Council needs staff support that requires more than thirty (30) minutes of a staff member's time. If a majority of the Council approves such a request, the City Manager will proceed with said request and report his/her findings back to the Council upon completion. The same procedure applies to Council requests of the City Attorney, except in instances involving personnel or sensitive issues.

TOWN OF ATHERTON

POLICY NO. 100 - CODE OF CONDUCT AND PROCEDURES

The City Council of the Town of Atherton is committed to providing excellence in legislative leadership. In order to assist in the governing of the behavior between and among members of the City Council, Committees, Commissions and City Staff. We will strive to observe the following Code of Conduct and Procedures.

- 100.01 The public good shall be the highest priority of the Council, Commissions, Committees, and staff of the Town of Atherton. Public office should be used for public good, not for personal gain.
- 100.02 The work of the City is a team effort. Council members, Commissions, Committees and staff shall work together in a collaborative process, assisting each other in conducting the affairs of the Town.
- 100.03 When responding to constituent requests and concerns, Council members, Commissions, Committees and staff shall be courteous, responding to individuals in a positive manner and routing their questions to the City Manager.
- 100.04 The City Council and members of the Commission~, Committees and staff shall develop a working relationship with the City Manager wherein current issues, concerns and Town projects are discussed comfortably and openly.
- 100.05 The City Council and members of the Commissions and Committees shall function as a part of the whole. Action issues shall be brought to the attention of the City Council as a whole rather than to individual members selectively.
- 100.06 The dignity, style, values and opinions of each member of the City Council, Commissions, Committees and staff shall be respected.
- 100.07 City Council members, Commissions, Committees and staff shall avoid double-talk, hidden agendas, gossip, backbiting, and other negative forms of interaction.
- 100.08 City Council members, Commissions, committees and staff shall commit to focusing on issues and not personalities.
- 100.09 Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the City Council, Commissions and Committees take action, Council, Committees, Commission members, and staff shall commit to supporting said action of the majority and not create barriers to the implementation of said action.
- 100.10 Individual Councilmembers, Committees and Commission members shall not directly criticize any City employee or contract personnel publicly. Criticism of subordinates of the City Manager shall be given to the City Manager for his/her use as appropriate.
- 100.11 Councilmembers should not publicly criticize the City Manager or staff, but shall discuss any concerns about the City Manager and staff in a closed session of the City Council.
- 100.12 Councilmembers shall act within the spirit and intent of the Brown Act, including but not limited to, the provisions pertaining to inter-Council member communications.
- 100.13 Councilmembers shall maintain confidentiality on all information discussed in closed session Council meetings.

CODE OF CONDUCT AND PROCEDURES
PAGE TWO OF THREE

- 100.14 The City Council, Commissions and Committees will distinguish between free speech and malicious innuendo or personal, insulting, slanderous attacks and will not tolerate verbal abuse of any Councilmembers, Commissions or Committee members, or staff, either from the floor or from each other. It is the responsibility of the Chair, and, if necessary, all the members of the Council, Commissions and Committees, to enforce and maintain decorum at meetings.
- 100.15 No public official, officer or employee of the Town shall solicit or accept any gift, gratuity, favor or anything of monetary value which might be perceived as consideration for, present or future preferential treatment or as unethical attempts to influence Town operation's. Public Officials and employees are not to accept any gift, gratuity, favor or anything of monetary value from any individual, company or organization doing business with the Town.

COUNCIL, COMMISSION, COMMITTEE, STAFF PROCEDURES

One of the primary responsibilities of the City Council is to monitor the City's progress in attaining its goals and objectives while pursuing the Town's Mission Statement. Council, Commissions, Committee members and City Staff shall practice the following procedures:

- 100.0t .a City staff members, except for the City Attorney, work for and are accountable to the City Manager, who, in turn, works for and is accountable to the City Council. City staff can be used by the City Council, Commissions and Committees as a valuable resource to provide routine information on ongoing projects and programs
- 100 01.b Council members, Commissions and Committee members shall request information needed to supplement, upgrade or enhance their knowledge about Town projects and programs directly through the City Manager. If the City Manager is absent, the request should be directed to the Acting City Manager who will inform the City Manager upon his/her return of the request and what action was taken.
- 100 01.c A more formal procedure shall be followed if staff, support requires more than thirty (30) minutes of a staff member's time. Requests for information requiring more than thirty (30) minutes of staff time shall be placed on a regular Council meeting or study session agenda for discussion and possible approval.
- 100.01.d - All complaints from residents and property owners of the Town -of Atherton shall be referred directly to the City Manager. The City Manager will keep the interested Council member apprised on the resolution of the complaint.
- 100.01.e Public safety and/or hazardous issues shall be reported to the City Manager and each on-site .Department Head. Emergency situations shall be dealt with immediately by staff, with notification to the City Council upon completion of the issue or with updated information as it becomes available.
- 100.01.f The City Council, Commissions, Committee members and Staff should refer all personnel issues directly to the City Manager. Clarification for policy related concerns, especially those involving personnel, legal matters, finances and programming, shall be referred directly to the City Manager.
- 100.01.g Council members, Commissions and Committee members shall direct inquiries to the City Manager when approached by Town personnel concerning specific Town policy, to ensure that the proper chain of command is followed at all times.
- 100.01 .h Council members, Commissions, Committee members and Staff shall not comment adversely on any Town employee with any constituent even in the event a constituent asks what he/she thinks of an employee.

APPROVED BY ATHERTON CITY COUNCIL ON: February 19, 1997
Revised 09-09-99

Exhibit C



TOWN OF ATHERTON

CITY COUNCIL

RULES OF PROCEDURE

**As Amended:
June 18, 2008
October 19, 2005
April 16, 2003
First Adopted**

June 19, 2002

RULES OF PROCEDURE

1. Authority

As provided by California Government Code Section 36813, the City Council establishes these Rules of Procedure for the conduct of meetings. The following Rules shall be in effect upon their adoption by the City Council and until such time as they are amended or new rules adopted in the manner provided by these Rules.

2. General Rules

2.1 Public Meetings All meetings (except closed sessions as provided by State law) of the Council shall be open to the public.

2.2 Meeting Dates/Times Regular meetings will be held on the third Wednesday of each month. Adjourned regular or special meetings may be called by the Mayor or a majority of the Council. All regular meetings will convene at 7:00 p.m. unless noticed at a different time by publishing a notice and/or posting a notice as required by Section 5.3.

2.3 Quorum Three members of the Council shall constitute a quorum necessary to transact business. In the event a quorum is not in attendance, those attending will be named in the minutes, and they shall adjourn the meeting to a later set time. If no one is present, the Clerk shall adjourn the meeting to a later date and post notice of that fact pursuant to Government Code Section 36811.

2.4 Compelling Attendance Members must notify the Presiding Officer for the issuance of an "excused absence" when they are unable to attend, which shall be granted. The member may notify the City Manager or City Clerk if the Presiding Officer is not available and the City Manager or City Clerk will notify the Presiding Officer of the request; or it will be noted in the minutes as an unexcused absence. In the event of perpetual absence by members, the Council may adjourn from day to day to compel attendance under the penalties prescribed by law. The seat of a member with two or more consecutive unexcused absences from regular council meetings shall be vacated pursuant to Government Code Section 36513(b).

2.5 Minutes of Proceedings An account of all public proceedings of the City Council shall be recorded by the City Clerk and entered into official minute

books of the Council. These minutes shall be available to the public following approval by the Council.

2.6 Right of Floor Any member desiring to speak shall first be recognized by the Mayor and shall, with the exception of Public Comments, confine any remarks to the subject under consideration.

2.7 Rules of Order Except in cases of conflict with these Rules, Robert's Rules of Order shall be used as a non-binding guide to govern the proceedings of this Council.

2.8 City Manager The City Manager shall attend all meetings of the Council unless excused, and in the City Manager's absence, a designee shall substitute. The City Manager may make recommendations and shall have the right to take part in all discussions of the Council, but shall have no vote.

2.9 City Attorney The City Attorney shall attend all meetings of the Council unless excused, and in the City Attorney's absence, a designee shall substitute. The City Attorney, upon request of the City Council or authorized representatives, shall give opinions, either written or oral, on questions of law and shall act as the Council's parliamentarian.

2.10 City Clerk The City Clerk shall attend all meetings of the Council unless excused, and in the City Clerk's absence, the Deputy City Clerk shall substitute. The City Clerk shall record, prepare and maintain the official record of the Council and perform other related duties as prescribed by the Council and/or City Manager.

2.11 Department Heads/Employees Department Heads/Employees, as described by the City Manager or requested by the Council, shall attend Council meetings.

3. Types of Meetings

3.1. Regular Meetings Unless otherwise designated by the Council, the Council shall meet in the City Council Chambers for all regular meetings. The regular meetings shall begin at 7:00 p.m. on the third Wednesday of each month, unless otherwise specified by posted notice. If the meeting date should fall on a legal holiday, the Council shall meet at a time and date so designated by the Council.

3.2 Adjourned Meetings Any meeting of the City Council may be adjourned to a later date, place, and time provided no adjournment is for a longer period than the next regularly scheduled meeting.

3.3 Special Meetings Special meetings may be called by the Mayor or by a majority of the Councilmembers. The call for a special meeting must specify

the day, hour, and place and shall specify the subject(s) to be considered. Twenty-four hours notice must be given prior to the meetings. Only matters specified in the notice may be discussed at special meetings. Notice shall be posted as required by law.

3.4 Closed Session Meetings Closed sessions, formerly referred to as Executive Sessions, may be held in accordance with the provisions of the Brown Act (Government Code Section 54954.5).

3.5 Study Session Meetings The Council may meet informally in Study Sessions called by the Mayor or the majority of Councilmembers. Study Sessions are open to the public and are meetings for purposes of the Brown Act. Council may not take any formal action at study session meetings. Meeting notice requirements are contained in Section 2.2.

3.6 Media Attendance All meetings (except Closed Sessions) of the City Council and Commissions shall be open to the media, and may be recorded by tape, radio, television, and photography, provided such recordings do not interfere with orderly conduct of the meetings.

4. Mayor - Duties

4.1 Mayor The Mayor is elected by members of the Council for a one-year period. No member shall serve as Mayor for consecutive terms. The City Council shall meet at least annually to choose one of its members as Mayor.

4.2 Vice Mayor The Vice Mayor shall be selected annually by a Council majority vote. No member shall serve as Vice-Mayor for consecutive terms.

4.3 Presiding Officer The Mayor, if present, shall preside. In the Mayor's absence, the Vice Mayor shall preside. In the absence of both, the Councilmembers present shall elect a temporary Presiding Officer.

4.4 Call to Order The Mayor or Vice Mayor shall call the meeting to order at the hour appointed. In the absence of both, the meeting shall be called to order by the City Clerk and those Councilmembers present shall proceed to elect a temporary Presiding Officer.

4.5 Preservation of Order The Presiding Officer shall preserve strict order and decorum, shall prevent verbal attacks on Councilmembers, staff, and/or citizens, and confine debate to the item under discussion.

4.6 Point of Order The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the entire Council. If an

appeal is taken, the question shall be, "Shall the decision of the Presiding Officer be sustained?"

4.7 Motion to be Stated The Presiding Officer shall state all motions submitted for a vote and announce the result. A roll call vote shall be taken upon ordinance, resolution, and at the request of any member.

4.8 Mayor Proclamations Mayor Proclamations will be issued at the discretion of the Mayor for various purposes including:

- A. Recognizing individuals and organizations whose contributions and achievements have community-wide significance;
- B. Calling public attention to a significant community event, service or program;
- C. Highlighting a special period of observance, celebration, or recognition for community, regional, state, or national occasions.

Mayor Proclamations do not need formal Council action or approval and individual Councilmembers can request through the Mayor that proclamations be issued. All public requests for proclamations should be directed to the City Manager or Mayor for review.

It will be at the discretion of the Mayor to determine whether it is appropriate to present the proclamation at a Council meeting.

Proclamations will be issued to recognize legitimate and significant community achievements, contributions, and occasions. These forms of recognition are not intended for partisan, commercial or narrow individual purposes which are inconsistent with the overall policies of the City Council.

5. Order/Preparation of Agenda

5.1 Order of Business

1. Call to Order, Pledge of Allegiance, Roll Call
2. Presentations
3. Council Reports
4. Public Comments
5. Staff Reports
6. Community Organization Roundtable Report
7. Consent Agenda
8. Regular Agenda/Public Hearings

9. Public comments
10. Adjournment

5.2 Agenda Preparation The agenda shall be prepared in accordance with the preparation procedure as directed by the City Manager. The agenda shall be delivered to the Mayor, Councilmembers, and Library after 5:00 p.m. on the Friday preceding the Wednesday meeting. Council materials are available for public review at the Library the Saturday, and at the City Administrative Office beginning on the Monday, before the regular Wednesday Council meeting.

5.3 Agenda Posting The City Clerk shall post an agenda at least 72 hours before a regular meeting at the following locations: (a) Atherton Town Offices, 91 Ashfield Road (lobby); (b) Atherton Branch Library, 2 Dinkelspiel Lane; (c) Atherton Train Station Bulletin Board; (d) Rosewood @ Green Oaks Bulletin Board; (e) Atherton @ Selby Lane Bulletin Board, (f) Town Council Chambers, 94 Ashfield Road. The agenda shall specify the time, date, and location of the meeting and contain a brief description and proposed action of each item of business to be transacted or discussed at the meeting.

5.4 Minutes Unless requested by Council, minutes may be approved without reading if the City Clerk previously furnished a copy to each member and the Library.

5.5 Public Comments (See also Citizens' Rights, Section 6) During Public Comments, any person may address the Council, provided that the item (1) is of interest to the public and is within the subject matter jurisdiction of the Council and (2) is not otherwise on the agenda.

5.6 Consent Agenda Items listed under the Consent Agenda are those items staff believes will not require Council discussion and are routine in content. Also listed under the Consent Agenda are resolutions confirming action from a previous meeting which are brought back for approval of form rather than approval of action. Items may be removed by any Councilmember for separate discussion for clarification and/or upon request by any member of the public who wishes to speak on that item.

5.7 Regular Agenda/Public Hearings Items requiring a public hearing will be noticed as required by law.

5.8 Actions Limited to Posted Agenda The City Council shall not take action on any item not appearing on the posted agenda except under the conditions permitted by Government Code Section 54954.2 (Brown Act).

6. Citizens' Rights

6.1 Addressing the Council

(1) Any person may address the Council on the following portions of the agenda:

- (a) Public Comments, as provided in Section 5.5.
- (b) Public hearings, as provided in Sections 8.1 and following.
- (c) When invited by the Mayor, all other portions of the agenda prior to the vote, if any, being taken.

(2) The following shall apply:

- (a) Each person addressing the Council shall step to the podium and give their name and address (optional) for the record.
- (b) A time limit may be imposed by the Council on each speaker depending on the subject matter. (Exception: See "Public Hearing Procedures" under Section 8.1 and following.)
- (c) All remarks shall be directed to the Mayor and Council as a body and not to any particular member.
- (d) No person, other than members of the Council and the person having the floor, shall be permitted to enter into the discussion.
- (e) No question shall be asked of Councilmembers except through the Mayor.

6.2 Personal and Slanderous Remarks Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous may be requested by the Mayor to leave the meeting. The Mayor shall discourage demonstrations before the Council, such as applauding or "booing". Upon instructions by the Mayor, a Sergeant-at-Arms may be called for the purpose of removing any person who, in the Mayor's judgment, has violated the rules of conduct and has disrupted the meeting. The Mayor appoints a person to fulfill the responsibilities of the Sergeant-at-Arms at the beginning of each meeting if he/she deems it to be necessary.

6.3 Reading of Protests Interested persons, or their representatives, may address the Council for the reading of protests, petitions or communications relating to the matter under consideration if a majority of the Council agree that the person should be heard.

6.4 Written Communications Any citizen may submit written comments to the Council through the City Clerk or City Manager's office and request that Council receive copies in the agenda packet provided such written comments are received four business days before the scheduled Council meeting. Written comments can be filed with the City Clerk or City Manager's office up to the time of the meeting and distributed to the Council at the meeting.

6.5 Printed Materials Printed materials contained in the agenda packet will be available upon request after the meeting is adjourned. There may be a copy charge, based on the Town's current copy fee, if printing is necessary. If the action taken requires retyping, the document will be available in Town Hall the next business day, as soon as the retyping is complete.

7. Ordinances, Resolutions and Contracts

7.1 Document Preparation All ordinances and resolutions shall be approved by the City Attorney. No ordinance shall be prepared for presentation to the Council unless ordered by a majority vote of the Council or prepared by the City Attorney on the City Attorney's own initiative.

7.2 Document Approval All ordinances, resolutions, and contracts shall, before being placed on the agenda, be approved as to form and legality by the City Attorney. Additionally, all these documents shall be reviewed by the City Manager.

7.3 Ordinance Introduction/Adoption Except as to urgency ordinances, unless a member requests a full reading, a proposed ordinance will be introduced by the reading of the title only. Ordinances introduced by first reading shall not be adopted within five days of the introduction or at other than regular Council meetings. If the ordinance carries an emergency clause, introduction and adoption may occur at the same meeting.

7.4 Majority Vote Required An affirmative vote of at least a majority of a quorum of the Council shall be necessary to adopt an ordinance. Urgency (emergency) ordinances must be adopted by the affirmative vote of at least four members of the Council. Resolutions, motions, and any other matters may be adopted by the majority present.

7.5 Ordinance Preservation Following adoption of an ordinance, the City Clerk will assign a number to the ordinance, and post according to law. The ordinance shall be filed and preserved in the City Clerk's office.

8. Procedures Regarding Public Hearings

8.1 Introduction Mayor announces subject of the public hearing.

8.2 Staff and Written Material Presentation

1. Staff summary report and other written material included in the agenda packet is received and filed. Written comments not in the agenda packet (e.g. protests, etc.) are noted for the record.
2. Written material not in the agenda packet, if any, is received and filed.
3. Staff report, if any, is presented by staff member.
4. Staff responds to Councilmember questions.
5. Mayor declares the public hearing open.

8.3 Public Comment

1. Purpose is to provide opportunity to concerned members in the audience who wish to testify in support or opposition to the matter being heard.
2. Mayor instructs members of the audience: (a) speak from the podium; (b) to give their name and address (optional) before speaking; (c) a time limit for each speaker may be designated; and (d) that repetition should be avoided.
3. The applicant/representative will normally speak first.
4. Questions by speakers will be noted prior to Council deliberation.
5. Mayor declares the public hearing closed.

8.4 Council Deliberations

1. After the Mayor has determined that no other member of the audience wishes to speak, the matter is returned to the City Council for deliberation.
2. The Council may ask questions of speakers for clarification.
3. The Council makes a motion and debates.

8.5 Council Action

1. Council at this time may re-open and continue the public hearing.
 - (a) This should be done if any additional information is requested (e.g. a staff report).
 - (b) Continuing a public hearing to a specific date does not require additional notice.
2. Council may:
 - (a) Vote on the item;
 - (b) Offer amendments or substitute motions and re-open the hearing allowing additional public comment;
 - (c) Continue the matter to a later date for a decision. (Note: no additional reports or testimony may be received after the hearing has been closed).

9. City Council Committees

- 9.1 Establishment – Appointment of Council Members Thereto. At the regular meeting in January, the Mayor shall appoint Council members to serve on various committees for a one year term. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by Resolution No.08-24 and as amended.
- 9.2 Appointment of Voting Members to City Council Committees. Appointment of voting members to City Council Committees shall proceed as provided by the terms and provisions of separate resolution and as amended. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by Resolution No.08-24 and as amended.
- 9.3 City Council Review of Town Committee Decisions. City Council Members on Town committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

9.4 Committees of City Council.

a. Standing Committees: Any standing committee of the Council shall be subject to the same rules of procedure as the City Council. Each standing committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The standing committees are:

1. Atherton Channel Drainage District Committee. Consisting of three members including two Council Members, and one resident of the Town. The committee meets on an as needed basis in the City Council Chambers.
 2. Audit Committee. Consisting of seven members, including two Council Members of the Finance Committee, and five residents of the Town. The committee meets quarterly in the Conference Room of the Town Administrative Offices.
 3. Budget and Finance Committee. Consisting of two Council Members. The Members also serve on the Audit Committee. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
 4. Buildings and Facilities Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
 5. Transportation Committee. Consisting of five members including two Council Members and three residents of the Town. The committee meets quarterly on the second Tuesday of the month at 6:00 p.m. in the City Council Chambers.
 6. Screening Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.
 7. Waste Reduction and Recycling Committee. Consisting of five members including two Council Members and three residents of the Town. The committee also includes the City Manager, Town Arborist, a SBWMA representative, and a representative of the franchise waste hauler. The committee meets quarterly on the first Wednesday of the month at 10:00 a.m. in the Conference Room of the Town Administrative Offices.
- b. Ad Hoc Committees. Any ad hoc committee of the Council shall be subject to the same rules of procedure as the City Council. Each ad hoc

committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The ad hoc committees are:

1. Cal Train Corridor Committee. Consisting of thirteen members including two Council Members and up to eleven residents of the Town. The committee meets on the first Tuesday of each month at 7:00 p.m. in the City Council Chambers.

9.5 City Council Review of City Council Committee Decisions. City Council Members on City Council-appointed committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

10. Suspension and Amendment of These Rules

10.1 Suspension Any provision of these rules not already governed by the Atherton Municipal Code may be temporarily suspended by a majority vote by the Council.

10.2 Amendment These rules may be amended by additions or deletions or new rules adopted by a majority vote of the Council provided the proposed amendment or new rules are introduced into the record at a prior Council meeting.

11. Miscellaneous Rules

11.1 Roll Call Votes Upon demand by any Councilmember, made before the "Nays" are called for, a roll call vote shall be taken on the motion before the Council. The Mayor's name shall be called last with other members' names called at random by the City Clerk. Members shall not give explanations for their vote during roll call.

11.2 Silence During a collective vote ("Ayes", "Nays" or "Abstain"), silence by any member denotes an affirmative vote.

11.3 Continuance of an Item

1. Continuance by a Councilmember: Any Councilmember may, with the consent of the Council, continue an item (not subject to a deadline) to the next agreed upon meeting. If the Councilmember will not be in attendance at the meeting, the Councilmember's request to continue an item should be personally conveyed to the Mayor or City Manager prior to the meeting.

2. **Continuances Requested by Someone Not a Councilmember:**
Anyone may request a continuance of an item by the Council. A request for a continuance may be granted by vote of the Council only if it finds that (1) the need for the continuance was beyond the control of the person requesting it, and (2) the need for the continuance arose after (a) the date of the notice of public hearing was published if the item is subject to a public hearing, or (b) the time the Council agenda was posted for items not subject to a public hearing.

11.4 **Personal Privilege** The right of a Councilmember to address the Council on a question of personal privilege shall be limited to cases in which the integrity, character, or motives of the Councilmember is in question, or where the welfare of the Council is concerned. The Councilmember may not interrupt the speaker, however, until recognized by the Mayor

11.5 **Protests** Any member shall have the right to enter into public record reasons for dissent or protest against any action carried by the majority.

11.6 **Motion to Reconsider** A motion to reconsider any action taken by the Council may be made in accordance with the following:

1. The motion must be made by a member of the prevailing side, although it may be seconded by any Councilmember.
2. The motion must be made prior to the adjournment of the meeting at which the original action was taken.
3. The motion is debatable and has precedence over a pending motion.

12. Rules of Debate

12.1 **Mayor as Presiding Officer** The Mayor may move, second, and debate from the Chair, and shall not be deprived of any rights and privileges of a Councilmember.

12.2 **Appeals** Any ruling of the Mayor may be appealed at the request of a Councilmember. The Mayor shall call for a roll call vote to determine if the ruling is upheld.

12.3 **Precedence of Motions** When a motion is before the Council, no motion shall be addressed except for the following:

- Motion to Amend
- Motion to Postpone
- Motion to Table

1. A Motion to Amend may be debated on the subject of the amendment. An amendment which modifies the motion before the Council is proper. If the intent of the Motion before the Council is changed by the amendment, a substitute Motion should be made. Amendments are voted on first. Upon the completion of these votes, the original motion as amended is voted upon. A motion may be amended more than once. Each amendment to a motion is voted on separately. There shall be only one motion to amend on the floor at any one time.
2. A Motion to Postpone. Adoption of a Motion to Postpone ends discussion of the matter which is postponed. A Motion to Postpone an item to a definite time is debatable. The motion also may be amended. Debate and the subject of the amendment must relate to the propriety of postponement and/or the time set for the postponement.
3. A Motion to Table results in temporarily passing by the item which is the subject of the motion. An item which has been tabled may be returned to the agenda at any time before the adjournment of the next regular meeting. If the item has not been taken from the table by that time, the item is deemed rejected.

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY MANAGER, JERRY GRUBER

DATE: FOR THE MEETING OF JULY 16, 2008.

SUBJECT: APPROVE LOWER-PRIORITY GOALS AND OBJECTIVES FROM THE MAY 2, 2008 CITY COUNCIL WORKSHOP CONDUCTED BY CARL NEU

RECOMMENDATION:

Approve lower-priority goals and objectives based on availability of staff time, resources, and a philosophy of a "pay-as-you-go" budget for fiscal year 2008/2009.

INTRODUCTION:

At the June 18, 2008, City Council meeting, the Council approved five high-priority goals as determined and agreed upon as a result of the Town Council Leadership Workshop. A suggestion was made by Vice Mayor Carlson to consider adopting the remaining lower-priority goals from the May 2, 2008, workshop. Listed below for the Council consideration are the remaining lower-priority goals for your consideration.

1. Obtain approval of an El Camino Real Drainage Plan, which would include funding by Redwood City, San Mateo, Caltrain, and Atherton.
2. Develop a Town-wide drainage program including funding plan and timetable for implementation.
3. Lobby to defeat High-Speed Rail.
4. Recruit, hire, and retain exceptional staff.
5. Reduce household consumption of electricity and gas for Atherton residents.

6. Continue to develop and adhere to standards of building and zoning code compliance in accordance with Atherton's General Plan and thereby in accordance with the will of the people.
7. Open an Art Center.
8. Restart daily train service.
9. Adopt Housing Impact Fee to provide money for regional lower-income housing.
10. Continue to provide quality amenities including, but not limited to, parks, cultural, personal-road safety, recreational, and social needs with special consideration given to the desirability and funding of a new Art/Cultural Center.
11. Adopt an environmental policy embedded in the Town General Plan.
12. Initiate active programs of ongoing cultural events at Holbrook-Palmer Park on a sustained basis.

ANALYSIS:

As each Goal and Objective is considered and addressed, a more detailed analysis will be required to determine the impact on the Town of Atherton's resources.

FISCAL IMPACT:

The City Council has adopted a balanced budget for 2008/2009 and a philosophy of "pay-as-you-go. As each Goal and Objective is considered and addressed a financial analysis will be required and recommendations made to the City Council on alternatives for funding these additional Goals and Objectives.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: APPEAL OF THE PUBLIC WORKS DIRECTOR'S DECISION
REGARDING 99 DEBELL DRIVE DRIVEWAY ENCROACHMENT
PERMIT TO MADRONE ROAD**

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing, deny the appeal, and uphold the decision of Staff for the reasons outlined in this report.

INTRODUCTION

The property owners of 73 Madrone Road, David & Leigh White, have filed an appeal of the decision of Staff regarding an encroachment permit for a driveway for 99 DeBell Drive to connect to Madrone Road.

The 99 DeBell Drive property has frontage on DeBell Drive, Oak Grove Avenue and Madrone Road. There is no restriction of access shown on the plat or any documents provided to Staff. In addition, the 99 DeBell Drive property was originally a lot in Ringwood Park, the subdivision that created Madrone Road, recorded at Plat Book 5 at page 38 on October 21, 1907. The right-of-way was accepted by San Mateo County, and subsequently became Town right-of-way upon incorporation of the Town in 1923. The street paving was never accepted for maintenance.

The owners of 99 DeBell Drive (permittee) applied for an encroachment permit to construct a driveway connecting to Madrone Road. The appellants asked Staff not to issue the permit. Staff had several conversations and meetings with appellants, including one with the City Manager and the City Attorney. Staff found no reason to deny issuance of the permit and so advised appellant. The permit was issued on June 4, 2008.

The appellant filed an appeal of Staff's decision with their letter dated June 4, 2008, and a subsequent letter dated June 11, 2008, to clarify their reasons for the appeal (attached). A Stop Work Notice was issued for the 99 DeBell Drive driveway project by Staff.

ANALYSIS

Atherton Municipal Code 12.06 regulates encroachments, defined as construction in the public right-of-way. Section 12.06.060 provides that:

The City Manager ... shall issue an encroachment permit to the applicant when, in the opinion of the City Manager, the proposed encroachment would not interfere with any town facilities or the use thereof, and would not be detrimental to the best interests of the town.

The section also provides:

The City Manager may delegate any of his functions hereunder to one or more designated deputies.

The function of issuing encroachments permits has been delegated to the Public Works Director. The Public Works Director determined that the proposed driveway at 99 DeBell Drive did not interfere with any Town facilities or the use thereof, and would not be detrimental to the best interests of the Town. The criteria to be used for this determination is set forth in Section 12.06.020

It is the intent of the encroachment regulations to preserve the rural nature of the town and to leave the lot frontage strip portion of the public right-of-way safe, clear of obstacles and impervious surfaces, for drainage, parking, access and other similar uses. It is the intent of this chapter to clarify that it is the responsibility of adjoining property owners to maintain such areas. (Ord. 503 § 1 (part), 1999)

The Public Works Director determined that the permit area was safe and clear of obstacles, required that the driveway contain a drainage swale to carry drainage across the driveway, determined that the driveway was for the purpose of providing access to the adjacent lot and determined that the construction did not include any impervious surfaces not necessary for providing access.

Because Madrone Road was never accepted for maintenance, the street is a unique hybrid of a private street within a public right-of-way. This means that the residents of the street are responsible for maintenance of the street until such time as the street is constructed to Town standards and accepted for maintenance by the Town. In the past, residents have expressed an unwillingness to do this because it would require the street to be wider than it is now. For this reason, Staff required acknowledgement by the permittee that constructing the driveway connection would cause them to be subject to maintenance costs of the street pavement. The permittee agreed to this condition and placed a note to that effect on the permit plans.

CLAIM OF ERROR

Appellant claims that Staff erred by not considering the project's impact on the rural nature of the Town, by failing to consider the effect of the project on aesthetics, garbage cans, traffic, consistency with the General Plan and character of adjacent public and private property, as required by Section 12.06.080 of the municipal Code, and by not adequately considering policies underlying setback, landscape screening and zoning regulations.

Staff in its review of this permit referred to other appropriate staff members for review and comment. The encroachment was evaluated for compatibility with the General Plan, including the Land Use and Circulation Elements. Other elements are not applicable to the issue. The Land Use Element does not contain any provisions inconsistent with the proposed project. The Circulation Element states that local streets (the smallest street standard) are used to provide access to abutting property...and they should be designed to discourage through traffic. The project is compatible with the Circulation Element.

An aside related to the private nature of the street, the Circulation Element Section 2.373 states:

A public street shall be accepted by the Town only on condition that it has been improved in accordance with Town standards existing at the time of acceptance

With regard to consideration of policies underlying setbacks for buildings, the garage complies with the zoning setbacks applicable to such an accessory structure. The fact that a driveway accesses the garage from the rear lot line does not affect the applicability of the setback.

With regard to landscape screening, the residential building project related to this encroachment permit is subject to landscape screening requirements on the front, side and rear yards, however, landscape screening is never required across an access driveway or sidewalk, regardless of which lot line it crosses. This permit is consistent with the landscape screening policies.

With regard to zoning regulations, whether or not there is a driveway present does not change the difference in setbacks from one side of the street to the other. The DeBell Drive side of the street will be the rear yard regardless, and the garage would be permitted at its present location whether there was a driveway from Madrone Road or not. Also appellant is incorrect that the zoning setbacks would not allow conversion of the street to public maintenance. Zoning setbacks are from the rear property line, not the edge of the street. As such, the setback would not change if the street were constructed to a standard width.

Regarding appellants contention that the permittee can provide access to the garage by extending the existing driveway from DeBell Drive, staff is not in a position to choose between the three lot lines which all provide equally legal access and require use of one over the other. There are not provisions in the Municipal Code or General Plan that indicate that this should be required.

Finally, regarding appellants contention that the 99 DeBell Drive property owner can provide access to the garage by constructing a driveway from Oak Grove Avenue, it should be noted that

Oak Grove Avenue is a Collector Street, which has the function, according to the General Plan, to transfer traffic from local traffic generators (homes, schools, etc.) and local streets to arterials. As such, it is desirable for access to be provided to the local street rather than the collector, if the choice is available. While this is not sufficient justification to require a change if the owner applied for a driveway to Oak Grove Avenue, in that other houses in the area have driveways to Oak Grove Avenue, it is sufficient justification to approve the permittee's desired location for the driveway as being consistent with the General Plan.

CONCLUSION

It is Staff's professional opinion that the request to construct a driveway to provide access to 99 DeBell Drive from Madrone Road is consistent with the Atherton Municipal Code and the Atherton General Plan and that the appeal should be denied.

ALTERNATIVES

- The Council could deny the appeal and uphold the decision of Staff. The permittee would be allowed to proceed with the project.
- If the Council determines the code interpretation of Staff is incorrect, in that issuance of the permit would be detrimental to the interests of the town, then the Council could direct staff to require the permittee to redesign the project to obtain driveway access from another street.

FISCAL IMPACT

The cost of the appeal process is paid for by the appellant.

FORMAL MOTION:

I move that the City Council deny the appeal and uphold the decision of Staff.

Prepared by:

Approved by:

Duncan L. Jones, P.E.
Public Works Director/City Engineer

Jerry Gruber
City Manager

Attachments:

1. Letter of Appeal dated June 4, 2008
2. Letter providing supplemental information dated June 11, 2008
3. Atherton Municipal Code section 12.06
4. Encroachment Permit and attached plan

Michael R. Gaulke
Judith A. Gaulke
1 Madrone Road
Atherton, California 94027
(650) 322-8833

RECEIVED
TOWN OF ATHERTON
2008 JUN 13 A 11:39

June 12, 2008

City of Atherton
Kathi Hamilton, City Clerk
Atherton, California 94027

Re: Revocation of 99 Debell Encroachment Permit

Dear Ms. Hamilton:

This letter is being sent in support of the request made by David and Leigh White to revoke the encroachment permit issued to the developers of Atherton property known as 99 Debell Road. The White's request is contained in letters dated June 4th and June 11th, 2008 addressed to the City Clerk.

We have lived 1 Madrone Road since 1987. We were initially attracted to the property, in large part, because of its rural charm and feeling of privacy afforded by the single lane "country road" that provided access to it. The thought of allowing Madrone Road to become a back alley for the residents of Debell is chilling. If it were allowed to happen, the current rural character of the road would be lost and it would negatively impact the value of the three homes that front on Madrone Road.

We concur with the reasons and rationales put forth in the White's June 11th letter to the City and ask that the encroachment permit be revoked, that the landscape screening be restored, and that the damage to the Madrone Road pavement be repaired.

Sincerely yours,



Michael R. Gaulke



Judith A. Gaulke

cc: David and Leigh White

David N. White
Leigh A. White
73 Madrone Road
Atherton, California 94027
650.327.5355 home
650.804.9220 mobile

June 4, 2008

City of Atherton
Office of City Clerk
Atherton, California 94027

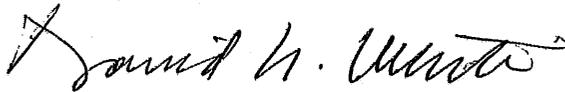
Re: 99 Debell encroachment permit

Dear Ma'am:

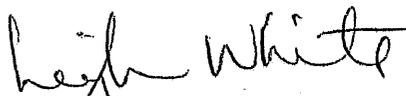
We understand that an encroachment permit was issued today for a driveway from 99 Debell onto Madrone Road in Atherton. This letter is intended to serve as a formal appeal to the permit.

Please contact us at your earliest convenience to instruct us as to the next steps in the appeal process. In the meantime, please inform the owner of 99 Debell that all work associated with the driveway must cease immediately.

Regards,



David White



Leigh White

cc: Duncan Jones
Marc Hynes ✓
Jerry Gruber

David N. White
Leigh A. White
73 Madrone Road
Atherton, California 94027
650.325.3707 phone
650.327.5355 fax

June 11, 2008

City of Atherton
Kathi Hamilton, City Clerk
Atherton, CA 94027

Dear Ms. Hamilton:

In addendum to our letter of June 4, 2008 appealing the issuance of an encroachment permit to the developers of Atherton property known as 99 Debell Road, and, pursuant to **Municipal Code §17.64.010**, the following outlines the facts upon which we believe demonstrate that the issuance of such permit was made in error by the decision maker:

Madrone to this point has been a charming single lane country road - only first paved within the last decade (at the expense of the residents on Madrone Road) and in compliance with the General Plan of the Town of Atherton in maintaining the rural character of the Town (**Municipal Code §12.06.020**). Only three homes presently front on and are accessed from Madrone Road. These three homes are located along the North side of Madrone and all are sufficiently isolated from one another by placement and vegetation to make them inconspicuous to the surrounding homes and neighborhoods. Madrone Road has been lined by a verdant growth of mature trees, shrubs and brush which gives it high value as a quiet, pastoral setting. Houses fronting on Debell Road whose rear property lines are bounded by Madrone are screened from Madrone Road by this vegetation. All access to these Debell lots (being in a subdivision separate from that which contains Madrone) is and has always been solely from Debell Road. The destruction of this vegetation by the developers of 99 Debell in anticipation of access via Madrone Road has resulted in the erosion of the character of Madrone Road due to the exposure of the rear service area and garages of 99 Debell to all who now travel down Madrone Road. Having granted such encroachment to 99 Debell, the Town would be required to allow the same for the additional 4 properties on Debell which back onto Madrone should it be so requested. Such disruption would completely destroy the character of Madrone Road. We believe that granting the encroachment permit is contrary to the stated intent of the encroachment regulations of **Municipal Code §12.06.020** of preserving the rural nature of the town. Therefore, the city authority granting such encroachment permit issued the permit in error.

Madrone Road has been privately maintained since before the Town of Atherton was incorporated and continues to be so. It represents the southernmost boundary of a subdivision known as Ringwood Manor, established in approximately 1908. It abuts an adjacent subdivision known as Maple Manor in such a way as the Maple Manor homes fronting on Debell Road have the back of their lots on Madrone. Access to these Debell homes has always been and continues to be from Debell. This design has been effective, functional and purposeful for nearly a century.

99 Debell which is bordered by Debell, Oak Grove and Madrone was sold approximately 2 years ago and the developers purchasing the property have built a garage facing Madrone with the intent of having access to it via Madrone. This presents a number of problems.

99 Debell Road is one of five Debell properties backing on Madrone Road. All of these homes were originally built in the 1950's and 60's or earlier and it is not unlikely that the next decade will witness significant redevelopment of these properties. The precedent established in granting encroachment from 99 Debell for this purpose would quite possibly be carried through in further development of additional Debell properties, converting charming Madrone Road from a street (as defined in **Municipal Code §16.08.190**) to use primarily as an alley (as defined in **Municipal Code §16.08.010**) for homes on Debell, with accompanying aesthetics, garbage cans, and traffic. This is inconsistent with the design of the road and the Atherton General Plan and character of the adjacent public and private property (as required under **Municipal Code §12.06.080(A)**) and would devalue existing Madrone properties. We believe the city authorities granting this encroachment permit failed to consider these effects as required and therefore granted such permit in error.

Madrone Road, owing to its historical development in bordering an adjacent subdivision, is perhaps unique within Atherton in having a small number of homes fronting one side of the road while on the other side a larger number of lots backing on to the street. **This results in the unusual arrangement of setback and landscape screening requirements quite different from one side of the street to the other.** This difference is manifest in the narrow setback between the new garages at 99 Debell (consistent with an alley) and the standard front set back and landscape screening required in the construction of our newly built home at 73 Madrone Road (consistent with a street). We thus face the potential usurpation of our street to serve as an alley for Debell. The difference is prejudicial and becomes problematic not only with the ensuing aesthetic changes on the street, but, should the residents along Madrone ever wish to have the street converted to public maintenance, the inadequate setbacks along the Debell side would disallow the conversion. A similar problem presently exists on Spencer, a privately maintained street in West Atherton where setbacks are inadequate to allow conversion to public maintenance. We believe that city authorities issuing the encroachment permit for 99 Debell did not adequately consider policies underlying setback, landscape screening and zoning regulations and therefore failed to exercise adequate discretion in the issuance of the permit.

Revocation of the encroachment permit requested by the developers of 99 Debell is in no way detrimental to the property owner. Adequate access to the garages as built exists by

extending the previous driveway along the west side of the property to the new garage area (this would require removal of one non-heritage tree) or by extending the newly cleared service areas from the front of the garage doors across the back of the lot to the East for access from Oak Grove. Either of the solutions can be attractive and inexpensive and both avoid damage to Madrone Road and the existing properties on Madrone.

In view of these special circumstances, we respectfully request that the city authorities revoke the encroachment permit pursuant to **Municipal Code §12.06.090** and require the owners of 99 Debell to restore the landscape screening and repair the damage to the pavement on Madrone Road.

Further, we intend to request that the town planner create a zoning overlay to protect the historic characteristic of Madrone Road from future encroachment from Debell properties and the permanence of Madrone Road as a street (as it has always been) and not an alley (as this encroachment permit would make it). This request will be made according to established procedures in coming weeks.

We understand that pursuant to **Municipal Code §17.64.050** the city council will, at its next regular meeting on June 18, 2008, set a date for a public hearing on this matter to be held within forty days.

Very respectfully yours,



David N. White



Leigh White

cc: Duncan Jones ✓
Marc Hynes
Jerry Gruber

RECEIVED
TOWN OF ATHERTON
Thom Bryant
Susan Gellen
99 De Bell Drive
Atherton, California 94027
2008 JUL -3 A 8:41

July 3, 2008

VIA Hand & Mail Delivery

Town of Atherton
City Council
c/o Office of the City Clerk
91 Ashfield Road
Atherton, CA 94027

re: Appeal of Encroachment Permit for New Garage at 99 De Bell Drive

Honorable Mayor and City Council:

We write in opposition to the appeal filed by David N. and Leigh A. White, which is scheduled to be heard at the Council's July 16, 2008 meeting. We respectfully request that this letter and the enclosures hereto be made a part of the administrative record of the appeal.

The Council should deny the Whites' appeal for the following reasons:

Background

In 2006 we purchased a lot and residence in Atherton. The lot is surrounded on three sides by city streets -- De Bell Drive on the southwest, Oak Grove Avenue on the southeast, and Madrone Road on the northeast. Access to the lot was from a driveway on De Bell Drive and a gate on Madrone Road.

In early 2007 we submitted plans and applied for building permits to renovate the residence and construct a new three-car garage. The plans clearly depicted that the garage would face northeast and be accessed via Madrone Road. A copy of the garage site plan is enclosed. After the plans were reviewed by Town staff, the Town issued building permits for the residence (#38486) and the garage (#38487) on July 10, 2007. A copy of the July 2007 building permit is enclosed. Our contractor immediately began renovating the residence and constructing the garage in accordance with the approved plans.

On June 4, 2008 our paving subcontractor applied for and received an encroachment permit to extend the new garage pavement to connect with the paved roadway of Madrone Road at the same location as the pre-existing gate. This encroachment permit was issued over-the-counter, based upon the previously-approved building permit plans. A copy of the June 4, 2008 encroachment permit is enclosed.

The day the encroachment permit was issued, the Whites' appealed the permit, and the Town issued a Stop Work Notice. On June 11, 2008 the Whites submitted a three-page letter outlining the bases for their appeal.

Our Property Is Part of the Original Ringwood Development With Access to Madrone Road

At the top of page 2 of their June 11th letter, the Whites represent that only their property is part of the turn-of-the-century Ringwood Park development. That is not accurate. Part of the Doyle estate was subdivided in 1907 creating Ringwood Park and including the dedication of Oak Grove Avenue and Madrone Road as public streets. A copy of the 1907 subdivision map is enclosed. The Whites' property (currently addressed as 73 Madrone Road) is identified as parcel 7 on this map; our property (currently addressed as 99 De Bell Drive) is identified as parcel 1 on this map. Thus, since 1907 our property has had the same right of access to Madrone Road as the Whites' property.

For 38 years following the creation of our parcel, the only access to it was from Madrone or Oak Grove. In 1945 parcels 1, 2, 3 and 4 of Ringwood Park were further subdivided along with the Nickel estate to create Maple Manor, including De Bell Drive. However, nothing in the creation of Maple Manor changed or detracted from our property's right of access to Madrone Road.

To this day Madrone Road remains a public street, and our property retains a right of access to it.

The Appeal Is Untimely

Municipal Code §§ 17.64.010 and .020 provide that appeals shall be made within ten calendar days from the date of a "decision" and must state the facts upon which an "error, omission or abuse of discretion was made by the decision maker."

Here, the relevant decision was the issuance of a building permit for construction of a garage fronting on Madrone Road. That decision was made in July 2007, and the time to appeal it expired in July 2007.

The Building Department's issuance of a building permit for the garage was discretionary, and thus subject to appeal, whereas the Public Works Department's issuance of the encroachment permit was ministerial, and thus not subject to appeal. *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 57 ("The issuance of a building permit, as we have seen, is a discretionary function. The permit process not only provides a means of ensuring that structures meet health, safety, and other requirements, it also subserves the public policies or goals of general land use planning.") In *Thompson*, the issue was whether the city could refuse to issue a certificate of occupancy for a building constructed in accordance with an issued building permit. The court held that the city could not do so: "the discretion to issue a building permit at all is much broader than the discretion which must be exercised in determining whether to issue a certificate of occupancy. Once a building permit has *been issued*, it cannot be de facto revoked by the simple expedient of never issuing the certificate of occupancy." *Thompson*. at 57-58 (*italics in original*). A certificate of occupancy is not required for a garage, but the encroachment permit at

issue here is analogous to the certificate of occupancy in *Thompson*, in that revocation of the June 4, 2008 encroachment permit would constitute a de facto revocation of the July 2007 building permit. Such a result would be neither just nor legal.

There was no “error, omission or abuse of discretion” in the issuance of the encroachment permit. In the case of a new project for which no prior permits had been issued, then the application would be “reviewed by the town staff for a determination as to whether it complies with the requirements of this policy, and meets town regulations. This review shall include referral to all appropriate staff members for review and comment. The proposed encroachment “shall be evaluated to determine whether it is compatible with the general plan and the character of adjacent public and private property.” But where, as here, the project has been reviewed by the building and planning departments, the plans approved, and a building permit issued, the Public Works Department’s review is limited to determining that the contractor is properly licensed and insured, and pays the required fee. The encroachment permit at issue here was issued over-the-counter. This was a ministerial act, and there can be no abuse of discretion in the performance of a ministerial act. Further, there was no error or omission by the Public Works Department on June 4, 2008. Public Works issued an encroachment permit to a properly licensed and insured contractor upon payment of the requisite fee for the construction of an encroachment in accordance with previously approved plans. No abuse of discretion, error or omission occurred. For the Public Works Department to refuse to issue an encroachment permit under these circumstances would have constituted a de facto revocation of the building permit, in violation of the law as laid down in *Thompson*.

**We Have a Vested Right to Complete the Garage Project,
and the Town is Estopped from Revoking the Encroachment Permit**

Where a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he or she acquires a vested right to complete construction in accordance with the terms of the permit. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791. The principle of equitable estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a property owner incurs substantial expense in reasonable and good faith reliance on some governmental act so that it would be highly inequitable to deprive the owner of the right to complete its project as proposed. “The theory of equitable estoppel simply recognizes that, at some point in the development process, a developer’s financial expenditures in good faith reliance on the governmental entity’s land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project.” *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321. We have expended \$242,000 to construct our new garage in accordance with properly-issued Building Permit #38487.

The “point” at which the governmental entity becomes estopped is when it issues a building permit. The Ninth Circuit held in *Congregation Etz Chaim v. City of Los Angeles* (9th Cir. 2004) 371 F.3d 1122, 1124 that the City was estopped from rescinding a building permit:

The district court essentially ruled that the City was estopped from revoking the building permit it had previously issued to the Congregation pursuant to the

Agreement. The district court expressly noted that the City's objection to the size of the building under construction "would have made a fine issue for the court, with excellent arguments on both sides, and with [the] result not predictable, *except for the fact that City approved the plans and issued the building permit with full knowledge of the terms of the settlement agreement.*"(emphasis added). The district court presumed that it would have had jurisdiction to resolve the size dispute if the dispute had arisen prior to issuance of the building permit and the incurrence of substantial expenditures by the Congregation in reliance upon issuance of the building permit. However, the district court concluded that once the building permit had issued and the Congregation had substantially relied upon its issuance by commencing construction, the Congregation acquired a vested right under California law that could not be revoked by the City. The district court ruled that the City's issuance of the building permit represented its approval of the building project, size and all. According to the district court, the appropriate time for the City "to take issue with the size of the remodeling was during the extensive and meticulous review, including review of the agreement, which preceded the issuance of the permit and the expensive reliance on it by Congregation."

Here, the time for the Whites to have challenged our new garage was when the building permit was issued, or when construction of the garage started. Instead, they waited until the garage was complete and about to be connected to Madrone Road to voice their opposition. It would be inequitable to stop the project at this time.

**Accessing the New Garage from Oak Grove or De Bell
as Suggested by the Whites Is Not Feasible**

Madrone Road is a city street. An owner of land abutting a city street is entitled to reasonable and convenient access to this property and the improvements on it. *Delta Rent-a-Car Systems, Inc. v. City of Beverly Hills* (1970) 1 Cal.App.3d 781, 786. Here, our new garage is a properly-permitted improvement, and the only reasonable and convenient access to this improvement is via Madrone Road.

In their June 11th letter, the Whites suggest that the new garage, as built, could be accessed from either Oak Grove or De Bell. Neither of these suggestions is feasible, as there is not enough space between the garage and the property line to make the turns required to enter and exit the northeast-facing garage from the southwest (De Bell) or southeast (Oak Grove). Revocation of the encroachment permit would thus be highly detrimental to us and our property.

**Allowing Us to Complete Our Project
Will Not Mean that the Town Will Be
Required to Grant Similar Access to All Properties
Between De Bell and Madrone**

The Whites argue that having granted us access to Madrone, the Town would be required to do the same for the additional four properties between Debell and Madrone. This is a red herring.

As the Whites point out on the last page of their June 11th letter, the Town could adopt zoning measures to forestall such projects. The other properties have not applied for or been granted building permits to construct driveways onto Madrone. Allowing us to complete our garage project in accordance with our Building Permit will not affect the Town's discretion to review future plans and issue building permits -- or not. As the court observed in *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 57: "The issuance of building permits, as we have seen, is a discretionary function. The permit process not only provides a means of ensuring that structures meet health, safety, and other requirements, it also subserves the public policies and goals of general land use planning." However, once a building permit has been issued, the permit holder has a vested right to complete the project. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791. Once a city has exercised its discretion to issue a building, it cannot be de facto revoked by refusal to grant a subsequent ministerial permit. *Thompson* at 58.

Taking a page from the Ninth Circuit's holding in *Congregation Etz Chaim*, the Whites' objections to additional driveways on Madrone present some fine issues "*except for the fact that the [Town] approved the plans and issued the building permit.*" 371 F.3d at 1124 (*italics in original*). Allowing us to complete our project in accordance with our building permit will not affect the Town's discretion to review future plans prior to issuing building permits.

The Town Adequately Considered Setback and Other Zoning Regulations

The Whites argue that the Town "did not adequately consider policies underlying setback, landscape screening and zoning regulations." The Town did consider these policies before it exercised its discretion to issue the building permit. Note the annotation on the enclosed garage plan: "30'-0" Min. Rear Setback for Acc. Str."

Conclusion

Our property has had a right of access to Madrone Road since it was created in 1907.

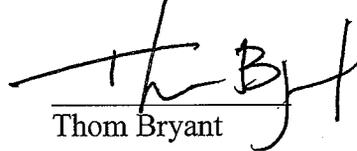
We applied for and were granted a building permit to construct a garage facing Madrone, with a driveway extending to the existing Madrone pavement. We expended considerable sums of money in good faith reliance upon this building permit. Thus, our right to complete the project in accordance with the building permit has vested and cannot be revoked without compensation. The requirement for a subsequent encroachment permit does not re-open the Town's discretion to consider land use factors associated with the building permit or re-start the ten-day appeal period. In this case, where a building permit has issued, the encroachment permit is a ministerial act and cannot be used to de facto revoke the building permit.

There was a time for dialog regarding whether we should be permitted to construct a garage facing Madrone. That time was in the spring/summer of 2007 when our application for a building permit was pending and the permit was issued. That time has long since passed, and revocation of our encroachment permit at this time would be inequitable and extremely detrimental to us and our property.

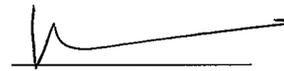
Accordingly, the Council should overrule the appeal and rescind the stop work notice.

We appreciate the Council's attention to this matter and look forward to a successful conclusion so that we may complete our house and garden.

Very truly yours,



Thom Bryant

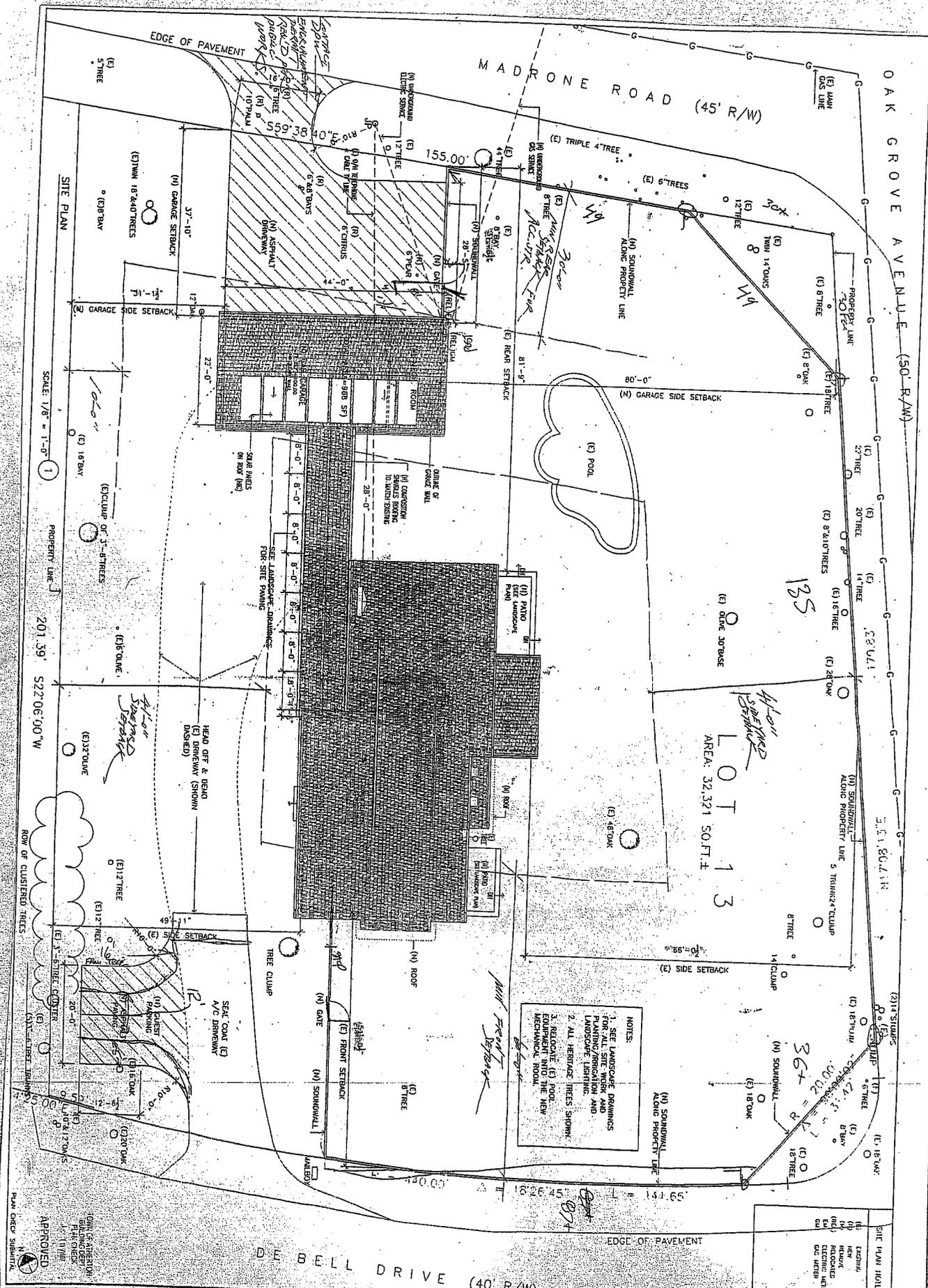


Susan Gellen

Enclosures: County Almanac Map
1907 Map of Ringwood Park
Approved Drawings T-1 & A1.0
Building Dept. attachments to approved plans
Building Permit #38487
Encroachment Permit #07-994

cc: Marc G. Hynes, City Attorney
Atkinson Farasyn LLP
660 West Dana Street
P.O. Box 279
Mountain View, CA 94042

David N. White
Leigh A. White
73 Madrone Road
Atherton, CA 94027



NEW SITE PLAN

NEW GARAGE BRYANT RESIDENCE
 99 DE BELL DRIVE, ATHERTON, CA 94027

DATE: 08-23-07
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: 1/8" = 1'-0"

APPROVED
 A10

LEGEND

(E)	EXISTING
(N)	NEW
(H)	HERITAGE
(R)	RELOCATED
(C)	CLEARING
(M)	METRIC
(S)	SEE LISTING

NOTES:

- SEE LANDSCAPE DRAWINGS FOR ALL SITE WORK AND PLANTING/PRUNING AND MAINTENANCE LISTING.
- ALL HERITAGE TREES SHOWN.
- REMOVE (E) POOL EQUIPMENT INTO THE NEW MECHANICAL ROOM.

BUILDING HEIGHTS

MAIN HOUSE

Average existing natural grade elevation shall be elevation: 99.57
 Maximum ridge height elevation of: 121.90
 Maximum sidewall height elevation of: 118.36
 Maximum First Floor: 101.35

DETACHED GARAGE & POOL HOUSE

Average existing natural grade elevation shall be elevation: 99.38
 Maximum ridge height elevation of: 114.17
 Maximum sidewall height elevation of: 108.00

Detached Care Taker House
 Maximum Ridge Height: N/A
 Maximum Side Wall Height: N/A

BENCH MARK

Benchmark assumed elevation ^{100.00 MAG NAIL} (top of man hole) located in front of property elevation
 from Meridian Surveying Engineering Inc. dated 1 AUGUST 2006
 BH SURVEYING INC.

Licensed surveyor shall verify building heights from average existing natural grade.
 Documentation of verification shall be submitted to Town of Atherton Building
 Department prior to framing inspection.



Zoning Compliance Worksheet

APN # 061-271-130

Address: 99 DE BELL DRIVE

Description REMODEL OF 2-STORY RESIDENCE

Square Footages	Stated	Actual
Ground Level:	<u>3202</u>	
2 nd Floor:	<u>701</u>	
3 rd Floor:	<u>-</u>	
Basement:	<u>-</u>	
Total (for valuation)	<u>3903</u>	

Is reported square footage correct? Yes No
 Does Valuation need to be corrected? Yes No

Average Nat. Grade + 100 basement included in FAR? Yes No

Lot Size: 32,321 SF Max Lot Coverage 5994 SF

Actual Lot Coverage 2234 SF this structure + 968 SF all other structures GARAGE = 3202 SF

Do total square footages exceed Maximum Lot Coverage? Yes No

Setbacks	Required	Actual
Front:	<u>60'</u>	<u>51'-0"</u>
Rear:	<u>60'</u>	<u>81'-9"</u>
Right:	<u>41'</u>	<u>66'-0"</u>
Left:	<u>41'</u>	<u>40'-11"</u>

Building Heights
 Roof Height: + 21.90
 Sidewall Height: + 118.36
 Use of increased setback to increase overall height? Yes No

Notes:

Reviewed By _____

Date _____



TOWN OF ATHERTON
91 ASHFIELD ROAD
ATHERTON, CA 94027-3896

INSPECTION REQUEST LINE
24-48 HOUR ADVANCE NOTICE
(415) 688-6521

BUILDING PERMIT

NOTE - THIS CARD AND APPROVED PLANS MUST BE KEPT DISPLAYED IN A CONSPICUOUS PLACE ON OR IN THE BUILDING WHERE SAME CAN BE READILY SEEN BY THE INSPECTORS. EACH STAGE OF CONSTRUCTION MUST BE INSPECTED AND APPROVED BY AN AUTHORIZED BUILDING INSPECTOR. DO NOT POUR CONCRETE UNTIL FIRST INSPECTION HAS BEEN MADE.

BUILDING PERMIT NO.

38487
GARAGE

- TYPE OF PERMIT () Combination () Building
 () Plumbing () Electrical () Grading
 () Mechanical () Right of Way Encroachment
 () Demo () Tree Removal () Pool
 () Roof () Landscape Screening

FINAL INSPECTION

This Building must not be occupied until a final inspection has been called for and certified below.

FINAL INSPECTION

_____ Building Official
 _____ By _____
 _____ 19 _____
 LANDSCAPE DATE FIRE PREVENTION DATE

() Landscape Screening Required

NOTICE TO OWNERS SMOKE DETECTORS

THE UNIFORM BUILDING CODE 1994 EDITION SECTION 310.91 REQUIRES THAT WHEN WORK IS DONE ON YOUR HOME, THE COST OF WHICH EXCEEDS \$1,000 AND A PERMIT IS REQUIRED, SMOKE DETECTORS SHALL BE INSTALLED IN EACH SLEEPING ROOM (BEDROOM), EACH HALLWAY GIVING ACCESS TO EACH SEPARATE SLEEPING AREA, AT EACH FLOOR LEVEL, AND IN BASEMENTS.

INSPECTION RECORD

	DATE	INSPECTOR	COMMENTS
FOUNDATION			
FORMS			
REBAR			
SLAB			
PIERS			
FOOTINGS			
VAPOR BARRIER			
HOLD DOWN BOLTS			
UFER			
SURVEY LETTER			
ENGR. LETTER			
ELECTRIC			
UNDERGROUND			
ROUGH			
SERVICE			
ELECT. FIX.			
PLUMBING			
SEWER			
UNDERFLOOR			
ROUGH			
SHOWER PAN			
ROUGH GAS			
VACUUM BREAKERS			
GAS TEST			
WATER HEATER			
TOPOUT			
WATER SERVICE			
MECHANICAL			
UNDERFLOOR			
DUCTS			
FLUES			
FURNACE			
HOODS			
A/C UNITS			
CHIMNEY			
COMBUST AIR			
STRUCTURE			
WINDOWS			
FLOOR JOISTS			
MASONRY			
SHEAR WALL			
ROOF NAIL			
FRAMING			
EXT. SHEATHING			
TEAR-OFF			
INSULATION			
ROOFING			
HOLD DOWNS			
UNDER FLOOR INSUL.			
INT. LATH			
DRY WALL			
LATH			
SMOKE DETECTOR			
SWIMMING POOL			
PRE-GUNITE			
PRE-DECK			
FENCE			
ENCROACHMENT			
FORMS			
SUB-BASE			
REBAR/DOWLES			
COMPACTION TEST			
GRADING			

Insp Type	Inspector	Sched. Date	Time	Compl Date	Time	Result	Remarks	Dur	LCKD	R
DRYWALL, EXT	JESSE	2/1/2008		2/1/2008		OK		0	<input checked="" type="checkbox"/>	C
SEE NOTES	JESSE	12/13/2007		12/13/2007		OK		0	<input checked="" type="checkbox"/>	C
SEE NOTES	JESSE	9/26/2007		9/26/2007		OK		0	<input checked="" type="checkbox"/>	C
PIERS AND	JESSE	8/6/2007		8/6/2007		OK		0	<input checked="" type="checkbox"/>	C
SEE NOTES	JESSE	7/25/2007		7/25/2007		OK		0	<input checked="" type="checkbox"/>	C

Inspection Details for Inspection Selected Above

Type of Inspection:

Inspector:

Date/Time Scheduled:

Date/Time Completed:

Results and Duration:

Comments / Remarks:

Scheduled Date (desc):

INSPECTION CODE NOT FOUND IN SETUP TABLE

More Info:

Troy



ENCROACHMENT PERMIT - INSPECTIONS AND STANDARDS
 INSPECTIONS REQUIRE A 24-HOUR ADVANCE NOTICE
 CALL (650) 752-0570 OR (650) 752-0551 FOR AN APPOINTMENT

REQUIRED INSPECTIONS	DATE	BY	(P)ass (F)ail	MINIMUM STANDARDS
----------------------	------	----	------------------	-------------------

DRIVEWAYS - ASPHALT/PAVERS			
Pipe Culvert (if applicable)			
Sub-Base (Bedding)			
Base			
Final Inspection			

8" Min. Traffic Rated pipe with flared end sections.
 4:1 slope. No CMP.
 95% Compaction
 95% Compaction. West of Alameda, engineer's compaction data required
 Sand seal all edges

DRIVEWAYS - CONCRETE			
Pipe Culvert (if applicable)			
Sub-Base (Bedding)	6/2/08	Troy	Pass
Base			
Steel/Forms			
Concrete Pour			
Final Inspection			

8" Min. Traffic Rated pipe with flared end sections.
 4:1 slope. No CMP.
 95% Compaction
 95% Compaction
 12" centers. All cross-joints tied.
 Steel Min 1" - Max 3" from bottom of hole.
 Dowels abutting concrete min 4" (no rust).
 Cold joints 10'.
 Six sack/2 pints lampblack per yard
 Broom finish flowline

LANDSCAPING IN R.O.W.			
Preliminary Layout prior to Planting			
Final Installation			

Compliance with approved Landscape Plan
 per Atherton's Streetfronting Landscaping Standard.
 (see handout)

UTILITY TIE-INS/BELLHOLES			
Compliance per Utility Company's Standards			
Sawcut Edges			
Pipe Bedding			
Sub-Base/Backfill			
Base			
Paving			
Final Inspection/Fog Seal			

Proof of Final Inspection from Utility Company
 per Atherton's Trench Detail and Surface Restoratic Standards (see handout)
 5 ft Overcut on each edge. All open trenches or holes covered with steel plates
 95% Compaction to 4" from Finish Grade
 per Atherton's Standard Specifications
 Tack edges, approved AC mix, smooth finish, sand seal edges

STORM DRAIN TIE-INS			
Tie-ins			
Sub-Base			
Base			
Asphalt (if necessary)			
Final Inspection			

per Atherton's Standard Specifications
 Hole size no greater than 1/2" of pipe size
 Grouted to smooth finish both sides of box
 SDR 13 standard pipe for tie-in or
 other traffic rated
 95% Compaction
 95% Compaction
 per Atherton's Standard Specifications

CONTACT PERSON: _____

David and Leigh White

73 Madrone Road
Atherton, CA 94027

RECEIVED
TOWN OF ATHERTON
650-327-5355 2008 JUL -9 P 2: 19

July 1, 2008

Atherton City Council
Atherton, CA 94027

Re: Appeal of encroachment permit issued to 99 De Bell

Dear Ma'am and Sirs:

This letter and attachments are intended to supplement the letters of appeal submitted by the residents of Madrone Road. We assert that pursuant to stated purposes of the municipal codes of the Town of Atherton, the encroachment permit issued to 99 De Bell should be revoked and future encroachment to Madrone Road from properties fronting on streets other than Madrone Road should be similarly restricted.

Our objection to the encroachment permit for 99 De Bell is not related to the existence of the newly constructed garage, nor its location on the property. Rather, we assert that access to the garage located approximately 25 feet from the street and is clearly visible from the street (see Attachment A), is inconsistent with the intent of the municipal code of Atherton. **If access to this structure is allowed from Madrone Road, the result would be that on one side of the street, homes fronting on Madrone are subject to garage setbacks of 60 feet for attached garages, 120 feet for detached garages and on the other side of the street, homes backing on Madrone, garage setback requirements would be essentially waived. Landscape screening requirements would be similarly inconsistent.**

Destruction of our tree-lined lane, whether for one rear driveway entrance or five, would negatively impact property values of homes on Madrone Road and impair the quality of life of Madrone Road homeowners. Until construction began on 99 De Bell, Madrone Road was completely screened from the property, consistent with municipal code requirements. When construction began on the garage structure, a footpath was cut in the screening along Madrone for worker access. In recent months the screening has been steadily removed, resulting in the obvious view of the garage structure and service yard we see today.

Given the alternatives available for access to the garages on 99 De Bell, the Madrone homeowners stand to lose substantially more than the owners of 99 De Bell stand to gain by access from Madrone Road. Until the construction of the new garage, the property's driveway was located along the west boundary of the property. Despite protestations to the contrary, this alternative is still available. The garage structure is located more than 30 feet from the west property line, providing ample access to the back of the garage structure. In fact, this original

driveway still provides primary access to the property. Continued use of this driveway is certainly no detriment to the property owners. Its extension along the west side of the property would allow convenient access to the present garage as built.

As we understand it, the relevant provisions of the Town of Atherton municipal code are as follows:

- Title 16. Subdivision (various subsections) provides broad regulations regarding land use.
- Title 17. Zoning (various subsections) refines land use regulations, enhances regulations by including landscape screening requirements.
- Title 12. Streets, Sidewalks and Public Places, Subsection 12.06 Encroachments regulates access to land.
- Title 8. Health and Safety, Subsection 8.14 Historical Artifacts preserves aesthetic heritage (among other things), demonstrating the importance of visual characteristics of Atherton.

Title 16. Subdivisions

The broadest of these regulations is Title 16 Subdivisions which begins by defining various aspects of land (for example, §16.08.100 Front lot line and §16.08.110 Rear lot line) providing a context for regulating use of such land. Significantly, included in the list are definitions of an **Alley** (§16.08.010: “a minor public way providing secondary access at the back or side of property”) and **Street** (§16.08.190: “an improved, traveled way providing the primary access to abutting property.”). In light of these definitions, if the majority of properties abutting Madrone Road use Madrone for secondary access, we are at risk of our street being converted into an alley.

There are an additional 4 homes on De Bell backing onto Madrone Road. Issuance of the permit in question would require that each of these properties have the same access, assuring the eventual conversion of Madrone Road from a street to an alley. This is problematic for many reasons, not the least of which is the impact on the property values of current Madrone Road homeowners and safety of those traveling daily on the narrow street.

Title 17. Zoning

Title 17’s zoning regulations begin by describing the purpose of the title, which include “to establish...regulations **implementing the general plan...**” and stating that “[t]hese regulations are necessary for the **orderly use of land...**” The definitions of Title 17 provide a template for use of property which results in the beautiful neighborhood we enjoy today. Complimenting these use requirements are §17.50 Landscape Screening codes, whose purpose is to “**reduce the impact of structures on neighborhoods.**” Together, these regulations contemplate a typical homeowner’s desire to build structures that maximize the use of the property while protecting other homeowners from being forced to view such structures.

In the case of garages, it is clear that Title 17 **assumes homeowners will access to such accessory structures from the front of the property**. Hence, the regulation **minimizes the visual impact of such structures by requiring they be set back from the front**: detached garages set back 120 feet from the front, and attached garages set back 60 feet from the front. This distance is necessary to ensure that accessory structures are not visibly dominant from the street.

Should the encroachment permit in question be granted we are left with a circumstance in which setback requirements vary from one side of the street to the other. This is untenable and significantly degrades the value of homes fronting on Madrone Road.

Although side and rear lot line setbacks are considerably narrower for accessory structures, since the regulations contemplate access from the front of the property, the code provides **protection from visual impact by imposing stringent side and rear landscape screening requirements** (§17.50.030 General requirements). These are minimum requirements, §17.50.030(C) grants the building official discretion to apply additional requirements.

However, in the case of 99 De Bell, the developer has built a garage that faces the rear property line, which abuts Madrone Road. The structure is within approximately 25 feet from the rear property line (see Attachment A). The placement of the structure is not in itself contrary to code requirements. However, **when seeking access to the structure from the side or rear of the property, the landscape screening requirements of §17.50.030 cannot be satisfied**. This is adequate reason for city officials to deny access to the structure from the side or rear of the property. As noted in our letter dated June 11, 2008, the structure can easily be accessed from the front of 99 De Bell by a driveway along the west side of the property, which is how the structure has always been accessed.

§12.06 Encroachment

Further protection for the visual character of Atherton is provided in §12.06 Encroachment provisions of Title 12. Specifically, §12.06.020 states that “It is the intent of the encroachment regulations to **preserve the rural nature of the town...**” *Nowhere in the town of Atherton is this rural nature more apparent than on Madrone Road* (see Attachment B). The value of this characteristic is strongly protected under this regulation, §12.06.080(A) grants the town staff broad discretion to determine whether the encroachment “is **compatible with the general plan and with the character of the adjacent public and private property.**” The city manager is then given the authority to deny or grant the permit (§12.06.080(B)), and to revoke the permit (§12.06.090).

The homeowners of Madrone Road assert that issuance of the encroachment permit for 99 De Bell, or any other property which does not front on Madrone Road, destroys the rural nature of the neighborhood and is inconsistent with the general plan and with the character of the adjacent public and private property.

ATTACHMENT A



99 De Bell garage view from Madrone Road

ATTACHMENT B



View of Madrone Road from Oak Grove looking west
(note break in foliage wall on left)

ATTACHMENT B (continued)



View of Madrone Road from cul-de-sac looking east
(note foliage wall on right)



Town of Atherton

CITY COUNCIL STAFF REPORT

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

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER
LISA COSTA SANDERS, DEPUTY PLANNER**

DATE: FOR THE MEETING OF JULY 16, 2008

**SUBJECT: ADOPTION OF A RESOLUTION FOR PLANNING FEE
INCREASE**

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution approving new planning fees.

INTRODUCTION

The City Council, at its recent budget hearings, requested staff propose fee adjustments to obtain full cost recovery for staff services.

Planning fees were last increased in 2000, where fees increased from \$450 to \$750 for most planning project types. In 2003, City Council adopted resolution 03-19 adding the ability to charge a deposit for planning projects. In 2007, the City Council adopted resolution 07-17 which inadvertently eliminated the ability to charge a deposit for planning projects and kept all other planning fees intact.

ANALYSIS

Staff has researched planning fees charged in other similar jurisdictions. Most jurisdictions have a planning review fee, as well as require a deposit be submitted to cover actual costs. Some jurisdictions have also established a pre-application review fee, providing the first hour to two hours free, then billing for each hour thereafter.

Staff has also reviewed the actual cost to review planning projects. Staff’s time includes review plans for completeness, correspond with applicant, conduct site inspection, prepare/mail/post public notices, respond to neighbor inquiries, prepare staff report and certificate, attend Planning Commission meeting, and prepare approval certificates.

In an attempt to have better cost recovery, staff recommends planning fees increase as follows with the ability to charge a deposit. Deposits will be tracked based on actual time spent on an application. If staff’s time does not exceed the fee charged, the full deposit would be refunded.

	Current Fee	Proposed Fee	Proposed Deposit
Conditional Use Permit	\$750.00	\$1,500.00	\$2,000.00
Variance	\$750.00	\$1,500.00	\$2,000.00
Heritage Tree Removal Permit	\$750.00	\$1,500.00	\$2,000.00
Exception Review	\$750.00	\$1,500.00	\$1,000.00
Excessive Height	\$750.00	\$1,500.00	\$2,000.00
Lot Line Redesignation	\$750.00	\$1,500.00	\$1,000.00
Lot Line Adjustment		\$2,500.00	\$1,000.00
Subdivision		\$5,000.00	\$2,500.00
Appeal	\$750.00	\$750.00	\$500.00
School Master Plan	\$400.00	\$250.00	
Initial Review/Negative Declaration		\$2,500.00	\$1,000.00
Zoning Ordinance Amendment	\$900.00	\$5,000.00	\$2,500.00
General Plan Amendment		\$5,000.00	\$2,500.00

In addition to the above listed fees for application review, staff also recommends the Council approve a pre-application fee based on staff hourly rates. The pre-application review would provide the first hour of consultation fee, and then charge hourly thereafter.

Staff recommends the following billing rates based on the Town’s actual cost plus 15% overhead charge:

City Manager	\$180.00
Town Planner	175.00
City Attorney	170.00
Building Official	120.00
Deputy Town Planner	120.00
Associate Planner	90.00
Town Arborist	70.00
Assistant Planner	70.00

For comparison purposes, a fee survey of six comparable cities – Los Altos Hills, Portola Valley, Woodside, Menlo Park, San Carlos, and Hillsborough – is attached.

Staff has published notice of the proposed fee increase in the Almanac on July 1 and July 8, 2008. The notice was also posted on Town bulletin boards and sent to the local builders associations.

FISCAL IMPACT

The proposed planning fee increase will obtain better cost recovery for actual staff time in processing applications. The estimated increase in planning fees is \$50,000.

FORMAL MOTION

I move the City Council adopt the Resolution adopting Planning Fees.

Prepared by:

Approved by:

Bill Yeomans
Interim Finance Officer

Jerome Gruber
City Manager

Attachments:

1. Resolution
2. Planning Fee Survey – six comparable cities

RESOLUTION 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
RELATING TO CHARGES FOR PLANNING SERVICES**

WHEREAS, the City Council of the Town of Atherton finds it necessary to recover cost of providing current planning services, and

WHEREAS, the City Council has not raised the planning review fees since May 17, 2000, and

WHEREAS, Finance Department has determined the current planning fees are not adequate to recover actual costs of the services rendered,

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the Town of Atherton that fees relating to planned be adjusted as set forth below:

	Current Fee	Proposed Fee	Proposed Deposit
Conditional Use Permit	\$750.00	\$1,500.00	\$1,000.00
Variance	\$750.00	\$1,500.00	\$1,000.00
Heritage Tree Removal Permit	\$750.00	\$1,500.00	\$1,000.00
Exception Review	\$750.00	\$1,500.00	\$1,000.00
Excessive Height	\$750.00	\$1,500.00	\$1,000.00
Lot Line Redesignation	\$750.00	\$1,500.00	\$1,000.00
Lot Line Adjustment		\$2,500.00	\$1,000.00
Subdivision		\$5,000.00	\$2,500.00
Appeal	\$750.00	\$750.00	\$500.00
School Master Plan	\$400.00	\$250.00	
Initial Review/Negative Declaration		\$2,500.00	\$1,000.00
Zoning Ordinance Amendment	\$900.00	\$5,000.00	\$2,500.00
General Plan Amendment		\$5,000.00	\$2,500.00

Staff Time:

pre-application review: first hour free, bill hourly thereafter with \$500 deposit

Town Billing Rates:

City Manager	\$180.00
Town Planner	175.00
City Attorney	170.00
Building Official	120.00
Deputy Town Planner	120.00
Associate Planner	90.00
Town Arborist	70.00
Assistant Planner	70.00

AND BE IT FURTHER RESOLVED that all other resolutions and orders in conflict herewith be, and thereby, repealed.

* * * * *

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 16th day of July, 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

Fee Survey
Town Of Atherton

	Los Altos Hills	Portola Valley	Woodside	Menlo Park	San Carlos	Hillsborough	Atherton Current	Atherton Proposed	Atherton Deposit
CUP- Single Family Res.	1170 + 1320 deposit	420 + 7,500 deposit	1,790	850 + deposit	2490	1386	750	1,500	2,000
Heritage Tree Removal	50.00	70.00		125	145	822	750	1,500	2,000
Lot Line Adjustment	1040 + 2610 deposit	620 + 2,500 deposit	1,080 + 1200 deposit	200	358	1934	-	2,500	1,000
Minor Subdivision	1,375/lot + 6500 deposit	1,070	6060 + 6,000 deposit	770 + deposit	3185	16446 + 150/lot		5,000	2,500
Variance	1370 + 1370 deposit	890.00 + 3,500 deposit	1,900	850 + deposit	3535	4,168	750	1,500	2,000
Appeal from PC to City Council	varies	890.00 + 1,500 deposit	400	110 + deposit	964	1,304	750	750	500
Initial Study/ Negative Declaration	810 + 660 deposit	Actual Town Cost	980	1250 + deposit	3,550.00	2113 + deposit		2,500	1,000
Zoning Ordinance Amendment	1040 + 1300 deposit	400	2340 + 1,200 deposit	2000 + deposit	5835	Actual Town cost	900	5,000	2,500
General Plan Amendment	1040 + 1300 deposit	190	2,340 + 1,200 deposit	4,000 + deposit	5269	Actual Town cost		5,000	2,500
<u>Los Altos Hills:</u>									
Hourly rate: Director \$185, Senior Planner \$135, Associate Planner \$120, Assistant Planner \$110									
Woodside (fees have not changed since 1995)									
Initial project consultation - first hour free, bill hourly thereafter. 25% overhead charge to consultant costs, staff hourly rates: Director \$95, Senior \$80, Assistant Planner \$55									
<u>Menlo Park</u>									
Initial project consultation - first two hours free									
<u>Hillsborough:</u>									
Town Costs: means the actual costs to the Town, including staff time (charged at hourly rate) or consultant cost plus 15% admin fee, plus costs of any billable items plus 15% admin fee. Minimum deposit of \$1,000									
Hourly rates: Director \$203, Assoc/Asst Planner \$106, counter tech \$80									



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY MANAGER, JERRY GRUBER

DATE: FOR THE CITY COUNCIL MEETING OF JULY 16, 2008

SUBJECT: APPROVAL OF PROCESS FOR PREPARATION OF THE 2007-14 HOUSING ELEMENT UPDATE INCLUDING APPROVAL OF THE NEAL MARTIN & ASSOCIATES SCOPE OF WORK AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE

RECOMMENDATION:

Approve the proposed process for preparation of the 2007-14 Housing Element Update including the items listed below:

- Approval of the Neal Martin & Associates Scope of Work (attached).
- Approval of the Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the Update (attached).

BACKGROUND and DISCUSSION:

Consideration of the Professional Services Agreement with Goldfarb & Lipman for legal services was on the June 18, 2008, City Council agenda. The approach to preparing the update recommended by Staff is to have Neal Martin & Associates prepare the draft Element and to have Barbara Kautz of Goldfarb & Lipman provide strategy recommendations, guidance, review and oversight during the draft preparation. Ms. Kautz would also be a key member of the team during the presentation and public hearing phase at public participation workshops and at General Plan Committee, Planning Commission and City Council hearings.

Questions were raised concerning the process leading to the recommendation for preparation of the 2007-14 Housing Element Update. Staff has attempted to provide answers to those questions, has provided a chronology of steps leading to the Update and has attached documentation for Council

review.

Among the questions asked were:

Were other approaches considered for the preparation of the 2007-14 Housing Element Update?

Response: The City Manager, in consultation with Council Members Janz and Carlson (the Town's representative and alternate to the Sub-regional Project Advisory Committee¹) reviewed four alternative approaches to preparing the Update. Those included:

- Use Neal Martin & Associates (existing contract staff) and Goldfarb & Lipman (Barbara Kautz) but do not participate in the Sub-regional effort.
- Use Neal Martin & Associates (existing contract staff) and Goldfarb & Lipman (Barbara Kautz) but participate in the Sub-regional effort.
- Hire a different outside consultant.
- Do not update the Element.

Why was the recommended approach chosen?

Response: The City Manager is recommending the second alternative, that is:

- Use Neal Martin & Associates (existing contract staff) and Goldfarb & Lipman (Barbara Kautz) and participate in the Sub-regional effort.

The reasons for recommending this alternative include:

- **Basic knowledge of the Town, its policies and history.** Neal Martin has been contract planner with the Town for 25 years. He has prepared the Town's Housing Element for each State required planning period since 1983. Although the Atherton Housing Element was not certified by HCD for the last two planning periods, the reason was the Town's policy of not rezoning land for higher density housing, not due to any errors or omissions in the Element content.
- **Significant time and cost in educating a different outside consultant.** Existing Town Staff would be required to dedicate a significant amount of time in providing background on policy and history to any new outside consultant.
- **Cost.** The cost for the recommended approach is \$72,600. The cost of the Zoning Ordinance Update Project prepared by PMC Consultants was \$88,240. It is expected that the Housing Element Update Project would cost about the same as the Zoning Ordinance Project. An additional cost of \$5,000 would need to be added for participation in the Sub-regional effort. Neither does this estimate include a budget for specialized legal review of the element.
- **Continuous legal review of the draft element.** The recommended strategy for preparation

¹ Atherton is a participant along with all the cities and the County in the San Mateo County-wide Sub-regional group for allocation of the Regional Housing Needs and assistance in preparation of the 2007-14 Housing Element Update.

of the Update is to prepare a legally defensible document for adoption. The recommended approach is to include an attorney who is an expert on Housing Element law and who has experience in preparing and defending housing elements on the Update team. This approach will provide continuous legal review of the draft to insure that it is legally defensible.

- **Participation with the Sub-regional Group.** The recommended approach is to participate with San Mateo County and the other 19 cities in the County in preparing the background and data sections of the element. This will result in an overall cost savings, have a uniform approach to all of the elements and have the added benefit of one HCD Staff member who will function as the reviewer for elements of all 21 jurisdictions.
- **Time constraints.** In order to meet the statutory deadline of June 30, 2009 for HCD review and Council adoption of the Update, the draft must be completed by December 31, 2008. With the recommended approach there is adequate time to complete the draft within the time constraints. Use of a new outside consultant would result in additional time constraints to accommodate the proposal and selection process.

Why is the update process so time consuming?

Response: When the 1999-2006 Housing Element Update was prepared (work was actually done in 2000 and 2001) much of the Census 2000 data was not available. Consequently, the law requires that all of the background data be updated to include the 2000 Census information and that all of the associated analyses be updated as well. This requires time consuming research, updating of the data and revisions of the analyses. In addition, greater detail is required for the “potential housing sites” inventory and analysis during this planning period. A new, detailed analysis of progress made in implementation of the 1999-2006 Update is required during this planning period. Finally, there are new requirements that must be addressed in each jurisdiction’s Update related to analyses of homelessness and plans for providing shelters.

The City Manager is recommending that the City Council approve the approach of having Neal Martin & Associates prepare the draft Element and having Barbara Kautz of Goldfarb & Lipman provide strategy recommendations, guidance, legal review and oversight during the draft preparation. Attached is a scope of work for Neal Martin & Associates that includes preparation of all the required analyses and the draft element, preparation of a draft Mitigated Negative Declaration and attendance at all of the public workshops and public hearings on the Update. Also attached is a proposed Professional Services Agreement with Goldfarb & Lipman. The proposed Goldfarb & Lipman scope of work includes the components listed below:

- Strategy recommendations during preparation of the Update.
- Review of the draft Housing Element for compliance with housing element law.
- Review of comments made by the State Department of Housing and Community Development (HCD) and advice on necessary changes to achieve HCD certification.
- Attendance and facilitation at up to five public meetings or hearings.

The proposal is a time and materials based agreement with a maximum authorized fee of \$27,600. The total amount is the product of 115 hours of work at Ms. Kautz’ billing rate of \$240 per hour.

The primary objective of this approach would be to adopt an Update that is as fully in compliance with State law as politically feasible in Atherton. In addition, an objective is to receive an “in compliance” finding from HCD, if possible.

FINANCIAL IMPACT:

The cost for the 2007-14 Housing Element Update Project is included in the proposed 2008-09 Atherton Budget. There is a total of \$72,600 in the proposed budget for the project. The \$27,600 for the Goldfarb & Lipman Professional Services Agreement is included in the \$72,600 total Housing Element Update project. The project expenses are budgeted as listed below:

- Goldfarb & Lipman - \$27,600
- Neal Martin & Associates - \$40,000
- C/CAG (Countywide Housing Element Project) - \$5,000

FORMAL MOTION:

I move that the City Council approve the recommended approach to preparation of the 2007-14 Atherton Housing Element Update. I move that the Council approve the scope of work for Neal Martin & Associates and authorize proceeding with that scope. I further move that the Council approve the Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the 2007-14 Housing Element Update and authorize the City Manager to sign the Agreement.

Attachments:

1. Chronology of Steps Leading to the 2007-14 Housing Element Update
2. Proposed Scope of Work, Neal Martin & Associates, April 21, 2008
3. Proposed Scope of Work, Goldfarb & Lipman LLP, April 10, 2008
4. Goldfarb & Lipman Resume for Housing Elements
5. Barbara Kautz Resume for Housing Elements
6. Staff Report and Attachments from Agenda Item 14, City Council Meeting of June 18, 2008

Town of Atherton 2007-2014 Housing Element Update

Proposed Scope of Work

Neal Martin & Associates

April 21, 2008

Objective: City Council Adoption of a 2007-2014 Housing Element Update that is legally sound and defensible, and, if feasible, receives an “In Compliance” determination by the California Department of Housing and Community Development (HCD).

Update Team: Neal Martin & Associates (NM&A) will work with Barbara Kautz of Goldfarb & Lipman, LLP and with the San Mateo County Sub-regional Housing Element Group to produce a draft Housing Element Update document for consideration by the Atherton General Plan Committee, Planning Commission and City Council. The rolls of the team members are:

San Mateo County Sub-regional Housing Element Group:

- Prepare data collection and presentation templates for standard required data and sections of the Update. The Update requires extensive data collection and presentation. This task accounts for about half of the Element volume.
- Prepare jurisdiction specific and county-wide materials on housing needs, resources and constraints.
- Prepare a menu of housing strategies, policies and programs, and public participation materials that can be selectively used by the participating jurisdictions.
- Provide assistance to participating jurisdictions such as coordination with HCD staff, shared advice on responses to HCD comments and questions on data needs or policy and program options.

Neal Martin & Associates:

- Prepare draft Housing Element Update including data provided by the Sub-regional Housing Element Group and proposed housing goals, objectives, policies and programs consistent with other Town policies.
- Prepare revisions to the draft Housing Element Update as required throughout the public participation process and review process by the Town and HCD.
- Attend public presentations as required and prepare presentation material in conjunction with Goldfarb & Lipman.
- Prepare, notice, circulate and facilitate adoption of a draft Mitigated Negative Declaration describing and evaluating the environmental effects of the project (i.e. the draft Housing Element Update).
- Facilitate HCD review of the Update.

- Assist conducting public participation workshops and assist in presenting the draft Element Update to the General Plan Committee, Planning Commission and Town Council.

Goldfarb & Lipman (Barbara Kautz):

- Review 1999-2006 Atherton Housing Element and HCD comments in order to provide guidance on strategies for obtaining an “In Compliance” determination for the 2007-2014 Update.
- Provide strategy recommendations and guidance, review and oversight during the preparation of the Update so as to achieve the objective of a legally sound and defensible document.
- Conduct one public participation workshops and assist in presenting the draft Element Update to the General Plan Committee, Planning Commission and Town Council at up to four meetings/public hearings.

Neal Martin & Associates Work Tasks:

Task 1: Update Data Sections of Adopted Housing Element

Using the Adopted Atherton Housing Element (2001 Update), update the data sections using information provided by the Sub-regional Housing Element Group. Revise text analyses where appropriate. Data to be updated include:

- Annual Income Limits by Household Size
- Existing and Projected Housing Need by Income Level (including extremely low incomes)
- General Plan/Housing Element Consistency Analysis
- Historic Population Trends and Projections
- Population Age, Racial, Ethnic Characteristics
- Housing Needs of Disabled Persons
- Employment History and Projections
- Housing and Household Characteristics
- Level of Housing Payments Compared to Ability to Pay
- Site-Specific Inventory of Land Suitable for Residential Development
- Analysis of Governmental Constraints to Housing Development and Efforts to Remove Governmental Constraints
- Analysis of Non-Governmental Constraints to Housing Development and Efforts to Remove Non-Governmental Constraints
- Analysis of Special Housing Needs Including: Elderly, Disabled, Large Households, Female-headed Households and Farm Workers
- Analysis of Persons in Need of Emergency Shelters and Zoning for Emergency Shelters
- Analysis of Opportunities for Energy Conservation
- Analysis of Existing Assisted Housing Developments that are Eligible for Conversion

- Other data required by Housing Element Law

Time Frame: April – July 2008

Work Product: Data and Analysis Sections of Draft Housing Element

Task 2: Quantify and Evaluate Existing Atherton Housing Programs

Quantify and evaluate the effectiveness of Atherton’s housing programs during the previous planning period of 1999-2006. Those programs included Market Rate Housing Construction, Second Dwelling Units, Faculty and Student Housing at private schools, and Shared Housing. Evaluate whether there is unallocated regional housing need from prior Housing Element period (Section 65584.09).

Time Frame: April – July 2008

Work Product: “Evaluation of 1999-2006 Housing Element Programs” Section of the 2007-14 Draft Housing Element

Task 3: Review and Update Atherton’s Housing Goals, Objectives and Policies

Review, evaluate the effectiveness and update Atherton’s goals, quantified objectives and policies for housing development, rehabilitation and conservation. Update these goals, objectives and policies so as to identify sufficient sites to meet the current housing needs allocation approved by the Association of Bay Area Governments. Update other policies as required by State law, such as policies regarding reasonable accommodation and housing for the disabled.

Develop a list of housing programs consistent with the goals, objectives and policies.

Include proposals to comply with recently enacted State legislation that requires local jurisdictions to strengthen provisions for addressing the housing needs of the homeless, by including the identification a zone or zones where emergency shelters are allowed as a permitted use without a conditional use permit, or by participating in a multi-jurisdictional agreement.

Time Frame: August – December 2008

Work Product: Draft 2007-14 Housing Element Update

Task 4: Describe Atherton’s Efforts to Achieve Public Participation in the Housing Element Update Process

Provide a description of Atherton’s efforts to achieve substantial public participation in the Housing Element Update process and incorporate into draft.

Time Frame: August – December 2008

Work Product: “Public Participation” Section of the 2007-14 Draft Housing Element

Task 5: Develop and Continually Update Answers to Frequently Asked Questions

Prepare and update answers to frequently asked questions concerning the Housing Element Update process. These can be posted on the Town website and published in Town sponsored publications.

Time Frame: April 2008 – June 2009

Task 6: Facilitate the HCD Review of the Housing Element Update

Maintain contact with the HCD representative/reviewer. Complete HCD checklist in advance of submitting Housing Element to HCD. Provide responses to HCD comments on the draft Element. Use “best efforts” to obtain an “In Compliance” determination for the Atherton Update from HCD.

Time Frame: January – April 2009

Task 7: Prepare a Mitigated Negative Declaration for the Housing Element Update Project

Prepare an Initial Study and draft Mitigated Negative Declaration for the Update project. This document would comply with the California Environmental Quality Act, as amended. It would be prepared for approval by the Planning Commission and adoption by the City Council. (Note: this Scope does not include preparation of an EIR if it is determined that one is needed or required).

Time Frame: November – December 2008

Task 8: Facilitate the Public Participation and Public Hearing Review Process

Attend public meetings and, as required assist Barbara Kautz in conducting the public participation process and presenting the draft Housing Element and CEQA document to the General Plan Committee, Planning Commission and City Council. Prepare notices, agendas, staff reports, and PowerPoint presentations for meeting in conjunction with G & L.

Time Frame: August 2008 – June 2009

Time Frame: Time frames for individual tasks are provided above. Key dates for completion of major components of the project are:

- Completion of Draft Housing Element Update – December 2008
- Public Participation Process – December 2008
- Completion of Draft Mitigated Negative Declaration – December 2008
- Initial HCD review and response – April 2009
- City Council adoption of Update – June 2009

Cost Estimate: The estimated cost for the above tasks is \$40,000.

**goldfarb
lipman
attorneys**

1300 Clay Street, Ninth Floor
Oakland, California 94612
510 836-6336

April 10, 2008

M David Kroot
Lee C. Rosenthal
John T. Nagle
Polly V. Marshall

Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
John T. Haygood

Jerry Gruber, City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Dianne Jackson McLean
Michelle D. Brewer

Re: Housing Element Assistance, Town of Atherton

Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.

Dear Mr. Gruber:

Goldfarb & Lipman LLP would be pleased to provide legal services to the Town of Atherton (the "Town"). This letter constitutes our written fee agreement.

Margaret F. Jung
Heather J. Gould
William F. DiCamillo

Goldfarb and Lipman will assist the Town of Atherton in reviewing the Town's adopted Housing Element and identifying key issues. Our scope of work and project budget are included in the attachment to this letter.

Juliet E. Cox
Erica Williams Orcharton
Amy DeVaudreuil
Barbara E. Kautz
Luis A. Rodriguez
Xochitl Marquez
Rafael Yaquian

Barbara E. Kautz will have the principal responsibility for these services. We will charge for our time as set forth in the attached rate schedule. Our legal services will be billed and payable monthly at these rates based on the number of hours expended. For your information, a copy of our standard billing policies is enclosed.

If the arrangement described above is satisfactory, then please sign each of the two originals of this engagement letter in the space provided below. Please return one of the signed originals to me, and keep the other signed original for your files.

Sincerely,



POLLY V. MARSHALL

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

Accepted:

Jerry Gruber, City Manager

**Town of Atherton
2007-2014 Housing Element Update**

Goldfarb & Lipman LLP

Proposed Scope of Work

Neal Martin & Associates (NM&A) has requested Goldfarb & Lipman LLP (G & L) to assist in producing a draft Housing Element Update document for consideration by the Atherton General Plan Committee, Planning Commission and Town Council. The goal is to present for Council adoption a 2007-2014 Housing Element Update that is legally sound and defensible, and, if feasible, receives an "In Compliance" determination from the California Department of Housing and Community Development ("HCD"). Barbara Kautz will have the primary responsibility for this work and for conducting public meetings.

The proposal from NM&A explains the respective roles of the participants in the Housing Element update process. As described by NM&A, G & L's role is to:

- Provide strategy recommendations and guidance, review, and oversight during the preparation of the Update so as to achieve the objective of a legally sound and defensible document.
- Conduct public participation workshops and present the draft Element Update to the General Plan Committee, Planning Commission and Town Council.

This Proposed Scope of Work presents in detail Goldfarb & Lipman's work tasks.

Task 1: Strategy Recommendations

Provide strategy recommendations during the preparation of the Update in response to Town policy and community input so as to achieve a legally sound and defensible document.

Work Product: Written and oral comments as needed.
Time Frame: April 2008 – June 2009

Task 2: Review Draft Housing Element

Review draft housing element for compliance with housing element law. The review will examine the housing element to ensure that each item required by the housing element statute (Government Code Section 65583) is included in the draft housing element. The review will also reference HCD policies regarding the review of housing elements. This work item includes one major review and one additional review of responses to initial comments.

Work Product: Comments will normally be made by e-mail message and by annotations in the draft housing element.
 Time Frame: October 2008 – December 2008

Task 3: Review HCD Comments

Review comments made by HCD on the draft housing element and advise Town on necessary changes to achieve HCD certification.

Work Product: Dependent upon nature of HCD comments.
 Time Frame: April 2009

Task 4: Public Meetings

Attend up to five public Town meetings on the Update, not exceeding total time per meeting of 8 hours for attendance, travel time, and preparation. G & L will facilitate the meetings; present the Update; advise NM&A regarding agendas, staff reports, and presentation materials and review those materials; and prepare written memos if a legal analysis is required, but will not prepare agendas, staff reports, and presentation materials.

It is expected that there will be one Public Participation meeting, one Joint General Plan Committee, Planning Commission and City Council meeting, one City Council Public Hearing on the Draft Element, and two additional public meetings to be determined as the process progresses.

Not Included In Scope of Work:

1. Attendance at meetings not included in Task 5, or in excess of time specified in Task 5.
2. Assistance with environmental review of Update.
3. Preparation of reports and memos except as specified.

If authorized by the Town, G & L will be reimbursed for these tasks on an hourly basis.

Hours and Costs

	Task 1	Task 2	Task 3	Task 4	Total
Barbara Kautz (\$240/hr)	25 hrs.	30 hrs.	20 hrs.	40 hrs.	115 hours
Total	\$6,000	\$7,200	\$4,800	\$9,600	\$27,600

**Goldfarb & Lipman LLP
Public Agency Rate Schedule**

Partners	\$240-250
Associates	\$160-240
Senior Law Clerks	\$135
Law Clerks	\$125
Project Coordinators	\$125

GOLDFARB & LIPMAN LLP

BILLING POLICIES AND PROCEDURES

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, this letter is intended to briefly explain our billing policies and procedures. We encourage you to discuss with us any questions you may have concerning these policies and procedures.

To determine the value of our services, we ask each of our lawyers and legal assistants to maintain time records for each client and matter. The time records are reviewed monthly by the responsible billing attorney. Our present billing rates for services rendered for partners, associates, and for paralegals is attached. Our hourly rates are adjusted from time-to-time (generally once a year) and may change during the course of our engagement.

It is our policy to serve you with the most effective support systems available. Therefore, in addition to our fees for legal services, we also charge for filing fees, Lexis/Nexis costs, messenger, and other costs and expenses incurred on your behalf.

Our billing statements are due and payable upon receipt. Clients whose statements are not paid within 30 days of the statement date will be assessed a late charge on the unpaid balance at the rate of one-and-a-half percent per month. As an incentive for early payments by clients, if payments are made within ten days of the date of the statement, we will be happy to reduce our statement by one percent.

We carry professional liability insurance above the limits required by law.

In closing, let us assure you that it has always been and will continue to be our goal to provide legal services to you on the most cost-efficient basis possible. If you have any questions or comments regarding our billing policy, please feel free to contact Barbara Kautz or Polly Marshall.

Sincerely

GOLDFARB & LIPMAN LLP

firm qualifications

M David Kroot

Lee C. Rosenthal

John T. Nagle

Polly V. Marshall

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

John T. Haygood

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San Diego

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Goldfarb & Lipman LLP

Goldfarb & Lipman is a California law firm that practices in the field of real estate law, with special strengths in redevelopment law, land use, and affordable housing. Our practice includes urban development, land use law (especially statutes related to housing), affordable housing financing, redevelopment, real estate syndications, public finance, environmental law, fair housing, subdivisions, securities, lender representation, and related areas of law. In the 37-year history of the firm, we have maintained an extensive practice representing both public and private clients in major development and financing transactions, as well as trial and appellate litigation. A representative listing of cities we have served follows:

City of Arcata

City of Barstow

City of Belmont

City of Brisbane

City of Campbell

City of Capitola

City of Cupertino

City of East Palo Alto

City of El Cerrito

City of Eureka

City of Folsom

City of Fremont

City of Hollister

City of Livermore

Town of Loomis

City of Los Angeles

City of Marina

City of Menlo Park

City of Montebello

City of Napa

City of Pacifica

City of Pinole

City of Pittsburg

City of Poway

City of Redding

City of Redwood City

City of Reno, Nevada

City of Richmond

City of Sacramento

City of Salinas

City of San Carlos

City of San Mateo

City of San Rafael

City of Seaside

City of Solana Beach

City of Stockton

City of South Lake Tahoe

City of Sunnyvale

Town of Tiburon

City of Tracy

City of Union City

City of Vacaville

County of Alameda

County of Butte

County of Contra Costa

County of Fresno

County of Marin

County of Mendocino

County of Orange

County of Placer

County of San Mateo

County of Santa Cruz

County of Sonoma

County of Yolo

LAND USE & MUNICIPAL LAW

Goldfarb & Lipman offers services to clients relating to land use and municipal operations and transactions. We represent cities and counties regarding housing related land use issues, including housing elements, inclusionary housing, and density bonuses. Our firm is in the forefront of creating inclusionary housing programs throughout California. We have developed ordinances, administrative guidelines, program implementation and loan documents and have successfully defended many local ordinances and implementation programs. The firm is experienced in matters related to the negotiation and preparation of statutory development agreements as well as drafting zoning ordinances and other local legislation. We represent local governments on development fee matters and have experience in annexations and obtaining LAFCO approvals. Our work in the area of land use has involved a wide range of mixed-use developments, often utilizing vertical subdivisions and planned unit development zoning.

The firm also provides support to public clients in matters such as agency formation, structure, organization, and operations; negotiating and structuring relationships between public entities to facilitate effective joint decision-making; historic preservation; discrimination and civil rights; business interference matters; and taxi licensing.

Housing Elements

Goldfarb & Lipman has reviewed housing elements, assisted cities in preparing housing elements consistent with State law, and defended jurisdictions in housing element litigation. We have advised the following jurisdictions on housing element matters: Fremont, San Rafael, Redwood City, Loomis, Poway, Solana Beach, Pittsburg, and Napa. In San Rafael, we reviewed the City's housing element for adequacy prior to adoption and successfully defended the housing element at the Court of Appeals. We also represented the cities of Pittsburg and Fremont in housing element litigation that resulted in a settlement. In Solana Beach and Poway, we successfully assisted the cities in responding to issues raised by the Department of Housing and Community Development. Attorneys from our firm also have been frequent speakers on topics related to housing elements, presenting at the California Chapter of the American Planning Association, Housing California, and the California Redevelopment Association's Annual Conference and Affordable Housing Conference and presenting a series of workshops in San Mateo County.

Inclusionary Housing

Goldfarb & Lipman has drafted inclusionary ordinances for Monterey County, and the cities of Ripon, Salinas, Fremont, Santa Cruz, Brisbane, and Thousand Oaks, and we are currently updating and revising the inclusionary housing ordinances for Marin County and the City of San Carlos. We have recently redrafted the inclusionary ordinance for Monterey County, one of the longest-existing inclusionary housing programs (over thirty years), to address serious issues regarding enforcement and maintenance of affordability. Along with the ordinance, Goldfarb & Lipman developed a complete set of new documents for the County to be used by developers and homeowners. The Ripon ordinance was coordinated with the use of redevelopment low and moderate income housing funds and included compliance with agency production requirements. The Salinas ordinance is an innovative one with three levels of affordability and incentives to encourage developers to provide higher levels of affordability. The San Carlos, Marin County,

and Brisbane draft ordinances and adopted Santa Cruz ordinance combine inclusionary housing with an ordinance implementing state density bonus law. We have also advised the cities of Albany, Atascadero, Hesperia, Concord, Campbell, and Santa Monica on inclusionary housing matters.

In 2006, Goldfarb & Lipman completed a handbook on implementation, administration, and enforcement of inclusionary ordinances, written for the Institute for Local Government (the League of Cities' nonprofit educational arm). Attorneys from our firm also have been frequent speakers on topics related to inclusionary housing, presenting at the League of California Cities' Planners Institute, the ABA Affordable Housing Conference in Washington DC, the California Chapter of the American Planning Association, Housing California, and the California Redevelopment Association's Annual Conference and Affordable Housing Conference. In addition, Barbara Kautz, an attorney at Goldfarb & Lipman and a former community development director, has written a well-recognized law review article entitled "In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing," 36 U.S.F. L. Rev. 971 (2002).

Density Bonuses

Goldfarb & Lipman has drafted density bonus ordinances consistent with the new State law with the intent of making them consistent with local inclusionary ordinances and redevelopment agency project area affordable housing production requirements. The firm has drafted density bonus ordinances, and/or advised the following jurisdictions on density bonus matters: Fremont, Salinas, Albany, Santa Monica, Carlsbad, Monterey County, San Rafael, Brisbane, Campbell, Santa Cruz, San Carlos, Marin County, and Santa Monica.

Environmental Compliance & Hazardous Materials

We assist our clients in mastering the complexities of the California Environmental Quality Act (CEQA), the National Environmental Protection Act (NEPA), and hazardous materials issues, including the allocation and reduction of liability risks in real estate transactions. Our attorneys provide guidance on reporting requirements, the process of remediation, preparation of contracts for hazard abatement, and obtaining clearance certificates from oversight entities once remediation has occurred.

Taxes, Assessments & Fees

At the intersection of Goldfarb & Lipman's real estate and municipal law practice areas are matters related to taxes, assessments and fees. We offer clients expertise on the California system of property tax allocation. We are skilled at negotiating and litigating disputes between counties and other taxing entities concerning the method of allocating property tax revenues. We advise on eligibility for property tax exemptions and the applicability of possessory interest taxes. In addition, our clients rely on our counsel related to Proposition 218, Proposition 13 and to other limitations on local general taxes, property taxes, special taxes, assessments, fees and charges.

Public Administration

Our extensive representation of cities, counties, commissions, authorities and special districts affords us unique insight into the issues encountered by our public agency clients. We provide experienced counsel to our public clients on the statutory requirements affecting public agencies, including the Brown Act, Public Records Act, noticing, public bidding and prevailing wages, and on issues relating to contracting and due process. We have worked closely with clients to develop policies to comply with reporting requirements such as those mandated by the Fair Political Practices Act.

AFFORDABLE HOUSING

Goldfarb & Lipman represents over 100 public agencies, nonprofit housing developers and cooperatives engaged in the production of low and moderate income housing units, and employing a wide variety of public and private financing sources. Over the past five years, we have been involved in the production of over 7,000 affordable housing units. We offer clients expertise in all areas of affordable housing development, including rental, cooperative and condominium development, single family subdivision development, mobile home park conversions, government subsidy programs, tax syndications and project financing, and second mortgage resale restriction programs. We are knowledgeable about every phase of the housing process, from the creation of the development entity to financing, construction and management.

Low Income Housing Tax Credits

Goldfarb & Lipman has structured over 100 affordable housing projects using federal and state Low Income Housing Tax Credits. We were one of the first firms in California to promote syndication as a source of capital for nonprofit-sponsored low income developments. We have remained on the industry frontier, utilizing and refining the Low Income Housing Tax Credit syndication structure. Our work in the area of Low Income Housing Tax Credits has helped improve the position of nonprofit housing corporations in tax credit transactions and has influenced industry standards and practice with the development of such provisions as ground lease preferences, nonprofit purchase options, nonprofit purchase discounts, favorable back-end splits, and local government loan forgiveness. We have closed tax credit syndications involving a variety of investors, including individual corporations, public pooled investment funds, corporate pooled investment funds, and private offerings for which we prepared the offering materials.

Federal & State Programs

Our firm is thoroughly familiar with the requirements of federal and State affordable housing programs. We regularly assist clients in successfully utilizing the programs of the U.S. Department of Housing and Urban Development (HUD), the California Housing Finance Agency (CHFA), the California Department of Housing and Community Development (HCD), the quasi-governmental agencies of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank, among others. The firm's redevelopment expertise makes us uniquely qualified to advise clients on the requirements and effective use of affordable housing funds required to be set aside under California Community Redevelopment Law.

Nonprofit Organization

Goldfarb & Lipman currently represents over 50 nonprofit corporations, cooperative and mutual housing associations on a variety of housing and related issues. For many of these clients, we have prepared corporate formation documents, overseen incorporation, trained board directors and organization members, drafted the necessary tax exemption applications and guided them through the Internal Revenue Service and Franchise Tax Board processes to secure exemptions for the organizations. In addition, our nonprofit clients rely on us to provide ongoing advice on corporate governance and operations matters.

Financing

The successful financing of affordable housing requires the creative layering of resources. Funds often must be drawn from many sources, with varied and sometimes conflicting requirements. Goldfarb & Lipman has extensive experience structuring and negotiating financing transactions for the feasible development of rental housing. We work on ownership transactions as well, developing second mortgage financing for first time homebuyers in numerous programs throughout the State. This work involves negotiating and drafting loan documents to meet local needs and circumstances as well as federal and State requirements, and shepherding them through the review processes of secondary market providers such as Fannie Mae and Freddie Mac.

Architect & Construction Contracts

Our firm has prepared and reviewed contracts for architectural, engineering, appraisal, cost estimating, construction management and other professional services for affordable housing projects. We are familiar with the related requirements of public and private affordable housing funding sources. We have also provided enforcement advice and litigation services to many owners and public agencies regarding such professional services contracts.

Subdivisions

Goldfarb & Lipman has extensive experience in drafting conditions, covenants and restrictions (CC&R's) for a variety of subdivision regimes, including condominiums, planned unit developments, single family developments and raw land. The firm has been an innovator in the creation and planning of air rights subdivisions for the purpose of financing and mixed-use developments. We also have expertise in obtaining Department of Real Estate (DRE) public reports as well as exemptions from DRE processing.

Fair Housing & Discrimination

We are familiar with the latest developments in fair housing and discrimination law. We advise clients on rent-up and tenant selection issues for projects, and provide analysis of various local and special preferences as they relate to fair housing and constitutional issues. The firm also represents public agencies and nonprofit housing development and management corporations in fair housing disputes. Our experience also includes the study of the potential discriminatory impact of restrictive covenants, zoning laws and governmental permit processes.

PUBLIC AGENCY DEVELOPMENT ISSUES

More than 50 public agency clients rely on Goldfarb & Lipman for representation on the full spectrum of development matters. We also represent numerous private sector development entities in achieving beneficial working relationships with redevelopment agencies and other local governments. Our counsel reflects thorough knowledge of law, process and practice, and emphasizes devising innovative strategies to meet clients' needs and goals. Goldfarb & Lipman has authored A Legal Guide to California Redevelopment (Second Edition), a leading reference source on redevelopment issues.

Property Disposition & Development

Our clients rely upon Goldfarb & Lipman's extensive experience in formulating and negotiating effective disposition, development and ground lease arrangements. We have provided counsel on projects ranging in size from a few residential units to mixed-use and office projects containing in excess of 1,000,000 square feet. The firm's experience encompasses office developments, shopping centers and specialty retail, hotels, and apartments, condominium and cooperative housing. Disposition arrangements include sales of land pursuant to disposition and development agreements, development agreements pursuant to Government Code Section 65860 et seq., agreements providing for agency share in net cash flow, ground leases and owner participation agreements. We regularly work with clients in structuring the full variety of public assistance techniques beyond property disposition, including redevelopment financial assistance for property rehabilitation, hazardous materials remediation and various public improvements.

Land Acquisition, Relocation & Eminent Domain

Goldfarb & Lipman is involved in all facets of land acquisition. We are knowledgeable and experienced in the areas of real estate and public law relevant to public agency acquisition of land. The firm's expertise in this area extends to eminent domain litigation and the relocation law, regulations and guidelines applicable to public acquisitions. We also have considerable experience in inverse condemnation litigation and in advising redevelopment agencies, cities and counties on minimizing the risks of inverse condemnation liability.

Public Finance

Goldfarb & Lipman has assisted many public agencies in achieving successful taxable and tax-exempt financing for project and program implementation. We have worked with tax allocation, multifamily revenue, single family revenue, Mello-Roos, and assessment bonds as well as mortgage credit certificates. The firm has served as issuer's counsel and is completely familiar with the requirements for authority to issue notes and bonds. In addition, the firm has facilitated the creation of housing trust funds in several cities and states, and has evaluated and prepared fee ordinances.

LITIGATION

Goldfarb & Lipman is skilled in trial and appellate litigation relating to issues common to the housing, redevelopment and municipal law practice areas. The firm has extensive experience in eminent domain litigation, housing element litigation, EIR litigation, construction dispute litigation, inverse condemnation litigation, redevelopment agency challenges, real property security disputes including bankruptcy, property tax allocation and distribution litigation, and land use litigation. Our litigation work has resulted in significant published opinions in the areas of redevelopment, eminent domain, and nonprofit housing ownership.

OTHER SERVICES

Goldfarb & Lipman also provides assistance to our clients in areas beyond traditional legal services. For example, we often coordinate several project activities for our clients, including marketing, relocation, engineering studies and economic analysis for the development of projects and the creation of redevelopment plans. In addition, we have served as consultants on affordable housing developments. Our expertise in such areas derives largely from the educational and occupational backgrounds of attorneys and staff of the firm. Numerous members of our firm possess advanced degrees in planning and related fields, and have experience and training in economic analysis, urban planning, and community organization. Many have worked previously for public agencies in the fields of community and economic development, land use, and housing. It is the blend of legal and ancillary service experience and expertise that makes us uniquely qualified to provide a wide range of services to our clients.

ATTORNEY BIOGRAPHIES

M DAVID KROOT

Emphasis of practice: Government-assisted housing, redevelopment and tax-exempt financing law, condominiums and cooperatives. **Education:** B.A., University of Michigan, honors. J.D., University of Chicago Law School. Editor, law school newspaper. **Previous Employment:** Chief Housing Attorney, U.S. Department of Housing and Urban Development (HUD), Office of Area Counsel, San Francisco, California. **Professional and Volunteer Affiliations:** State Bar of California. American Bar Association. Member, Forum on Affordable Housing & Community Development Law of American Bar Association. Member, California Redevelopment Association.

LEE C. ROSENTHAL

Emphasis of practice: Redevelopment, real estate development, and litigation. **Education:** B.A., University of Pennsylvania. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. Associate Editor of the California Law Review. Masters in City Planning, University of California, Berkeley. **Previous Employment:** Chief Legal Counsel, California Political Fair Practices Commission. **Professional & Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association.

JOHN T. NAGLE

Emphasis of practice: Redevelopment, real estate development, tax-exempt financing. **Education:** B.A., University of Notre Dame, Highest Honors. Masters in City Planning, University of Pennsylvania. HUD Fellow. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. **Previous Employment:** City of Oakland, Office of Economic Development and Employment. Project manager for downtown redevelopment project including major hotel and public convention center. City of Philadelphia, Planning Commission, Chief of Economic Development Planning. **Professional & Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association, Committee on Housing.

POLLY V. MARSHALL

Emphasis of practice: Affordable housing, redevelopment, relocation, condominiums, cooperatives, and mobile home parks. **Education:** B.A. in Biology and in Politics, University of California, Santa Cruz, honors. J.D., Boalt Hall School of Law, University of California, Berkeley. **Professional and Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association, Housing Task Force. Member and past president, San Francisco Rent Stabilization and Arbitration Board. Member, Queen's Bench.

LYNN HUTCHINS

Emphasis of practice: Land use, real estate development, rent control. **Education:** B.A., Stanford University. J.D., University of California, Davis, Order of the Coif honors.

Professional & Volunteer Affiliations: State Bar of California. Member, Real Property Law Section, American Bar Association. Member, Forum on Affordable Housing and Community Development Law of the American Bar Association. Member, California Redevelopment Association.

KAREN M. TIEDEMANN

Emphasis of practice: Affordable housing, redevelopment, environmental law and cooperatives. **Education:** A.B., University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. Associate Editor, Ecology Law Quarterly. Masters in City Planning, University of California, Berkeley. **Professional & Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association.

THOMAS H. WEBBER

Emphasis of practice: Affordable housing, redevelopment and municipal law. **Education:** B.A., University of Massachusetts, Amherst. J.D., Golden Gate University School of Law, San Francisco. **Previous Employment:** Assistant to the City Attorney, Office of City Attorney, City of Oakland. Planner, Office of Economic Development and Employment, City of Oakland.

Professional & Volunteer Affiliations: State Bar of California.

JOHN T. HAYGOOD

Emphasis of practice: Real estate tax matters and syndications. **Education:** B.A., Stanford University. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment:** Senior Tax Counsel, Kaiser Aluminum and Chemical Corporation. **Professional and Volunteer Affiliations:** Member, Executive Committee of the Taxation Section of the State Bar of California. Charles Houston Bar Association.

DIANNE JACKSON MCLEAN

Emphasis of practice: Affordable housing, real estate development and redevelopment. **Education:** A.B., University of California, Berkeley. Masters in City Planning, University of California, Berkeley. J.D., Hastings College of the Law. **Previous Employment:** Community Development Block Grant Coordinator and Associate Planner, Department of Community Development, City of Daly City. Associate Planner, Planning Department, City of Sacramento. City Planner, City of Emeryville Redevelopment Agency. **Professional & Volunteer Affiliations:** State Bar of California. Member, Charles Houston Bar Association. Member, Alameda County Bar Association. Member, American Bar Association. Member, California Redevelopment Association. Member, Cesar Chavez Middle School Site Council. Board of Directors, California Association of Black Lawyers. Board of Directors of Kidango (Children Centers).

MICHELLE D. BREWER

Emphasis of practice: Affordable housing, real estate development, real estate loans, Housing Authority development issues, FHA and HUD programs, municipal law, nonprofit corporations. **Education:** B.A., Harvard University, honors. Masters in Public Affairs, Princeton University. J.D., Harvard University Law School. **Previous Employment:** Deputy City Attorney, City and County of San Francisco, with responsibilities in affordable housing, real estate leasing and development, and as legal advisor to the Mayor's Office of Housing and the Port of the City and County of San Francisco. **Professional & Volunteer Affiliations:** State Bar of California. Member, Real Property Law Section of the State Bar of California. American Bar Association. Member, Forum on Affordable Housing and Community Development Law. Former Board Member, East Oakland Youth Development Center. Former Member, San Francisco Bar Association Committee on Minority Employment.

JENNIFER K. BELL

Emphasis of practice: Affordable housing, real estate development, and redevelopment. **Education:** B.A., Wellesley College, honors. J.D., Harvard University Law School. **Previous Employment:** Deputy General Counsel, San Francisco Redevelopment Agency. Deputy City Attorney, City of Oakland. Attorney, U.S. Department of Housing and Urban Development. Staff Attorney, Legal Aid Society of Alameda County. **Professional & Volunteer Affiliations:** State Bar of California, Real Property Law Section. Black Women Lawyers of Northern California. Former Board Member, Merritt Community Capital Corporation and the Low Income Housing Fund. Member, California Redevelopment Association.

ROBERT C. MILLS

Emphasis of Practice: Affordable housing, redevelopment and real estate. **Education:** B.A., California State University, Northridge, cum laude. J.D., Hastings College of the Law. Associate Articles Editor, Communications and Entertainment Law Journal. **Previous Employment:** Staff Attorney, U.S. Department of Housing & Urban Development, Office of Counsel, Pacific/Hawaii Area. **Professional & Volunteer Affiliations:** State Bar of California. Member, Non-Profit Housing Association of Northern California.

ISABEL L. BROWN

Emphasis of Practice: Affordable housing, redevelopment, and litigation. **Education:** B.S.E. in Civil Engineering and Certificate in Architecture, Princeton University, cum laude. Masters degree in Architecture, University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley. Articles Editor, Ecology Law Quarterly. Sadie & Alvin Landis Prize in Local Government Law. **Previous Employment:** Legislative Assistant, U.S. House of Representatives. Assistant Architect, City of New York, Department of Housing, Preservation & Development. **Professional & Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association.

JAMES T. DIAMOND

Emphasis of Practice: Litigation and Employment Law. **Education:** B.A., University of San Francisco, cum laude. J.D., Hastings College of the Law. **Professional & Volunteer Affiliations:** State Bar of California. Member, Employment Law Section, American Bar Association. Author, "Putting Former Employees in the Firing Line", San Francisco Daily Journal, February 16, 2000. Co-Author, "Inevitable Disclosure: Employee Mobility and Trade Secrets", Minnesota Bench and Bar, June 1997.

MARGARET F. JUNG

Emphasis of Practice: Real estate tax matters, securities, tax credits. **Education:** A.B. in Business Economics, magna cum laude, University of California, Los Angeles. Phi Beta Kappa. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment:** Public Accountant, Ernst & Young, LLP. **Professional & Volunteer Affiliations:** State Bar of California. Certified Public Accountant. Member, California Redevelopment Association.

HEATHER J. GOULD

Emphasis of Practice: Affordable housing, redevelopment, and real estate. **Education:** B.A., Carleton College, magna cum laude, Northfield, Minnesota. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment:** State of Minnesota Attorney General's Office, Consumer Division, Tobacco Team, Legal Assistant. **Professional & Volunteer Affiliations:** State Bar of California. Officer, Board of Directors, Oakland's Citywide Community Land Trust, Inc. Member, California Redevelopment Association.

WILLIAM F. DICAMILLO

Emphasis of Practice: Real estate, affordable housing, redevelopment, and litigation. **Education:** B.A., State University of New York, Buffalo, magna cum laude. J.D., University of California, Los Angeles. **Previous Employment:** Travelers Aid Society of Alameda County, Case Manager. **Professional & Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association.

JULIET E. COX

Emphasis of Practice: Land use, eminent domain, real estate, and municipal government litigation. **Education:** B.A., summa cum laude, Rice University, Houston, Texas. M.S., University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. **Previous Employment:** Briefing Attorney to the Honorable Harriet O'Neill, Supreme Court of Texas. **Professional and Volunteer Affiliations:** State Bar of California. Chief Financial Officer, Berkeley Law Foundation. Member, California Redevelopment Association.

ERICA WILLIAMS ORCHARTON

Emphasis of Practice: Affordable housing, redevelopment, and employment law. **Education:** B.A., Occidental College. J.D., University of Southern California Law School. **Previous Employment:** Affordable Housing Associates, Berkeley, CA, Director of Operations/Real Estate Project Manager. **Professional and Volunteer Affiliations:** State Bar of California. Political Asylum Project, Lawyers' Committee for Civil Rights, Pro bono Attorney.

AMY DeVAUDREUIL

Emphasis of Practice: Affordable housing, redevelopment, and real estate. **Education:** B.A., University of Rhode Island, Highest Honors, Phi Beta Kappa. J.D., Boalt Hall School of Law, University of California, Berkeley. **Professional and Volunteer Affiliations:** State Bar of California. Member, California Redevelopment Association.

BARBARA E. KAUTZ

Emphasis of Practice: Land use, CEQA compliance, inclusionary zoning, redevelopment, and economic development. **Education:** B.A., cum laude, Phi Beta Kappa, Stanford University, Masters of City Planning, University of California, Berkeley. J.D., summa cum laude, University of San Francisco. U.S.F. Law Review Articles Editor. Author, *In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing*, 36 U.S.F. Law Review 971 (2002). Co-author, *Local Government Financing Powers and Sources of Funding*, ABA Legal Guide to Affordable Housing (2006). **Previous Employment:** Community Development Director & Assistant City Manager, City of San Mateo, California. Planning Director, Town of Corte Madera, California. **Professional & Volunteer Affiliations:** State Bar of California. American Bar Association, Section on State and Local Government. Fellow, American Institute of Certified Planners. American Planning Association. Urban Land Institute. Association of Environmental Professionals.

LUIS A. RODRIGUEZ

Emphasis of Practice: Redevelopment and affordable housing. **Education:** B.A., Sociology University of California, Los Angeles, Dean's List. M.A., Social Sciences, University of Chicago in 1998. J.D. from University of California, Los Angeles, School of Law. Recipient of the Drown Fellowship, Public Interest Law Fellowship, the UCLA Law Scholarship and the Managing Editor of the *Chicano-Latino Law Review*. **Previous Employment:** Staff Attorney, Economic Development Unit, Legal Aid Foundation of Los Angeles. **Professional & Volunteer Affiliations:** State Bar of California.

XOCHITL MARQUEZ

Emphasis of Practice: Affordable Housing, Tax-Exempt Entities, Redevelopment, and Litigation. **Education:** J.D., University of California, Hastings College of the Law. B.A., University of California, Los Angeles, Highest Honors. **Professional & Volunteer Affiliations:** State Bar of California. American Bar Association. Hispanic National Bar Association. La Raza Lawyers Bar Association of San Francisco. Bar Association of San Francisco. Latina Lawyers Bar Association. Forum on Affordable Housing and Community.

RAFAEL YAQUIAN

Emphasis of Practice: Affordable Housing, Redevelopment, Land Use, and Tax-Exempt Entities. **Education:** J.D., University of California, Los Angeles. M.A., Urban Planning, University of California, Los Angeles. B.S., Community and Regional Development, University of California, Davis. **Professional & Volunteer Affiliations:** State Bar of California, Real Property and Taxation Sections. American Bar Association, Forum on Affordable Housing and Community Development. Member, Urban Land Institute.

RETIRED

STEVEN H. GOLDFARB

Emphasis of practice: Redevelopment, real estate development, real estate financing and leasing. **Education:** B.S., University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. Associate Editor, California Law Review. **Previous Employment:** General Counsel, Oakland Redevelopment Agency.

BARRY R. LIPMAN

Emphasis of practice: Condominiums, multi-use subdivisions, real estate civil and appellate litigation. **Education:** B.S., Wharton School of Business and Finance, University of Pennsylvania. J.D., Hastings College of the Law. **Professional and Volunteer Affiliations:** State Bar of California. Florida State Bar.

Chronology of Steps Leading to the 2007-14 Housing Element Update

Town of Atherton

- January 17, 2007 Atherton City Council appoints Councilmembers Janz and Marsala as representative and alternate to Sub-regional Project Advisory Committee.
- October 17, 2007 Atherton City Council approval of resolution acknowledging participation in the San Mateo County Sub-region and acceptance of the 2007-14 Housing Element Regional Housing Needs Allocation for the Town.
- March 31, 2008 Meeting with Councilmembers Janz and Carlson (2008 Council appointed representative and alternate to Sub-regional Project Advisory Committee)
- April 2, 2008 City Manager authorized Request for Proposal for Professional Services from Goldfarb & Lipman (Barbara Kautz) for legal review, oversight and presentation services related to the 2007-14 Housing Element Update.
- April 16, 2008 Appointment of Ad Hoc Council Sub-committee Regarding the 2007-14 Housing Element Update (Consent Calendar item)
- May 5, 2008 Completion of Survey of Small Peninsula cities regarding Housing Elements (questions related to 1999-2006 Update and 2007-2014 Update)
- May 7, 2008 Completion of Matrix comparing Second Unit Regulations of Small Peninsula Cities
- June 18, 2008 Request for City Council approval of Goldfarb & Lipman Professional Services Agreement



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: NEAL J. MARTIN, TOWN PLANNER

**SUBJECT: APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH
GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE WITH THE 2007-14
HOUSING ELEMENT UPDATE**

RECOMMENDATION:

Approve the attached Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the 2007-14 Housing Element Update.

BACKGROUND and DISCUSSION:

State law requires all cities and counties within the Bay Area to adopt an update of their General Plan Housing Elements by June 30, 2009. In order to meet that deadline, Staff has prepared a Scope of Work and a schedule for completion of various components of the process. Most of the work on the project will need to be completed during the six months between June and December 2008.

The approach to preparing the update recommended by Staff is to have Neal Martin & Associates prepare the draft Element and to have Barbara Kautz of Goldfarb & Lipman provide strategy recommendations, guidance, review and oversight during the draft preparation. Ms. Kautz would also be a key member of the team during the presentation and public hearing phase at public participation workshops and at General Plan Committee, Planning Commission and City Council hearings.

Barbara Kautz is an attorney specializing in land use and housing with the firm of Goldfarb & Lipman in Oakland. She has been employed as Community Development Director for the City of San Mateo and Planning Director for the City of Corte Madera. Ms. Kautz is an expert in Housing Element law and has lectured extensively on that subject; recently to planners and city officials in San Mateo County. She has good contacts with HCD staff.

The primary objective of this approach would be to adopt an Update that is as fully in compliance with State law as politically feasible in Atherton.

The proposed Goldfarb & Lipman scope of work includes the components listed below:

- Strategy recommendations during preparation of the Update.
- Review of the draft Housing Element for compliance with housing element law.
- Review of comments made by the State Department of Housing and Community Development (HCD) and advice on necessary changes to achieve HCD certification.
- Attendance and facilitation at up to five public meetings or hearings.

The proposal is a time and materials based agreement with a maximum authorized fee of \$27,600. The total amount is the product of 115 hours of work at Ms. Kautz' billing rate of \$240 per hour.

FINANCIAL IMPACT:

The costs for the 2007-14 Housing Element Update Project is included in the proposed 2008-09 Atherton Budget. There is a total of \$72,600 in the proposed budget for the project. The \$27,600 for the Goldfarb & Lipman Professional Services Agreement is included in the \$72,600 total Housing Element Update project. The project expenses are budgeted as listed below:

- Goldfarb & Lipman - \$27,600
- Neal Martin & Associates - \$40,000
- C/CAG (Countywide Housing Element Project) - \$5,000

FORMAL MOTION:

I move that the City Council approve the Professional Services Agreement with Goldfarb & Lipman for legal services and assistance with the review, preparation, and presentation of the 2007-14 Housing Element Update and authorize the City Manager to sign the Agreement.

Prepared by:

Approved by:

/s/ Neal Martin

Neal J. Martin
Town Planner

Jerry Gruber
City Manager

Attachments:

1. Proposed Scope of Work, Goldfarb & Lipman LLP, April 10, 2008

**goldfarb
lipman
attorneys**

1300 Clay Street, Ninth Floor
Oakland, California 94612
510 836-6336

April 10, 2008

M David Kroot
Lee C. Rosenthal
John T. Nagle
Polly V. Marshall

Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
John T. Haygood

Jerry Gruber, City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Dianne Jackson McLean
Michelle D. Brewer

Re: Housing Element Assistance, Town of Atherton

Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.

Dear Mr. Gruber:

Goldfarb & Lipman LLP would be pleased to provide legal services to the Town of Atherton (the "Town"). This letter constitutes our written fee agreement.

Margaret F. Jung
Heather J. Gould
William F. DiCamillo

Goldfarb and Lipman will assist the Town of Atherton in reviewing the Town's adopted Housing Element and identifying key issues. Our scope of work and project budget are included in the attachment to this letter.

Juliet E. Cox
Erica Williams Orcharton
Amy DeVaudreuil
Barbara E. Kautz
Luis A. Rodriguez
Xochitl Marquez
Rafael Yaquian

Barbara E. Kautz will have the principal responsibility for these services. We will charge for our time as set forth in the attached rate schedule. Our legal services will be billed and payable monthly at these rates based on the number of hours expended. For your information, a copy of our standard billing policies is enclosed.

If the arrangement described above is satisfactory, then please sign each of the two originals of this engagement letter in the space provided below. Please return one of the signed originals to me, and keep the other signed original for your files.

Sincerely,



POLLY V. MARSHALL

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

Accepted:

Jerry Gruber, City Manager

**Town of Atherton
2007-2014 Housing Element Update**

Goldfarb & Lipman LLP

Proposed Scope of Work

Neal Martin & Associates (NM&A) has requested Goldfarb & Lipman LLP (G & L) to assist in producing a draft Housing Element Update document for consideration by the Atherton General Plan Committee, Planning Commission and Town Council. The goal is to present for Council adoption a 2007-2014 Housing Element Update that is legally sound and defensible, and, if feasible, receives an "In Compliance" determination from the California Department of Housing and Community Development ("HCD"). Barbara Kautz will have the primary responsibility for this work and for conducting public meetings.

The proposal from NM&A explains the respective roles of the participants in the Housing Element update process. As described by NM&A, G & L's role is to:

- Provide strategy recommendations and guidance, review, and oversight during the preparation of the Update so as to achieve the objective of a legally sound and defensible document.
- Conduct public participation workshops and present the draft Element Update to the General Plan Committee, Planning Commission and Town Council.

This Proposed Scope of Work presents in detail Goldfarb & Lipman's work tasks.

Task 1: Strategy Recommendations

Provide strategy recommendations during the preparation of the Update in response to Town policy and community input so as to achieve a legally sound and defensible document.

Work Product: Written and oral comments as needed.
Time Frame: April 2008 – June 2009

Task 2: Review Draft Housing Element

Review draft housing element for compliance with housing element law. The review will examine the housing element to ensure that each item required by the housing element statute (Government Code Section 65583) is included in the draft housing element. The review will also reference HCD policies regarding the review of housing elements. This work item includes one major review and one additional review of responses to initial comments.

Work Product: Comments will normally be made by e-mail message and by annotations in the draft housing element.
 Time Frame: October 2008 – December 2008

Task 3: Review HCD Comments

Review comments made by HCD on the draft housing element and advise Town on necessary changes to achieve HCD certification.

Work Product: Dependent upon nature of HCD comments.
 Time Frame: April 2009

Task 4: Public Meetings

Attend up to five public Town meetings on the Update, not exceeding total time per meeting of 8 hours for attendance, travel time, and preparation. G & L will facilitate the meetings; present the Update; advise NM&A regarding agendas, staff reports, and presentation materials and review those materials; and prepare written memos if a legal analysis is required, but will not prepare agendas, staff reports, and presentation materials.

It is expected that there will be one Public Participation meeting, one Joint General Plan Committee, Planning Commission and City Council meeting, one City Council Public Hearing on the Draft Element, and two additional public meetings to be determined as the process progresses.

Not Included In Scope of Work:

1. Attendance at meetings not included in Task 5, or in excess of time specified in Task 5.
2. Assistance with environmental review of Update.
3. Preparation of reports and memos except as specified.

If authorized by the Town, G & L will be reimbursed for these tasks on an hourly basis.

Hours and Costs

	Task 1	Task 2	Task 3	Task 4	Total
Barbara Kautz (\$240/hr)	25 hrs.	30 hrs.	20 hrs.	40 hrs.	115 hours
Total	\$6,000	\$7,200	\$4,800	\$9,600	\$27,600

Goldfarb & Lipman LLP
Public Agency Rate Schedule

Partners	\$240-250
Associates	\$160-240
Senior Law Clerks	\$135
Law Clerks	\$125
Project Coordinators	\$125

GOLDFARB & LIPMAN LLP

BILLING POLICIES AND PROCEDURES

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, this letter is intended to briefly explain our billing policies and procedures. We encourage you to discuss with us any questions you may have concerning these policies and procedures.

To determine the value of our services, we ask each of our lawyers and legal assistants to maintain time records for each client and matter. The time records are reviewed monthly by the responsible billing attorney. Our present billing rates for services rendered for partners, associates, and for paralegals is attached. Our hourly rates are adjusted from time-to-time (generally once a year) and may change during the course of our engagement.

It is our policy to serve you with the most effective support systems available. Therefore, in addition to our fees for legal services, we also charge for filing fees, Lexis/Nexis costs, messenger, and other costs and expenses incurred on your behalf.

Our billing statements are due and payable upon receipt. Clients whose statements are not paid within 30 days of the statement date will be assessed a late charge on the unpaid balance at the rate of one-and-a-half percent per month. As an incentive for early payments by clients, if payments are made within ten days of the date of the statement, we will be happy to reduce our statement by one percent.

We carry professional liability insurance above the limits required by law.

In closing, let us assure you that it has always been and will continue to be our goal to provide legal services to you on the most cost-efficient basis possible. If you have any questions or comments regarding our billing policy, please feel free to contact Barbara Kautz or Polly Marshall.

Sincerely

GOLDFARB & LIPMAN LLP

Questions for other Small Peninsula cities regarding Housing Elements
May 5, 2008

Contact Cities and Person:

Hillsborough – Liz Cullinan	H.E. In Compliance
Portola Valley – Leslie Lambert	H.E. Out of Compliance
Woodside – Curtis Williams/Hope Sullivan	H.E. In Compliance
Los Altos Hills – Debbie Pedro	H.E. In Compliance
Menlo Park – Arlinda Heineck	H.E. Out of Compliance

Questions (where relevant):

1. Regarding the 1999-2006 Element, what were the key programs that were included in your Housing Element that resulted in an “In Compliance” determination from HCD? Please describe these.
e.g. 2nd Dwelling Units with income restrictions
Rezoning for multiple family densities
2. Were any of these programs required by HCD as a condition of the “In Compliance” determination? If so, which?
3. Which consultants did you use for the 1999-2006 Update? Which consultants do you plan to use for the 2007-2014 Update?
4. How are you proposing to meet the Homeless Shelter requirements SB 2?

Have a discussion with Redwood City and Menlo Park about joining and sharing the Homeless Shelter obligations of SB 2.

Hillsborough

1. The key program was 2nd Dwelling Units. The city committed to a number of measures to encourage the development of 2nd Units including waiver of fees, elimination of design review, allowing for units up to 1,200 sq. ft. in size, administrative approval only and a significant outreach program to builders, developers and homeowners. There is very little discretionary review. The result was that the number of units built actually exceeded the numbers projected in the Housing Element. The city does not have data on the income level of the households living in the 2nd Units. In addition the City Council is very committed to providing affordable housing. Members serve on the Heart Board and on the Shelter Network Board. Another program that was included in the Housing Element was Faculty

Housing at the private school(s) in town. However this was not a significant program in terms of getting an “In Compliance” determination.

They are considering a program that would require dedication of a percentage of “affordable” lots in future subdivisions.

2. Councilmembers went to Sacramento to advocate their 1999-2006 Housing Element. Although the person that I interviewed was not working in Hillsborough at the time, she thought that the commitment to relaxed review of 2nd Units was key in getting the “In Compliance” determination.
3. Naphtali Knox prepared the 1999-2006 Housing Element and has also been retained to prepare the 2007-14 Element.
4. They plan to partner with San Mateo County to meet the provisions of SB2.

Portola Valley

1. The Town did not receive an “In Compliance” determination from HCD. Their programs included additional faculty housing at private schools (Woodside Priory), 2nd Dwelling Units and a percentage of below-market lots in subdivisions. They hosted a tour of the Town by the HCD reviewer but were unsuccessful in obtaining an “In Compliance” determination.
2. N/A
3. William Spangle and Associates (George Madder) prepared the 1999-2006 Housing Element and has also been retained to prepare the 2007-14 Element. Karen Christian of Spangle and Associates will be the lead Planner for the 2007-14 Update.
4. They seem interested in San Mateo County’s proposal to assist the cities in meeting the SB2 provisions.
5. They are proposing to meet with other small San Mateo County cities (Atherton, Hillsborough, and Woodside) to share Housing Element experiences and ideas.

Woodside

1. There were two key programs; 2nd Dwelling Units and housing at Cañada College (partially in Woodside and partially in Redwood City). For the 2nd Unit program the Town allows units up to 1,500 sq. ft. with reduced parking standards and restrictions on income limits for occupants. The proposed housing at Cañada College was to be restricted to faculty, students and other governmental employees.
2. No response.
3. Curtis Williams & Associates/MHA Associates prepared the 1999-2006 Housing Element.

Menlo Park

1. Menlo Park never finished a draft 1999-2006 Housing Element for submittal to HCD. They had hired a consultant to prepare the background material and the staff prepared the objectives, policies and programs. Prior to finishing the draft Element the City Council decided to do a full EIR on the Element. That added considerable time to the process and the Council also put the Element and EIR as a low priority on their staff work program. They ultimately decided to wait for the next planning period.

Menlo Park's 1992 Housing Element is their currently adopted Element. That also has an "Out of Compliance" determination by HCD. The determination was primarily the result of the element providing for fewer units than the Regional Housing Needs Allocation number. The Element provided for 1,428 units and the RHNA number was 1,614. The City Council believed that the Element number was sufficient.

Menlo Park has a very active affordable housing program. They have a full time Housing Manager and many specific housing programs and projects.

2. N/A
3. A consultant prepared the background portion and staff prepared the objectives, policies and programs portion of the 1999-2006 Element. They plan to have Doug Fredrick, Housing Manager prepare the 2007-14 Element.
4. There are two homeless shelters in Menlo Park, one at the Veterans Hospital. They would be interested in talking further about a multiple city effort on providing homeless shelters.

Los Altos Hills

1. The primary affordable housing program used by Los Altos Hills was 2nd Dwelling Units. Most new houses in LAH have a guest house or 2nd unit either attached or detached. The attached units must have at least a full kitchen, a bathroom and a bedroom. Second units may have up to 1,000 sq. ft. of floor area. They did a survey in 2001 asking every property owner in Town whether they had a 2nd unit and if so what rent was charged. When the answer was that the rent was free (presumably in exchange for work or services) the Town counted that as affordable to a very low income household. They had a good response to the survey since it did not request the address of the property.

The other significant program was to prezone an area within the Town's Sphere of Influence for higher density residential uses. That pre zoning would take effect upon annexation of the territory.

2. They had at least two rounds of comments from HCD on the 1999-2006 Element, but HCD finally agreed to accept their 2nd unit program.

3. Deborah Unger McCormick prepared the 1999-2006 Housing Element and the Town may retain her to prepare the 2007-14 Element.
4. I didn't ask about the SB2 requirements since the Town is not in San Mateo County.

Housing Needs Allocation

City	RHNA-3¹	RHNA-4²
Atherton	166	83
Hillsborough	84	86
Los Altos Hills	83	81
Portola Valley	82	74
Woodside	41	65

¹ Regional Housing Needs Allocation 1999-2006

² Regional Housing Needs Allocation 2007-2014

goldfarb & lipman

1300 Clay Street
Ninth Floor
Oakland, CA 94612

510 836-6336

Facsimile
510 836-1035

San Francisco
415 788-6336

Los Angeles
213 627-6336

world wide web:
goldfarblipman.com

Barbara E. Kautz

bkautz@goldfarblipman.com

Goldfarb & Lipman LLP is a real estate law firm with a practice emphasizing affordable housing, land use, redevelopment, tax credit syndications, and public finance, including:

- Drafting of affordable housing ordinances
- Negotiating development agreements and property acquisitions
- Reviewing housing elements for compliance with State law
- Analyzing fair housing issues
- Issuance of tax-exempt bonds
- Real estate, housing, and redevelopment litigation

Goldfarb & Lipman has experience in all aspects of affordable housing development, including cooperative and condominium development, government subsidy programs, resale restriction programs, tax syndications, loan closings, relocation, housing management, and fair housing issues. Members of the firm have taken a lead role in drafting legislation in affordable housing, property tax exemptions, the California Low Income Housing Tax Credit, density bonuses, and redevelopment.

Ms. Kautz has an emphasis of practice in land use approvals, CEQA compliance, inclusionary zoning, density bonus law, housing elements, redevelopment, and implementation of homeownership programs. She is the author of *In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing*, 36 U.S.F. Law Review 971 (2002); co-author, *Local Government Financing Powers and Sources of Funding*, in ABA Legal Guide to Affordable Housing (2005); and co-author, *Authority of the Department of Housing and Community Development to Conditionally Approve Housing Elements* (paper presented at May 2007 City Attorneys Conference).

Prior to joining the firm, Ms. Kautz was Community Development Director and Assistant City Manager for the City of San Mateo, California. In that capacity, she was responsible for managing the planning, redevelopment, code enforcement, and building operations of the city. Ms. Kautz has been active in the League of California Cities, serving on the Board of Directors and as Planning Department President, and in the California Chapter of the American Planning Association, where she served as Vice President for Policy and Legislation.

Ms. Kautz is a frequent lecturer on inclusionary housing, affordable housing approvals, housing elements, homeownership programs, and density bonus law.

Professional Experience

Goldfarb & Lipman, Oakland, CA, 2004-present.

Community Development Director and Assistant City Manager, City of San Mateo, California, 1987 - 2002.

Education

J.D., University of San Francisco Law School, summa cum laude.

M.C.P., University of California, Berkeley.

A.B., Stanford University, Phi Beta Kappa, cum laude.

Professional & Volunteer Affiliations

State Bar of California. Fellow, American Institute of Certified Planners. Member, American Bar Association, Section on State and Local Government. Member, American Planning Association. Member, Urban Land Institute. Member, Association of Environmental Professionals.

Examples of Housing Element Experience:

- ***City of San Rafael:*** Reviewed City of San Rafael's Housing Element approximately two weeks prior to adoption after the Department of Housing and Community Development (HCD) sent third letter finding draft Housing Element not in conformance with State law. Recommended amendments to comply with State law. Assisted City in presenting adopted Housing Element to HCD, resulting in HCD's finding that the Housing Element was in substantial compliance with State law. Goldfarb & Lipman (Lee C. Rosenthal and Barbara E. Kautz, attorneys of record) defended adopted Housing Element in subsequent litigation, resulting in holding by Court of Appeal that Housing Element conforms with State law (*St. Vincent's School for Boys v. City of San Rafael* (2008) 160 Cal. App. 4th 1426).

Reference: Rob Epstein, City Attorney, (415) 453-9433, repstein@rflawllp.com.

- ***City of Concord:*** Currently providing assistance to City in preparation of Housing Element. Scope includes review of preliminary reports prepared by consultant, preparation of legal memos as required, and review of final Housing Element to ensure conformance with State law.

Reference: Craig Labadie, City Attorney, (925) 671-3363, clabadie@ci.concord.ca.us.

- ***City of Solana Beach:*** Assisted City in responding to HCD letter threatening to withdraw certification of City's Housing Element. Worked closely with City staff and City Attorney's office to gather relevant information and prepare letter demonstrating that City had complied with all HCD conditions. Continuing to assist City on issues related to Housing Element.

Reference: Johanna Canlas, City Attorney, (619) 440-4444, jcanlas@mclex.com.



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 JULY 16TH, 2008

SUBJECT: DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER

RECOMMENDATION

Discuss setting aside General Fund (101) and Facilities Construction Fund (406) balances for a new Town Center.

DISCUSSION

Building Fees were increased effective January 2008, and plans for a new Town Center are being considered.

When Building Fees were increased in May 2000, there was some discussion (staff report attached) of setting aside the Building Department's share of a new permanent facility. The calculation estimated that the Building Department would occupy 20% of the permanent facility, whose cost would be \$4,000,000, so the set aside was calculated at \$4,000,000. A new fund was created (Fund 406 Facilities Construction) and \$440,000 was transferred to that fund in FY2001 and FY2002. In FY 2003 the 406 Fund was spent on other projects leaving a current balance of about \$71,000.

If the Council decides to set aside further funds raised from building fees for a new Town Center, those funds could be transferred to the 406 Fund from the General Fund where Building Permit Fees are received or could be set aside in a specified reserve within the General Fund. The current balance in the 406 Fund could be returned to this specified reserve if the second choice were made. The name of the reserve or the name of the 406 Fund should be considered in order to designate the use of the funds or to allow broader use of the funds.

How much should be set aside and when?

- a. Town Hall value could be based on an estimate of the new construction cost possibly adjusted by consideration of other funding sources; or based on the May 2000 estimate with or without inflation or interest adjustments
- b. The building use factor could be based on plans (e.g.--% of footage) or historical factors
- c. Should the target amount be met immediately or reached over time?
- d. Should the target be adjusted for inflation?

FISCAL IMPACT

This discussion could lead to the restriction of collected or future building fees to a limited purpose.

Prepared by:

Approved by:

Bill Yeomans
Interim Finance Officer

Jerome Gruber
City Manager

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: MICHAEL A. HOOD, BUILDING OFFICIAL
DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000
SUBJECT: BUILDING INSPECTION FEES

RECOMMENDATION:

Pass a motion to approve a resolution pertaining to building inspection fees.

INTRODUCTION:

At the April 12, 2000 City Council meeting staff presented a proposal to adjust valuation figures used to calculate building inspection fees and to adjust permit and service fees to reflect the Town's actual cost of providing service.

ANALYSIS:

For the last ten years the Building Inspection Department has used the figure of \$110.00 per square foot for new construction and \$70.00 per square foot for remodel construction as the basis of calculating the value of construction in Atherton. The actual cost of new construction and remodel work has risen over the years and is now more realistically in the range of \$250.00 to \$350.00 per square foot.

Building permit fees are based on building valuation. The formula for calculating the building permit fee is shown in Table 1-A of the 1997 Uniform Building Code. Raising

Building Fees
City Council Meeting; May 9, 2000

the valuation basis from \$110.00 per square foot to \$250.00 per square foot will raise the building permit fees an average of 71%.

Building permit revenues for the 2000-2001 fiscal year are anticipated to be approximately \$700,000. A 71% increase in building permit fees will generate an additional \$497,000. Since building permit revenues must be used for building permit related activities the additional revenues will be used to fund the following programs:

1. A **cost allocation plan** to reimburse administrative departments for their costs associated with supporting the building inspection function.

Administrative departments, including the City Manager, Finance, and City Clerk, cost approximately \$730,000 per year. If the cost of these departments is distributed to the Building Department based on the Building Department's percentage of total Town personnel, then 20% or \$146,000 should be allocated as a cost to the Building Department.

2. An **inspection carry-over fund**, to pay for inspection services on projects that take longer than one year to construct.

Permit fees are collected before a permit is issued and those fees are used to pay for plan checking and inspection services. Since most construction projects last more than one fiscal year, the funds to pay for inspection services should be carried over from one fiscal year to the next until the project is complete. Rather than specifically carrying over the revenues for each of several hundred projects, a group carry-over fund is usually established.

Without a carry-over fund, if the economy entered a severe depression, as it did in the mid 70's and again in the 80's, we could be faced with the situation where inadequate revenue was generated to service the existing, ongoing construction projects. In other words, with out a carry-over fund we are left with an inspection liability with no source of revenue. Revenues, in this case, would be drawn from the General Fund until the inspection liability was met.

It is therefore prudent to establish an inspection carry-over fund of approximately one-year's worth of inspection work or approximately \$600,000. At least \$150,000 per year should be set aside for four years to establish this fund.

Building Fees

City Council Meeting; May 9, 2000

3. A **Permanent Building Fund** to pay for the Building Department's portion of a new, permanent structure.

Currently the Building Department is housed in temporary, modular units. If a new, permanent town facility is built then the Building Department would pay its share of the new building construction. A new building is estimated to cost \$4,000,000 with the Building Department utilizing 20% of the floor area. The prorated share of the Building Department would therefore be \$800,000. This amount would be set aside at a rate of \$200,000 per year for four years.

Prepared By:

Approved:

s/Michael A. Hood
Michael A. Hood, Building Official

s/Ralph Freedman
Ralph Freedman, City Manager

RESOLUTION NO. 00-13

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON RELATING TO CHARGES FOR PUBLIC SERVICES**

WHEREAS, the City Council of the Town of Atherton finds it necessary to recover at least some of the costs of special and extraordinary services rendered by the various departments of the Town, and

WHEREAS, at the direction of the City Council, the Building, Planning, Police and Public Works Departments of the Town have conducted in-depth studies to determine the actual cost to the Town of providing various special services rendered by those departments, and

WHEREAS, the City Council has received reports from the said Departments, showing that, in each case, the present fees charged are not adequate to recover even a relatively small portion of the costs of the services rendered, and in some instances departments of the Town are rendering special services without any cost recovery whatever, and

WHEREAS, said reports include recommendations for proposed new fees which new fees would be fair and would be adequate to recover a portion of said costs, but which would not, in any instance, exceed the actual costs of rendering such special services,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the Town of Atherton as follows:

1. The City Council hereby finds and determines that the following established charges are reasonable and necessary for the specified services, and that the cost to the Town of providing such services equals or exceeds, in every instance, the charges hereby established.

2. The following charges and fees are hereby established, to be charged for special or extraordinary public services rendered by the following named departments of the Town of Atherton:

A. Building Permit and Inspection Fees: Fees calculated in accordance with Table 1-A of the 1997 Uniform Building Code, based on a valuation of new construction and of remodeling at \$250.00 per square foot.

B. Planning Fees: All those fees listed as "Proposed" in that certain report of the Building Official dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

C. Police Department Fees: A service charge of \$25.00 per month for each alarm system connected directly to the Police Department's Communications Center.

D. Public Works Department Fees: All those fees listed as "Recommended" in that certain report of the Public Works Director dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

3. The foregoing fees shall be effective immediately, and shall be applicable to all applications filed after the adoption of this resolution.

AND BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, phrase, or portion of this resolution or the application thereof to any person or circumstances is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof nor other applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

AND BE IT FURTHER RESOLVED that all other resolutions and orders in conflict herewith be, and they are hereby, repealed.

* * * * *

I HEREBY CERTIFY that the foregoing Resolution was regularly introduced and adopted at a regular meeting of the City Council of the Town of Atherton held on May 17, 2000 by the following roll call vote:

Ayes:	5	Councilmembers	Carlson, Conwell, Dudley, Fisher, Chapman
Noes:	0	Councilmembers	
Absent:	0	Councilmembers	
Abstain:	0	Councilmembers	

Dated: May 17, 2000

/s/ Nanette F. Chapman
Nanette F. Chapman, Mayor
Town of Atherton

ATTEST:

/s/ Sharon Barker
Sharon Barker, City Clerk

Verbatim Excerpt from May 9, 2000, Special City Council Budget Meeting

Building Official Mike Hood , real quickly, at the last budget meeting, we had discussed raising the building permit fees, or raising the valuation, from our current \$110 a square foot for new construction to, we're proposing \$200 a square foot, (???) to \$215 a square foot, which is even still on the low side as far as I'm concerned. The, a a, by doing that, it's anticipated that it will raise an additional approximately \$496,000, \$497,000 and the state law restricts the use of this money, would have to be used for building-related programs, circumstance. The three programs that we're looking at, the first is a cost allocation plan that was discussed last time. Here we have some little harder figures going with it. The administrative functions within the Town cost about \$730,000 a year if you cost allocate based on staff percentage, your line staff percentage, with the rest of the line staff, building inspection would contribute about 20%, that's ???? so that's a quite frankly at the most organizations do for a cost allocation plan. This one is consistent with.....The next item is the establishment of a carry-over fund, that Ralph has mentioned a couple of times tonight and we discussed it last time. If construction activity turns off like a switch, which it has done in the 70s and the 80s, where the activity just goes down to zero almost overnight. Most of our construction projects last for 18 months, two years, sometimes three years. So, if our activity turns off, our revenue stream is turned off, but we still have an inspection liability for permits we have already issued. So what most jurisdictions do, is they establish carry-over fund, pump it up over the ?? so if the activity turns down, you have this fund already established for the specific purpose of financing your unfunded liabilities, as opposed to going to the General Fund. The number we've attached to that is about, I think it's appropriate to have a carry-over fund establish it at about the \$600,000 level, pump it up by \$150,000 per year for four years. Building activity is extremely hot right now, so we would aggressively go after this to get that fund up there. It looks like next year's revenues are going to be every bit as high as, or building activity, will be as active next year as it was this year.

Council Member Alan Carlson: What happens with those as a four-year program, \$150,000 a year, what happens in year five to the \$150,000?

Building Office Mike Hood: We'd reevaluate it.

Interim City Manager Ralph Freedman: It could be built up just as we have reserves that could obviously carry us in the General Fund. The decision may be that maybe we build up two years, maybe we just cut it off. It's a decision that we make.

Council Member Alan Carlson: But right now there's no....

Building Official Mike Hood: Zero. And the last major program is establishing a permanent building fund, We discussed this last time. Currently, building inspection and public works is housed in modular units and Ralph has indicated they are not designed to last forever. We finance them on a 5-year payback and at sometime it would be nice to have the choice to have permanent facilities. If we built permanent facilities, we can provide funding up front of the...you build a new facility and departments either pay rent or they can actually buy out their own square footage, and buy square footage you can do it up front. So this is an appropriate fund establishing that concept. You'd have money up front for the purpose of a building. So sort of shot-gunning it, a \$4,000,000 facility, building inspection occupies 20% of the space, we would contribute about \$800,000, so we'd kick in \$200,000 a year on a 4-year program, again while the building activity is very active. At the end of the four years, we'd reevaluate. So that in a nutshell is the revenue enhancements for the Building Inspection side.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JERRY GRUBER, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF JULY 16, 2008

SUBJECT: DISCUSSION AND POSSIBLE CANCELLATION OF THE AUGUST CITY COUNCIL MEETING

RECOMMENDATION:

If the City Council desires to cancel its regularly scheduled meeting of August 20, 2008, staff recommends a motion be made to cancel the August meeting.

BACKGROUND:

In 2001, 2003, 2004, 2005, and 2007, the City Council has canceled its August meeting. If the August 20, 2008, meeting is canceled, the next regularly scheduled meeting of the City Council is scheduled for September 17, 2008. Formal City Council action for cancellation of the meeting should also provide for public comment.