



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
December 19, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

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

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:
Two (2) potential cases
- B. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

John P. Johns Petitioner vs. Town of Atherton et. al. Respondent
Superior Court of California, San Mateo County, CIV 465782

Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899
- C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95**
Claimant: John P. Johns
Agency Claimed Against: Town of Atherton

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us
☛ *Please contact the City Clerk's Office at 650.752.0500 with any questions.* Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
DECEMBER 19, 2007

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** Janz, J. Carlson, Marsala, McKeithen
- 7:05 P.M. 3. **CITY COUNCIL REORGANIZATION**
- Selection of Mayor and Vice Mayor
Oaths of Office
- 7:20 P.M. 3A. **PRESENTATIONS**
- A. Presentation to Outgoing Mayor Alan B. Carlson
B. Final Park Landscaping Plan
C. Atherton Disaster Preparedness Committee
- 8:00 P.M. 4. **PUBLIC COMMENTS** (only for items which are not on the agenda –
limit of three minutes per person)
- 8:15 P.M. 5. **STAFF REPORTS**
- 8:25 P.M. 6. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed
by Resolution No. 99-6)
- None

8:25 P.M.

CONSENT CALENDAR (Items 7-16)

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

7. **APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING OF OCTOBER 3, 2007; THE SPECIAL CITY COUNCIL CLOSED SESSION AND SPECIAL MEETING OF OCTOBER 29, 2007; THE SPECIAL CLOSED SESSION MEETING AND SPECIAL MEETING OF NOVEMBER 14, 2007; AND THE SPECIAL CLOSED SESSION MEETING OF NOVEMBER 26, 2007**

8. **APPROVAL OF BILLS AND CLAIMS FOR NOVEMBER IN THE AMOUNT OF \$ 816,797**

9. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR NOVEMBER 2007**

10. **SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE, REPEALING ORDINANCE 537, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE, AND ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE**

Recommendation: Staff recommends that the City Council waive further reading and adopt an ordinance amending Title 15 of the Atherton Municipal Code which will, in turn, adopt current building, electrical, plumbing, mechanical, energy, historical building, housing and seismic hazards codes, retain the existing abatement of dangerous buildings code and ratify the fire code.

11. **PERFORMANCE REPORT OF TOWN LANDSCAPING CONTRACT WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE**

Recommendation: Staff recommends that Commercial Environmental Landscape (CEL) is retained to continue performing landscaping duties in various locations in the Town of Atherton.

12. **REVIEW AND APPROVAL OF PROPOSAL FROM PMC FOR EXPANDED SCOPE OF SERVICES AND BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE**

Recommendation: Staff and the General Plan Committee recommend that the City Council authorize PMC's expanded scope of services and budget for the zoning code update.

- 13. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIKUCHI & ASSOCIATES FOR LANDSCAPE CONSTRUCTION DOCUMENT DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK MAIN HOUSE LAWN, PLAYGROUND RESTROOMS AND TENNIS COURT BUFFER LANDSCAPE PROJECT**

Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape construction document design services for the Holbrook-Palmer Park Main House Lawn, Playground Restrooms and Tennis Court Buffer Landscape Project in an amount not to exceed \$32,700, plus a 10% contingency, for a total authorization of \$35,970.

- 14. AMENDMENT TO REACT AGREEMENT -- RAPID ENFORCEMENT ALLIED COMPUTER TEAM (REACT) TASK FORCE**

Recommendation: Staff recommends that the City Council authorize the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.

- 15. ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR AN APPOINTMENT TO THE PARK AND RECREATION COMMISSION**

Recommendation: Accept and approve the recommendation of the City Council Screening Committee to appoint Mr. David Wright to the Atherton Park and Recreation Commission to fill the unexpired term of Rodney Washburn, which expires April 30, 2008.

- 16. ADOPTION OF A RESOLUTION SETTING ASIDE THE DECISION OF THE CITY COUNCIL TO DENY A PERMIT AT 51 LABURNUM PENDING FUTURE RECONSIDERATION**

Recommendation: Adopt the attached resolution vacating and setting aside the Council's action of January 17, 2007, and Resolution 07-01 regarding issuance of a major alteration permit and to hold future related administrative proceedings as set forth in the resolution.

PUBLIC HEARINGS (Item 17)

- 8:15 P.M. 17. **APPEAL OF THE PLANNING COMMISSION'S DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA** (*Continued from the November 14, 2007, City Council meeting.*)

Recommendation: Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit for the reasons outlined in this report.

REGULAR AGENDA (Items 18-21)

- 8:20 P.M. 18. **DISCUSSION AND DIRECTION TO STAFF REGARDING THE PROCESS TO FILL A VACANCY ON THE CITY COUNCIL**
- A. **ADOPTION OF RESOLUTION CALLING SPECIAL ALL-MAIL BALLOT IN MAY**
 - B. **ADOPTION OF RESOLUTION CALLING SPECIAL ELECTION IN JUNE**
 - C. **ADOPTION OF URGENCY ORDINANCE TO FILL VACANCY BY SPECIAL ELECTION**

Recommendation: Staff recommends the Council discuss the available options, choose a method to fill the vacancy, and direct staff to begin the process to fill the vacancy for the chosen method.

- 8:50 P.M. 19. **RESOLUTION GOVERNING COMMITTEES/COMMISSION**
- A. **ADOPTION OF A GOVERNING RESOLUTION REGARDING COMMITTEES AND COMMISSIONS**
 - B. **ADOPTION OF A RESOLUTION AMENDING COUNCIL'S RULES OF PROCEDURE**
 - C. **INTRODUCTION OF AN ORDINANCE RESCINDING SECTIONS 2.37 AND 2.40 OF ATHERTON'S MUNICIPAL CODE**
 - D. **ADOPTION OF A RESOLUTION RESCINDING RESOLUTION NO. 98-06 ESTABLISHING AN ARTS COMMITTEE**

Recommendation: Review resolution which is designed to provide one master document governing all Town committees with the exception of the Planning Commission. If adopted, proceed with Items B, C, and D.

- 9:10 P.M. 20. **GARDEN ROOM REMODEL AND ADDITIONAL STORAGE**
- Recommendation: The Atherton Arts Committee recommends that the City Council 1) Reaffirm that the Garden Room of the main house at Holbrook-Palmer Park is the AAC's designated space; 2) Approve remodeling Garden Room into an Art Gallery; and 3) Move storage of "dog people" and Jean Cardona's furniture and supplies from the Garden Room.**
- 9:25 P.M. 21. **DISCUSSION AND POSSIBLE ACTION CONCERNING SAM GOODMAN'S LETTER APPEARING IN THE DECEMBER 12, 2007, ALMANAC**
- 9:45 P.M. 22. **COUNCIL REPORTS**
- 9:55 P.M. 23. **PUBLIC COMMENTS**
- 10:00 P.M. 24. **ADJOURNMENT**

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DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
WEDNESDAY, OCTOBER 3, 2007

6:00 PM

Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California

SPECIAL MEETING

The meeting was called to order by Mayor Alan Carlson at 6:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subsection (b) of Government
Code Section 54956.9:

One (1) potential case

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

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

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that there was no reportable action on either Item A or Item B.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 10:30 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
October 29, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Alan Carlson at 6:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

CLOSED SESSION

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

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

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

One (1) potential case

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that no reportable action was taken on either Item A or Item B.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 7:10 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
October 29, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Alan Carlson at 6:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

CLOSED SESSION

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

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

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

One (1) potential case

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that no reportable action was taken on either Item A or Item B.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 7:10 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
OCTOBER 29, 2007

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

SPECIAL MEETING

Mayor Alan Carlson called the meeting to order at 7:14 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

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

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

PUBLIC COMMENTS

City Attorney Marc Hynes reported out of Closed Sessions as follows:

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

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

No reportable action was taken.

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

One (1) potential case
No reportable action was taken.

REGULAR AGENDA (Items 3)

3. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.14 OF THE ATHERTON MUNICIPAL CODE REGARDING HISTORICAL ARTIFACTS

City Attorney Marc Hynes presented the staff report. The amendment before the Council was prepared as a result of the decision made in the case of Lambs vs. Town of Atherton, which resulted in the action of the City Council being overturned under the Historical Artifact Ordinance. The court required that the Town rescind the denial of a permit application pending later reconsideration. The court suggested that the Town clarify certain parts of Chapter 8.14, which was the action before the Council that evening. The principal revisions identified by the court involved the definition of the Lindendwood Historic District and clarification of certain provisions in the ordinance relative to an owner's consent at the time of designation of a historical artifact. Other "cleanup actions" were taken to delete language that was duplicative and to clarify terms such as the distinction between the physical property location and the artifact itself. If Council approved the changes that evening, the ordinance would be introduced for first reading, a second reading and adoption would be necessary in December, and the ordinance would become effective 30 days later.

Laura Jones, Historic Preservation consultant, clarified historic districts could be comprised of a set of properties that were related to each other by their theme; in Atherton's case, the theme was associated with the Flood estate. The theme was meant as an inventory or survey tool to find a collection and had very broad categories such as court houses of an entire state. The boundaries were very large and the space between them was not governed by the designation. She said it was common for historic districts to have both significant and non-significant resources in it. There were historic districts that did not contain buildings. She clarified the inventory included artifacts where the owner gave consent to be part of the study. The artifacts in the appendix to the inventory were identified in the moratorium list, but their owners either did not respond or refused permission to be studied.

Steve Ackley, Atherton, submitted a letter to Council and queried why two significant items were being discussed on a Monday evening rather than a regular meeting date. He asked how much the Town had spent on legal fees regarding the court case with the Lambs.

Mary Ann Ackley, Atherton, expressed concern for the process. She thought having the discussion on a special agenda was inappropriate. She queried what the cost was to the homeowners affected by the ordinance and what the cost was to the Town to enforce the ordinance. She believed the Town would be open to more lawsuits and additional legal fees.

Larry Sweeney, Atherton, member of the Lindenwood Homes' Association, was concerned that the people he spoke with in Lindenwood were unaware of the meeting. He expressed concern for homeowners who lived in historic districts and the effects resulting from such a designation.

Neil Rasmussen, Atherton, believed Council had listened to a few residents who were pushing the ordinance forward. The General Plan Committee had voted against passing such an ordinance, was composed of a wider cross-section of Atherton residents than the Council, and deserved to be heard. He raised the issue of whether the tax dollars of the entire Town should be used in defending an ordinance that benefited Lindenwood.

Carol Flaherty, Atherton, believed residents wanted to preserve historic artifacts; however, she was concerned about the process. She queried whether adequate notice had been given to the Lindenwood residents who would be impacted by designating the entire Lindenwood area as a historic district. Additionally, she was concerned about potential litigation.

George Garrick, Atherton, said the ordinance would affect approximately 500 families, and he did not understand the urgency. The Council should represent the majority of the Town's residents rather than a small minority who seemed to be railroading the ordinance through the process. He did not want his tax dollars funding litigation. More time was needed for the process.

Scott Mitchell, Atherton, requested that his property be exempted from the overall Lindenwood Historic District.

Dave Dollinger, Atherton, was concerned about the issues affecting his neighbors and friends. He believed ninety-nine percent of Atherton residents could care less. Atherton was not a historical Town and designating parts of it was an infringement on the rights of the homeowners. Enough funds had been wasted on legal fees.

Elizabeth Lewis, Atherton, was dismayed regarding how the special meeting was called and the apparent lack of notice. She noted, as a member of the General Plan Committee, valid issues over the significance of the artifacts had been raised. She understood preserving history was important. Many property owners believed the movable artifacts were their personal property. She said the Lambs should be able to move their urns.

George Shaheen, Atherton, spoke in support of preserving artifacts and did not believe it to be an infringement on personal rights. One could not rely on the good will of people to do the right thing. In order to preserve the artifacts, rules were necessary. Many residents in Lindenwood would like to have the artifacts kept in their original sites.

Lisa Lamb, Atherton, was concerned about the public process and the lack of transparency in government. She gathered 75 letters in one day of people who did not agree with the way Council was doing business. None of the 75 knew about the meeting.

Pat Dobbie, Atherton, attended several meetings regarding the artifacts. Many options were discussed on how the issue would ultimately be solved. She took responsibility for the Lindenwood Homes' Association for not keeping people more informed.

Randy Lamb, Atherton, said the Lambs were the first test of the ordinance. He agreed with previous speakers and reiterated the lack of transparency. He believed notices should have been mailed to every homeowner and the meeting held in the Pavilion. The

General Plan Committee could not come to a conclusion because the language of the ordinance was terrible. The ordinance was not ready for a first reading. More input from the Town was needed.

Scott Carey, father of Lisa Carey Lamb, former City Council Member/Mayor of the City of Palo Alto, spoke regarding a lawsuit the city was involved in, “a taking without compensation.” The city lost the case and faced \$30 million worth of damages. He believed the Town was in a similar circumstance, i.e. the Town could dictate what property someone owned. He cautioned Council regarding the inadequacy of notice and suggested the item be continued.

Deputy Town Planner Lisa Costa Sanders read a letter from William Grindley into the record. She noted that a public notice was mailed to all property owners who had artifacts on their property on Friday, October 19, 2007, at least 10 days prior to the meeting. The Lambs were notified by email and by phone the previous Wednesday.

Council Member McKeithen said everyone had an interest, not just the property owners. She said the item should be continued to allow for proper notice and more participation by all the residents of Atherton.

Mayor Alan Carlson stated it was not possible to give personal notice to every resident regarding an action that might impact them. Although, the Town provided legally required notice, he agreed with his colleague that the item should be continued. He suggested that notice be mailed to those within the proposed boundary of the Lindenwood Historic District. Additionally, he suggested the City Attorney draft a summary of the ordinance as it existed and how it might change, which would be included with the notice. He said Council’s role was to balance interests; the interests of the public against the individual, the interests of the individual against another individual.

Council Member Marsala expressed concern for the Town’s noticing procedures. A better system was needed. He suggested regularly scheduled quarterly or semi-annual special meetings for ordinance discussions in order for everyone to schedule the meetings in advance. He initially supported the ordinance; however, given the circumstances of the past 18 months, he questioned whether an ordinance should be in place at all. He thought the Town had the potential for several historic districts. He was also in favor of soliciting donations to buy artifacts or seeking donations of artifacts as a better way to protect them. He recommended a voluntary process.

Council Member Jerry Carlson agreed to continue the item to a later date. He asked for clarification on what designating Lindenwood as a historic district really meant.

City Attorney Hynes said designating the district under the ordinance, provided there was a finding of local significance, conveyed the ability to consider all the artifacts within the Lindenwood district and, consequently, the restrictions as to what could be done with artifacts in terms of altering/moving them. The purpose of the permit process within the ordinance was to confirm the significance of the artifacts and ensure they were preserved and protected.

Vice Mayor Janz agreed with his colleagues to continue the item.

MOTION – to continue the item to the December City Council meeting, with proper mail notice to the property owners within the proposed boundaries of the Lindenwood Historic District, including a summary of the existing ordinance and how it might change, and a display ad notice in the *Almanac*

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

STUDY SESSION (Item 4)

4. DRAFT ZONING CODE UPDATE

Deputy Town Planner Lisa Costa Sanders said the Study Session was a prelude to a full public process, a first look at the update to the zoning code.

Christopher Jordan, PMC, gave a PowerPoint Presentation, which was a cursory overview of the project, emphasizing it was a preliminary “check-in.” A question and answer period ensued. Mr. Jordan responded to Council questions.

Philip Lively, Atherton, Planning Commission member, said the Chapter 17, Zoning Code, was the second most important document in the Town. He recommended that the public, Planning Commission and the General Plan Committee members be notified that the draft was available. The update was a big undertaking and should not be rushed.

Carol Flaherty, Atherton, spoke regarding dormers on French style homes. She asked for clarification on retaining walls and the need for a Conditional Use Permit in certain circumstances. She thought the need for a second kitchen was the result of older parents moving in with their children.

Mr. Jordan explained that a Conditional Use Permit was required for retaining walls taller than 6’ in height or located less than 20’ from other retaining walls on the same property; otherwise, only a building permit was required.

Jeff Wise, Atherton, said a great deal of what was reflected in the update was very helpful and clarified what was confusing. Summaries of the parts that were substantive changes would be helpful. He was baffled by light well restrictions that no one could see. He agreed with Mr. Lively’s comments on the importance of the update.

Charles King, Atherton, spoke regarding height limitations on a hillside. He encouraged the Council to look at it not only from a mass standpoint but also how the proposed calculation would affect the floor plan of a structure.

Council Member McKeithen suggested putting a notices in the Building Department and Administrative offices indicating that copies of the draft update were available, place copies in the packets for the General Plan Committee and Planning Commission, and add annotations explaining what was new and what was old.

Mayor Carlson said the item should be referred to the General Plan Committee with instructions to meet monthly until the item was sent to the Planning Commission.

Council Member Marsala suggested that the General Plan Committee, at its first meeting, decide what items would be discussed in what timeframes, in order for residents to plan ahead.

Council Member Carlson suggested a process was needed for people to convey their comments as they reviewed the update.

Deputy Town Planner Costa Sanders said a cover sheet could be added to the document for comments and where to direct comments. When the item goes before the General Plan Committee, a list of the comments received with responses would be provided.

Vice May Janz suggested once the update was circulated to committees, builders, architects, a general meeting could be held in the Pavilion to hear the list of questions and concerns. The General Plan Committee could address them one at a time.

Deputy Town Planner Costa Sanders said the initial process envisioned by Council was to look at the zoning code and provide a comprehensive update, not necessarily opening it up for significant changes. Three public sessions were held. If Council wished to open up the process, an amendment to the PMC contract would be necessary.

Mayor Carlson suggested there would expanded opportunity for public comment when the General Plan Committee reviewed the proposals, when the Planning Commission reviewed the item, and when it was returned to the City Council.

MOTION – to refer the draft zoning code to the General Plan Committee for review, with instructions to meet monthly until making recommendations to the Planning Commission

Council Member Marsala took exception to directing the General Plan Committee to meet monthly.

M/S A.Carlson/McKeithen Ayes: 4 Noes: 1 (Marsala) Absent 0 Abstain: 0

5. ADJOURNMENT

Mayor Carlson adjourned the meeting at 10:12p.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
NOVEMBER 14, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Alan Carlson at 6:05 p.m.

ROLL CALL

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

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:
One (1) potential case
- B. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**
- Case # Civ 467582 in the Superior Court, State of California, County of San Mateo, entitled John P. Johns Petitioner, v. Town of Atherton et al Respondents

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

**Claimant: John P. Johns
Agency Claimed Against: Town of Atherton**

**Claimant: Dr. Frank L. Altick
Agency Claimed Against: Town of Atherton**

RECONVENE TO OPEN SESSION

Report of action taken.

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

With respect to Item A, Conference with Legal Counsel, Anticipated Litigations, one potential case, there was no reportable action taken.

With respect to Item B, Conference with Legal Counsel, Existing Litigation, Case # Civ 467582 in the Superior Court, State of California, County of San Mateo, entitled John P. Johns Petitioner, v. Town of Atherton et al Respondents, on a 3 to 1 vote of the City Council, with Council Member Marsala absent and Council Member McKeithen abstaining, the City Council approved retaining the firm of Stubbs and Leone to defend the action with Louis Leone acting as special counsel for the Town.

With respect to Item C, Liability Claims, there was no reportable action taken regarding Claimant John P. Johns. Claimant Dr. Frank L. Altick's claim was approved in the amount of \$6123.30.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 7:00 p.m.

Respectfully submitted,

**Alan B. Carlson
Mayor**

**Minutes Prepared by:
Kathi Hamilton**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
NOVEMBER 14, 2007

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

SPECIAL MEETING

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

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala (arrived at 9:07 p.m.)
Alan B. Carlson
Kathy McKeithen

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

Mayor Alan Carlson announced that the evening's meeting would be his last as a City Council Member. He would be moving in the near future and would resign from the Council. He thanked the residents and his colleagues for allowing him to serve for the past nine years.

3. PRESENTATIONS

- A. Police Department Swearing In - Dispatcher Nicole Amore

Police Chief Bob Brennan introduced Dispatcher Nicole Amore and administered the Oath of Office.

- B. Annual Red Ribbon Week Presentation

Police Chief Bob Brennan and Lieutenant Glenn Nielsen presented awards to the Annual D.A.R.E. Red Ribbon Week poster contest, 1st and 2nd place winners, from Encinal and St. Joseph's schools.

PUBLIC COMMENTS

Lisa Lamb, Atherton, spoke regarding meeting notices and transparency in government. She said there was a need for better noticing when meetings were changed.

John Ruggeiro, Atherton, agreed with the previous speaker regarding better noticing of meetings.

Randy Lamb, General Plan Committee Member, spoke regarding the historic artifact ordinance, the resignation of Mayor Alan Carlson, the need for a special election to replace him, and former Finance Director John Johns.

5. STAFF REPORTS

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

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:

One (1) potential case

There was no reportable action taken.

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

Case # Civ 467582 in the Superior Court, State of California, County of San Mateo, entitled John P. Johns Petitioner, v. Town of Atherton et al Respondents

On a 3 to 1 vote of the City Council, with Council Member Marsala absent and Council Member McKeithen abstaining, the City Council approved retaining the firm of Stubbs and Leone to defend the action with Louis Leone acting as special counsel for the Town.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: John P. Johns

Agency Claimed Against: Town of Atherton

No reportable action was taken.

Claimant: Dr. Frank L. Altick

Agency Claimed Against: Town of Atherton

The claim was approved in the amount of \$6123.30.

- **Interim City Manager Wendé Protzman stated that the cancellation of the Regular City Council meeting and the scheduling of a Special meeting for that evening had been noticed in the *Almanac*. Additionally, she had spoken to members of the community to solicit ideas for better noticing. Additional information had been added to the website, as well as a new information bulletin board in the post office.**
- **Council Member McKeithen expressed concern for changing two meetings in succession especially since the Lindenwood homeowners were promised a letter regarding the historical artifacts ordinance.**

6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

A. Park and Recreation Commission

John Davey, Chair of the Park and Recreation Commission (Commission), presented a background of the Commission and reported on the progress of improvements at Holbrook-Palmer Park.

B. Arts Committee

Jean Schaaf, Chair of the Arts Committee (AAC), read the Mission Statement of the AAC and reported on the activities of the AAC. She noted the AAC met in the Garden Room at Holbrook-Palmer Park and announced plans to remodel the area for an art museum.

CONSENT CALENDAR (Items 7-14)

MOTION – to approve the Consent Calendar as presented

M/S McKeithen/J.Carlson Ayes: 4 Noes: 0 Absent: 1 (Marsala) Abstain: 0

7. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING AND REGULAR MEETING OF OCTOBER 17, 2007

8. APPROVEDS BILLS AND CLAIMS FOR OCTOBER IN THE AMOUNT OF \$ 677,586

9. ACCEPTESD MONTHLY FINANCIAL REPORT FOR OCTOBER 2007

10. ACCEPTED THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2007

11. APPROVAL OF A CONDITIONAL USE PERMIT - HELICOPTER LANDING – 150 VALPARAISO (APN 070-390-010)

Approved the landing of a helicopter at 150 Valparaiso (Sacred Heart Schools) in Atherton and approved the Conditional Use Permit.

12. ADOPTION OF ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 8.54 OF THE ATHERTON MUNICIPAL CODE BY ADDING A NEW SECTION 8.54.050 ADOPTING DRAINAGE GUIDELINES

Adopted Ordinance 573, “AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 8.54 OF THE ATHERTON MUNICIPAL CODE BY ADDING A NEW SECTION 8.54.050 ADOPTING DRAINAGE CRITERIA.” The ordinance was introduced for a first reading at the regular City Council meeting on October 17, 2007, and is before the Council for second reading and adoption.

13. A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF THE PLANNING COMMISSION DECISION DENYING USE PERMIT FOR 94 TALLWOOD BY GRANTING A USE PERMIT AND FINAL CERTIFICATE OF OCCUPANCY

Adopted Resolution No. 07-29, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF THE PLANNING COMMISSION DECISION DENYING USE PERMIT FOR 94 TALLWOOD COURT BY GRANTING A USE PERMIT AND AUTHORIZING THE ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY.”

14. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS AND QUANTITY CHANGES IN THE AMOUNT OF \$237,053 FOR THE STREET RECONSTRUCTION PHASE 3 PROJECT NUMBER 05-005

Accepted work, authorized recording of a notice of completion, and approved contract change orders in the amount of \$237,053 for the Street Reconstruction Phase 3 Project, Project No. 05-005.

PUBLIC HEARINGS (Item 15)

15. APPEAL OF THE PLANNING COMMISSION’S DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA
(Continued from the October 17, 2007, City Council meeting.)

Recommendation: Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit for the reasons outlined in this report.

MOTION – to continue the item to the December City Council meeting, at the request of the appellant

M/S J.Carlson/Janz Ayes: 4 Noes: 0 Absent: 1 (Marsala) Abstain: 0

REGULAR AGENDA (Items 16-27)

Mayor Alan Carlson moved Item No. 21 forward to be heard before Item No. 16.

21. COMMITTEES AND COMMISSION MASTER SCHEDULE

- A. ADOPTION OF A GOVERNING RESOLUTION REGARDING COMMITTEES AND COMMISSIONS**
- B. ADOPTION OF A RESOLUTION AMENDING COUNCIL'S RULES OF PROCEDURE**
- C. INTRODUCTION OF AN ORDINANCE RESCINDING SECTIONS 2.37 AND 2.40 OF ATHERTON'S MUNICIPAL CODE**
- D. ADOPTION OF A RESOLUTION RESCINDING RESOLUTION NO. 98-06 ESTABLISHING AN ARTS COMMITTEE**

City Attorney Marc Hynes said the proposed resolution before the Council would combine the Town's committees/commission, with the exception of the Planning Commission, under one authority. Either "line through" for deletions or "bold" for additions showed changes from the last discussion. In Section 3, "unless otherwise set out below" was added in response to Council Member McKeithen's concern for the Screening Committee appointing everyone to every committee. Council Member Jerry Carlson suggested the Park and Recreation Commission provide input for setting park fees. City Attorney Hynes suggested in Section 11, Item c, the second sentence could contain a statement, "...includes recommendations regarding the setting of fees."

Council Member McKeithen suggested excluding the Atherton Channel Drainage District, the Atherton Rail Committee, the Crime Prevention Task Force, the Environmental Programs Committee, the Transportation Committee, and the Tree Committee from the Screening Committee process.

Council Member Jerry Carlson said an orientation regarding the Brown Act was needed for current and new committee members. If funding were required for any committee, a budget should be prepared during the regular budget process. He wanted some type of accountability or way in which committees reported to the Council. He suggested more community outreach was necessary regarding committees, as well as setting up a website for each committee. The process for reapplying to committees needed to be clarified. The process for those committees that did not go through the Screening Committee needed to be clarified. Regarding the Arts Committee, he thought there should be some type of term limit; he believed an important duty/responsibility was fulfilling the provisions of the Rita Corbett-Evans' will; and the duties should state the committee could make recommendations to the Council. He queried whether term limits would be assigned to the Atherton Channel District Committee and suggested adding the committee could make recommendations to the Council. He also queried whether it made sense for the committee to work with Town staff in prioritizing capital improvement projects and budget. He suggested combining the Building/Facilities Committee with the Budget/Finance Committee. He thought the Emergency Preparedness committee should be expanded to include a representative of CERT or the Menlo Park Fire Protection District to provide a link to the citizens'

committee, etc. He questioned why there were five-year terms suggested for the Environmental Programs Committee. Along with determining whether terms limits were appropriate, clarifying when someone could apply after being termed out was also necessary.

Vice Mayor Janz said if the intent was to extend the terms of the existing members, clarification was needed, i.e. members of the Atherton Rail Committee would commence a new 4-year term. He thought each committee needed to be considered as to whether it should be changed or not, e.g. the Crime Prevention Task Force. Meeting intervals for the General Plan Committee should be clarified to read meets quarterly, or as determined by the committee to meet more often from time to time.

Council Member McKeithen did not agree with Council Member Carlson's suggestion regarding the Atherton Channel Drainage District Committee. The committee had oversight of a very specific fund assessed on some Atherton residents, some unincorporated San Mateo County residents, some Woodside residents, and some Menlo Park residents and did not pertain to general drainage issues. She thought "upon request" should be removed throughout the document. She thought by formation of the committees themselves, direction was being given.

Mayor Alan Carlson said the committees act on behalf of the City Council, but they did not have independent authority. He thought they should act upon the request of the City Council. With the exception of the General Plan Committee, he did not favor term limits. Finding people to serve on committees was difficult, as well as losing good people because of being termed out. The Screening Committee should function to make appropriate recommendations and eliminate term limits.

Jean Schaaf, Atherton Arts Committee, queried the need to rescind Resolution No. 98-06, which regulated the Arts Committee. She did not see the need to make every committee a "cookie cutter" committee.

City Attorney Marc Hynes said the idea was to make things as uniform as possible, all under one umbrella. Once the information was set out in the new resolution, Resolution No. 98-06 would no longer be necessary.

Tom Croft, Atherton, said 15 percent of Americans did not have Internet access and indicated Atherton had a very poor website design.

Mayor Alan Carlson suggested having terms but not term limits and relying on the Screening Committee.

Vice Mayor Janz asked what happened to those committees that did not go through the Screening Committee.

Mayor Carlson and Council Member McKeithen both thought committees such as the Atherton Rail Committee, Tree Committee, etc. could take care of themselves. The

City Attorney needed to clarify which committees would be exempt from the Screening Committee process.

Direction was given to staff to incorporate the suggestions/comments of the Council and return the item to the December 19, 2007, meeting for consideration.

16. CONSIDERATION OF EXECUTION OF SETTLEMENT AGREEMENT-TOWN OF ATHERTON V. SEQUOIA UNION HIGH SCHOOL DISTRICT

City Attorney Marc Hynes said before the Council that evening was a Settlement Agreement (the Agreement) resulting from negotiations that accompanied a lawsuit by the Town against the Sequoia Union High School District (SUHSD), brought under the California Environmental Quality Act (CEQA), challenging actions of the SUHSD trying to take advantage of an exemption. The Town retained the firm of Colantuano and Levin to represent it in the matter, with Holly Whately as the principal attorney for the case. She would take City Attorney Hynes' seat on the dais for the remainder of the item. City Attorney Hynes recommended the Town enter into the Agreement, which had been signed by the SUHSD Board.

Attorney Holly Whatley said SUHSD determined the Performing Arts Center (PAC) was categorically exempt from CEQA under a Class 14 exemption under the guidelines and did not need to do any environmental mitigation measures or environmental evaluation of the impacts of the project. The Town filed an action challenging the Notice of Exemption as legally void on a number of reasons, arguing that the Class 14 exemption did not apply. If an agency claims that a project was exempt, it did not need to go through any analysis to analyze such things as traffic, noise, etc. The lawsuit dealt solely with CEQA. She explained that the Civic Center Act mandated that schools permit public use of its property, although the district had discretion to place restrictions on use.

Bruce Smith, Atherton, had an immediate concern with traffic on Oak Grove at the beginning of the school year. The process put in place to deal with SUHSD and to pursue a lawsuit for CEQA only was flawed from the beginning. The Council Members assigned to negotiate and Ms. Whatley did not have applicable experience with CEQA or the Civic Center Act. Additionally, he thought the Mayor should recuse himself from the discussion since he was resigning from the Council. Those impacted residents were poorly served. He urged the Council to renegotiate the Agreement.

Larry Crouch, Atherton, was no longer a neighbor of Menlo-Atherton (M-A) High School. He wanted to see more concrete guidelines in the Agreement that were consistent with the Town's zoning ordinances and CEQA.

Marina, 228 Oak Grove, was concerned there was no communication with neighbors of the PAC from the SUHSD. Specialists were needed to look at the traffic and noise issues. Too many unknowns made people uneasy. Laws that were not well established ahead of time created worse problems later.

Gene Rauen, Atherton, lived very near the school and spoke regarding traffic issues related to M-A High School. He queried whether a traffic study had been conducted.

Mayor Carlson understood several traffic studies were being done including the entire corridor of Middlefield Road and one of the PAC in particular.

Corinne Zaro, Atherton, urged Council not to sign a very weak Agreement that did not protect her rights. She supported the PAC; however, she did not feel represented by the Council in the process. The Agreement did not have enough concrete language and too much best effort language.

Carol Smith, Atherton, represented the Lindenwood Homes' Board, and noted the Board engaged a CEQA attorney, a former Superior Court Judge, and a Town attorney to review the Agreement. She distributed a slightly modified version of the Agreement with suggested revised language.

Rick Skerca, Toyon Road, said "best efforts" by the SUHSD resulted in two letters in 35 years.

Jim Dobbie, Atherton, said the reason for the present state of affairs resulted from having no strategy, nonexistent public relations, as well as nonexistent publicity to improve negotiations. He urged Council to delay any settlement date and rewrite a Town agreement.

Tom Hill, Atherton, said many concerns of the residents related to unknowns: the traffic study and the parking plan. He queried why the Town would enter into an Agreement in advance of the important studies being done.

Bob Plashkey, Atherton, was supportive of the PAC. His concern was that M-A High School had never shown good faith efforts to accommodate residents' concerns. He supported the Lindenwood Homes' Association recommendations.

Duker Ringwood, said the Town was under attack from many sources. He expressed concern with the inability to deal with M-A High School when engaged in "educational activities." The only way to affect the school was through non-school events.

Greg Beatty, Atherton, spoke regarding the Special Events ordinance. He believed the ordinance with respect to outside uses was arbitrary and very restrictive. He supported children who needed the facilities.

Council Member McKeithen said the PAC was being built and was 70 feet tall. There would be generations of students and non-students who would get great pleasure from the PAC. The real issue concerned the adverse effects on the neighborhood. She noted the traffic study was not completed, the parking plan was not satisfactory, "best efforts and reasonably feasible" with regard to noise was not sufficient, and drainage could not be mandated. She said the Town owed it to the community to go back to SUHSD and present Carol's suggestions as a minimum.

Mayor Alan Carlson was not sure there was a better deal. The SUHSD could exempt itself from the Town's zoning ordinances. The Menlo Park Elementary District did that; however, it worked cooperatively with the Town. Private schools were subject to the Town's ordinances. Neighbors could get something worse. The SUHSD legacy was telling the Council, with respect to the Special Events Ordinance, that it would not work with the Town. If the neighbors want to take the risk of a better deal, he would vote against adopting the Agreement.

Council Member Jerry Carlson was concerned that the SUHSD made a glaring mistake not involving the Town in the planning process. The residents were stakeholders in the project because the PAC was within Town boundaries. The Town was forced to act to protect the interests of residents. The Agreement did not spell out the regional nature of the traffic issue and was a piecemeal approach in solving a regional problem. He was concerned with the parking plan, with the Police Department's role in recovering costs, and with protection of Town ordinances. He thanked the Lindenwood Homes' Association for its ideas. He queried whether the legal counsel could craft an umbrella agreement listing concerns about particular areas and work in conjunction with other parties to take care of traffic with a qualified traffic engineer, the parking by qualified professional engineer, etc. Address the details of the issues in separate agreements.

Ms. Whatley said SUHSD could be approached with the idea. She was concerned it was not any more definite than what was before the Council. There was a deadline of December 4 to tell the court to put the matter back on the active calendar and set a hearing date for the motion for the Writ. CEQA actions, by law, were required to be processed more quickly and took priority. The presiding judge wanted to see it happen, most likely 45 days out.

Vice Mayor Janz said everyone was in favor of the PAC. Problems centered with the school's history in not seeking Town participation. He did not have a problem with how the Agreement was structured with respect to "best efforts or reasonable standards" language. He liked Lindenwood Homes' Association suggestions and changes. He thought the biggest issue would be the cutoff number for non-school events. He was also concerned about police costs. He asked what happened at the present time when an event required police services.

Police Chief Bob Brennan said if people had a special event requesting police services, they were billed. The Town had a contract agreement with M-A High School for a Resource Officer, which included language for certain events outside the scope to be billed. He suggested a non-school event held at the PAC could have a surcharge added to ticket sales to defray cost of police services.

Council Member Marsala said he and Mayor Carlson met for months with SUHSD regarding the PAC. They sought input from residents before attending negotiation meetings. Having spent a lot of energy in the past year, some issues were not as serious as they might seem. He did not believe police costs would be exorbitant. He thought

the Town should have reevaluated the Special Event Guidelines. Two hundred attendees was a good cutoff number because it was hard to predict exactly how many people might attend. The design, the drainage, and the parking were already designed to handle 2000 people on campus every day. He did not see that 400 people attending an event would be a huge problem. He believed the issues should be worked out without lawsuits and be a good example.

Mayor Carlson said there were at least three votes not to approve the Agreement. Since the matter was in litigation, discussion in open session was not appropriate. He made the following motion:

MOTION – that the Agreement not be approved, the matter be returned to the City Council in Closed Session to give appropriate direction to legal counsel

M/S A.Carlson/McKeithen Ayes: 4 Noes: 1 (Marsala) Absent: 0 Abstain: 0

17. QUARTERLY CONSULTATION WITH THE MENLO PARK FIRE PROTECTION DISTRICT – (Oral Report)

Interim City Manager Wendé Protzman said she met with Menlo Park Fire Protection District (MPFPD) Chief, Harold Schapelhouman, MPFPD Board Member Peter Carpenter, and Building Official Mike Wasmann in a quarterly meeting where priorities were discussed.

Peter Carpenter, MPFPD Board Member, said the direction the Town and MPFPD were going was a wonderful example of cooperation between two separate entities. The last few months were spent communicating and putting in place the groundwork for the MPFPD and the Town to work cooperatively to better serve the citizens. He reported on an statewide event that took place that day, Golden Guardian. The MPFPD ran an exercise in parallel called Golden Shadow, which actually connected with neighborhoods. Lloyd Park and Sacred Heart School participated in real time with information going between the EOC and the neighborhood. The MPFPD and the Town agreed to meet on a quarterly basis to address/focus on those things discussed in the previous quarterly report that were not clearly the responsibility of the MPFPD or the Town but needed to be addressed, e.g., evacuation planning, especially west Atherton; water supply; and public service agencies dependent on cellular phones. Both staffs would work together on a regular basis.

Fire Chief Harold Schapelhouman appreciated the invitation to attend Town staff meetings. He presented statistical data regarding services to the Town. Medical calls were the vast majority of calls, with year-to-date calls totally 201. He noted the MPFPD had purchased a new fire truck that was on display in front of Town Hall.

A discussion ensued regarding radio equipment, cellular phones, and communications during emergencies. Cell phones had become an important form of communication, especially text messaging. Cell phone coverage throughout Town was needed. In an emergency, one or more types of communication might not work.

18. INTRODUCTION OF AN ORDINANCE AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE, REPEALING ORDINANCE 537, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE, AND ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE

Building Official Mike Wasmann said building codes were required by the State Legislature to be adopted every three years in conjunction with the most current codes being published by the model codes, i.e. the 2006 International Building Code was the model code for the California Building Code. The model codes were adopted into the California Building Standards Commission for the development of Title 24 Code of Regulations. The amending of certain portions of the Atherton Municipal Code was necessary to maintain consistency between the new building codes procedures and terminology of existing regulations. Included in Council’s packet were the proposed codes for adoption.

Fire Inspector Bob Blach, Menlo Park Fire Protection District (MPFPD), said the MPFPD was going through the same process to keep the codes current as everyone across the state. The updates were also included in Council’s packet.

Mayor Alan Carlson noted the Town was required to adopt the codes and the action that evening was technically a formality.

Tom Croft, Atherton, spoke regarding the system of communication used by truckers and suggested the system could supplement communications during an emergency. Ham radios should be used as a last resort.

MOTION – to introduce the ordinance for first reading, “AN ORDINANCE AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE, REPEALING ORDINANCE 537, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE, AND ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE”

M/S McKeithen/Janz

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

19. CONSIDERATION AND POSSIBLE APPROVAL OF LETTER TO RESIDENTS PERTAINING TO ACCESS AND FIRE/SUPPRESSION WATER SUPPLY PREPARED BY MENLO PARK FIRE PROTECTION DISTRICT

City Attorney Marc Hynes said a proposed draft of a letter to residents concerning issues of access and fire flow was before the Council. He had one last concern regarding the final paragraph that concluded with contacting either the Town’s

Building Department or the Menlo Park Fire Protection District (MPFPD). He thought the MPFPD should be the agency to be contacted; however, MPFPD wanted the letter to be a joint letter and suggested the language indicate contacting the Town's Building Department for building code questions and the MPFPD for fire code questions.

Bob Blach, MPFPD, explained, per Council's direction, the letter was drafted as a joint effort after he and the Building Official reviewed the 200+ outstanding building permits. A drive-by visit was conducted on the 21 homes where issues were found.

Council Member McKeithen suggested creating a checklist of the potential issue(s) after the first sentence that informed the residents what issue(s) affected their home.

Mayor Alan Carlson did not have a problem with both the Town and MPFPD signing off on the letter.

Council Member Jerry Carlson said he thought the first sentence should eliminate reference to the Town since the Town did not participate in the drive-by visit. He suggested adding a telephone number and/or contact information.

Vice Mayor Janz suggested modifying the first sentence of the letter to indicate the criteria that determined which homes were inspected, i.e., recently constructed. Additionally, he queried what type of result was expected once a resident was notified.

Bob Blach said MPFPD could do a follow-up inspection, modify the preplan, and give them the information. There was no obligation to the homeowner to correct anything. The properties were considered existing nonconforming.

Vice Mayor Janz suggested expanding the sentence in bold face that indicated the letter was not a citation or notice of fines to include "...there was no requirement for taking corrective action."

MOTION – to approve the letter with 1) modification of the first sentence to include criteria that determined which homes were inspected, i.e., recently constructed; 2) addition of a checklist of issues; 3 addition of contact information; and 4) expanding the sentence in bold face that indicated the letter was not a citation or notice of fines to include there was no requirement for taking corrective action

M/S McKeithen/Janz

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

20. REQUEST TO RECONSIDER THE EXTENSION OF TENTATIVE PARCEL MAP AT 64 MOULTON DRIVE (APN0 61-350-020)

Mayor Alan Carlson clarified the issue was whether the Council would vote to reconsider the item but would not actually reconsider it that evening.

Public Works Director Duncan Jones said there was an additional handout on traffic numbers. The listed alternatives listed in the staff report could be combined.

Vice Mayor Janz said there was an increased traffic flow on Middlefield Road turning left onto Marsh Road.

Council Member McKeithen recommended Alternative No. 1: Direct staff to take no further action. This acknowledges that the signal changes have improved traffic flow on Marsh Road and reduced traffic flow on Holbrook Lane, except during the ½-hour morning school peak, and that during that ½ hour there is little that can be done locally because traffic is backed up on Middlefield Road. This acknowledges that signal retiming and other Middlefield Road improvements may improve the situation further; No. 3: Direct staff to wait until the signal retiming is implemented and Encinal School completes their traffic study and start time change, recount at that time and return to the Transportation Subcommittee for further direction at that time; and No. 8: Direct staff to study extending the right turn lane on Marsh Road. This would allow right turning vehicles to bypass the left turn queue, resulting in less diversion to Holbrook Lane. This could also be accomplished by extending the Atherton Channel box culvert and widening the intersection to the south, avoiding impacts to heritage Oak trees on the north side of the road. It would also repair the channel wall for the distance of the box culvert extension. Return to either the Transportation Subcommittee or Council with traffic study and a project concept, including estimated costs.

Mayor Alan Carlson agreed with Alternatives 1 and 3; however 8 assumed there was a significant problem on Holbrook Lane. He observed the traffic during the ½-hour school peak and did not believe that was the case.

Vice Mayor Janz was interested in a light at Encinal. Alternative No. 5 said to work with Menlo Park School District and the City of Menlo Park to install traffic signals. He clarified the study was in process and no action should be taken until the results were concluded.

Zolik Fichtenholz, Atherton, asked for Council to adopt Alternative No. 6. He submitted data indicating that the change in traffic light duration had not changed anything. Traffic had increased over the past two years and he could not get out of his driveway, which was unacceptable for a residential street without sidewalks and was a safety issue for children who could not get out of the house. The simplest solution was to install a sign that prohibited no through traffic. If there were unintended consequences, the sign could be taken down.

Vice Mayor Janz wanted to know what the results of the Encinal School study were. He was concerned about the increased backup on southbound Middlefield Road at Marsh Road.

Council Member Marsala supported Mr. idea. He suggested installing the sign with the caveat that sign would be taken down if it caused other issues.

Council Member McKeithen repeated her support for Alternatives Nos. 1, 3 and 8 as a Council. The other alternatives were either being pursued or would be pursued. She suggested that each Council Member go out and look for themselves whether there was an issue.

Mayor Alan Carlson supported Alternatives Nos. 1, 3, and 8, as well as Council Member McKeithen's suggestion.

After further discussion of the pros and cons of adding signage, Council Member McKeithen made the following motion:

MOTION – to adopt Alternatives No. 1, 3 and 8; direct staff to survey residents on Holbrook Lane to determine the desirability of posting a “No Through Traffic” sign and/or a “No Left-Hand Turn sign between certain hours onto Middlefield Road; further each Council member should observe traffic on Holbrook Lane between the hours of 7 a.m. and 8:30 a.m.

M/S McKeithen/J.Carlson

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

25. LANDSCAPING FOR 12 SELBY LANE

City Attorney Marc Hynes noted 12 Selby Lane was the property where, in the process of constructing a wall, the roots of four pine trees were cut and a walnut tree was damaged, which was later removed. A settlement was reached with the property owner who paid \$20,000 and agreed to some mitigation planting. At least one neighbor was not impressed with the mitigation landscaping. Mr. Kielty, a Certified Arborist, was hired by the Town to review the issue and make recommendations for further mitigation.

Kevin Kielty, Certified Arborist, received responses from five residents, one of whom was not aware of the situation. The new landscaping was not professionally done. The trees were very small, over-staked, with no theme. The neighbors wanted the wall and house screened. If a wall of Redwood trees were used, the southwest exposure would shade the property. He recommended a deciduous tree, a Red Oak, which grew to 40 feet and was low maintenance.

City Attorney Hynes clarified that by the settlement agreement, the property owners obligated themselves to provide minimal landscaping. If there was a desire by the Council to improve that effort, the landscaping would be planted at the Town's expense and maintained by the Town.

Mayor Alan Carlson said the only issue before the Council was whether to spend up to \$20,000 in the Town right-of-way that the Town would need to maintain.

John Thomas, Atherton, said all the neighbors wanted tall evergreens planted. A deciduous tree would create a mess. Coast Redwoods were the fastest growing in trees in California and grew 8 to 10 feet a year. There was enough room to plant 12 trees.

Building Official Mike Wasmann said the Town was originally under the 1997 Uniform Building Code, Table 1A. For \$1 million and above, the factor was \$3.65 for each additional \$1 thousand or fraction thereof. When the Town began to calculate the fees electronically, the Acting Building Official used the Table 1A from the California Building Code, which used a \$3.15 factor. The system was corrected to collect the fees according to the adopted 1997 fees. The undercharged fees amounted to \$28,330.63. The total amount permit plan check revenue for the time period was \$1,860,969.45, which was an error of 2.61%.

In response to Council Member McKeithen, City Attorney Marc Hynes said the Building License Tax was a separate issue, which might result in an offset.

Council Member McKeithen believed if the Town owed money, it should be paid; and if money was owed to the Town, it should be paid.

City Attorney Hynes believed the amounts would be relatively small. A letter could be sent requesting the amount. If the money was not collected, the matter could be referred to Small Claims Court.

Mayor Alan Carlson suggested the information be included in a report to the Council.

Vice Mayor Janz clarified that there were instances where the Town was owed building fees and instances where the Town owed building license fees and one might offset the other.

Both issues would be returned to Council at its January 16, 2008, meeting.

28. DISCUSSION AND POSSIBLE ACTION TO CANCEL THE REGULAR CITY COUNCIL MEETING OF DECEMBER 19, 2007, AND SCHEDULE A SPECIAL CITY COUNCIL MEETING FOR DECEMBER 12, 2007

Based on comments received at the meeting, Council did not take any action to cancel and/or change the date of the Regular City Council meeting of December 19, 2007.

29. COUNCIL REPORTS

Council Member Marsala said the Environmental Programs Committee would begin to address air issues.

Vice Mayor Janz said C/CAG awarded \$85,000 to the Town for a project to update detection systems in connection with traffic signals at Oak Grove and Marsh Road.

30. PUBLIC COMMENTS

31. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 12:20 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
November 26, 2007
5:30 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Alan Carlson at 5:30 p.m.

ROLL CALL

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

PUBLIC COMMENTS

The following people spoke in support of the Sequoia Union High School District, Menlo-Atherton High School Performing Arts Center.

Nancy Sterling
Kim Young
Terry Winters
Hilary Katz Hausman
David Shores
Julie Brody
Margaret Connet
Barbara Windham
Celeste Chapman
Diane Jensen
Margaret Winters
Ed Levine

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9
1. Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899
 2. John P. Johns vs. Town of Atherton et. al.
Superior Court of California, San Mateo County, CIV 465782
- B. CONFERENCE WITH LEGAL COUNSEL-Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:
- One (1) potential case
- C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95
Claimant: John P. Johns
Agency Claimed Against: Town of Atherton

RECONVENE TO OPEN SESSION

Report of action taken.

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

Item A1: The City Council, on a unanimous 5-0 vote, approved a settlement agreement regarding the Sequoia Union High School District in the case of Town of Atherton vs. Sequoia Union High School District, et al. Superior Court of California, San Mateo County, CIV 458899.

Item A2: There was no reportable action taken.

Item B. There was no reportable action taken.

Item C. There was no reportable action taken.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 7:30p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton

TOWN OF ATHERTON
CLAIMS LIST
November, 2007

Payroll Checks	10546-10684	\$ 19,776
Electronic Transfers		106,340
A/P Checks	25064 - 25223	690,681
TOTAL		\$ 816,797

I, Wendé' Protzman, Interim City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 10546 - 10684 (payroll) and 25064 - 25223 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$816,797; are true and correct, and that there are sufficient funds for payment.

Wendé C. Protzman
Interim City Manager

The above claims, check numbers 10546 – 10684 (payroll) and 25064 - 25223 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$816,797; are true and correct, and are authorized for payment.

Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$408,193
105	Tennis Fund	
201	Special Parcel Tax	-
202	Transportation	-
203	Gas Tax Fund	-
210	Road Construction Impact Fees	246,481
211	Park Grants Fund	-
213	Library Special Revenue Fund	685
401	General Capital Projects	-
402	Storm Drainage	2,963
403	Atherton Channel District	5,198
406	Facilities Construction	-
411	Park Well	-
610	Vehicle Replacement	
611	Computer Maint. & Replacement	11,126
612	Administrative Services	14,937
715	Evans Estate	1,024
740	Tree Committee	73
TOTAL		\$690,681



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: BILL YEOMANS, INTERIM FINANCE OFFICER

DATE: FOR THE MEETING OF DECEMBER 19, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, NOVEMBER, 2007

RECOMMENDATION:

Receive the Monthly Financial Report for November, 2007.

INTRODUCTION:

The attached schedules of revenues and expenditures for all funds as of November 30, 2007.

HIGHLIGHTS:

For Atherton, revenues run behind expenditures for the first half of the year as the property tax and special parcel tax collections are received by San Mateo County in December and April and distributed a few weeks later.

Expenditures are within expected levels (36%) except in the following areas:

1. The City Council at 73% of budget includes several annual membership payments paid in July and August;
2. The City Attorney at 70% of budget includes unanticipated litigation that will be addressed by a mid-year budget adjustment;
3. Annual insurance deposits are paid at the start of the fiscal year increasing expenditures in the Administrative Services Fund (58%). Utility bills amounting to \$40,000 charged to the Information Technology Fund (74%) will be reallocated to other funds.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

/s/ Bill Yeomans
Bill Yeomans
Interim Finance Officer

Wendé C. Protzman
Interim City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF DECEMBER 19, 2007

SUBJECT: ORDINANCE AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE ADOPTING CURRENT BUILDING AND SAFETY CODES

RECOMMENDATION:

Staff recommends that the City Council waive further reading and adopt an ordinance amending Title 15 of the Atherton Municipal Code which will, in turn, adopt current building, electrical, plumbing, mechanical, energy, historical building, housing and seismic hazards codes, retain the existing abatement of dangerous buildings code and ratify the fire code.

BACKGROUND:

The City Council has previously introduced the ordinance. 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:

/s/ Marc Hynes
Marc G. Hynes
City Attorney

Wendé C. Protzman
Wendé C. Protzman
Interim City Manager

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF ATHERTON AMENDING TITLE 15 OF THE ATHERTON MUNICIPAL CODE, REPEALING ORDINANCE 537, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE, AND ADOPTING CURRENT BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING CODE, HOUSING CODE, AND SEISMIC HAZARDS CODES, RETAINING EXISTING ABATEMENT OF DANGEROUS BUILDINGS CODE, AND RATIFYING FIRE CODE

The City Council of the Town of Atherton does ordain as follows:

Section 1. Chapter 15.04 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.04 is added to read as follows:

Chapter 15.04

BUILDING CODE

Sections:

- 15.04.010** **Adopted.**
- 15.04.020** **Permit and license requirements.**
- 15.04.025** **Permit Fees.**
- 15.04.030** **Fee Disposition.**
- 15.04.040** **Cash Deposits – Early Utility Hookups**
- 15.04.045** **Cash Deposits – Road Damage.**

15.04.010 **Adopted.**

That a certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Building Code", Volumes 1 and 2, as published by the International Codes Council and adopted by the California Building Standards Commission as Title 24 California Code of Regulations, is adopted as the Building Code of the Town for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the Town; control of excavation and grading; providing for the issuance of permits and collection of fees therefore; providing penalties for violation of such code; and each and all of the regulations, provisions, penalties of such 2007 California Building Code, are referred to, adopted and made a part of this chapter as if fully set out in this chapter, subject to the amendments, deletions and additions thereto, as provided in this chapter.

15.04.015 Administration.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as “Appendix Chapter 1 – Administration” of the 2007 California Building Code is adopted for the purpose of providing for the administration and enforcement of the technical codes adopted by the Town; and each and all of the regulations, provisions and penalties of Appendix Chapter 1 are referred to adopted and made a part of this Chapter as if fully set out in this Chapter, subject to the amendments, deletions, and additions thereto, as provided in this Chapter.

15.04.020 Permit and license requirements.

No building permit shall be issued to any contractor unless that contractor holds a business license duly issued by the Town. The Town may refuse to grant a final inspection of a structure until such time as all subcontractors and contractors working on the structure have obtained all necessary permits and licenses from the Town.

15.04.025 Permit Fees

Permit fees are as established and amended by resolution of the City Council.

15.04.030 Strong Motion Instrumentation Fee.

There is a Strong Motion Instrumentation Fee collected by the Town on all permits for construction or alterations of residential and commercial buildings, (excluding plumbing, electrical or mechanical permits) and this fee is submitted to the State Department of Conservation.

15.04.040 Cash Deposit – Early Utility Hookup.

Every person who makes application for a temporary certificate of occupancy or makes application to receive gas and electrical service prior to the final inspection shall post a deposit or cash bond of five thousand dollars. The deposit or cash bond shall be returned after a satisfactory final inspection is made. Any costs related to work performed by Town staff to effect compliance with the intent of this section shall be deducted from this deposit.

15.04.045 Cash Deposit – Road Damage.

Every person who makes application for an excavation permit in excess of 500 cubic yards and where the excavated material is to be hauled on the public roads shall post a deposit or cash bond of five thousand dollars. The deposit or cash bond shall be returned after a satisfactory final inspection is made, and where no road damage has occurred. Any costs related to work performed by Town staff to effect repair of damaged roads shall be deducted from this deposit.

Section 2. Chapter 15.08 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.08 is added to read as follows:

Chapter 15.08

ELECTRICAL CODE

Sections:

15.08.010 Adopted.

15.08.020 Permit Fees.

15.08.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Electrical Code," including Appendix Chapters as published by the National Fire Protection Association and adopted by the California Building Standards Commission as Title 24, California Code of Regulations, Part 3, is adopted as the Electrical Code of the Town for the purpose of providing for the issuance of permits for the installation or alteration of electrical systems, and the collection of fees for the same, defining certain terms, establishing minimum regulations for the installation or alterations or additions or repairs of electrical systems and the inspection thereof, providing penalties for its violation; and each and all of the regulations, provisions, penalties, conditions and terms of such 2007 California Electrical Code, are referred to, adopted and made part of this chapter as if fully set out in this chapter, subject to the amendments, deletions and additions thereto, as provided in this chapter.

15.08.020 Permit Fees

Permit fees are as established and amended by resolution of the City Council.

Section 3. Chapter 15.12 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.12 is added to read as follows:

Chapter 15.12

PLUMBING CODE

Sections:

15.12.010 Adopted.

15.12.020 Permit Fees.

15.12.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Plumbing Code," including Appendix Chapters as published by the International Association of Plumbing and Mechanical officials, and adopted by the California Building Standards Commission as Title 24, California Code of Regulations, Part 5, is adopted as the Plumbing Code of the Town, requiring a permit for the installation or alteration of plumbing and drainage systems; defining certain terms; establishing minimum regulations for the installation or alteration or addition or repairs of plumbing and drainage systems and the inspection thereof, providing penalties for its violation; and each and all of the regulations, provisions, penalties, conditions and terms of the 2007 California Plumbing Code are referred to, adopted and made a part of this chapter, as if fully set out in this chapter, subject to the amendments, deletions, and additions thereto, as provided in this chapter.

15.12.020 Permit Fees.

Permit fees are as established and amended by resolution of the City Council.

Section 4. Chapter 15.16 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.16 is added to read as follows:

Chapter 15.16

MECHANICAL CODE

Sections:

15.16.010 **Adopted.**

15.16.020 **Permit Fees.**

15.16.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Mechanical Code," including Appendix Chapters, as published by the International Association of Plumbing and Mechanical officials, and adopted by the California Building Standards Commission as Title 24, Part 4, California Code of Regulations, is adopted as the Mechanical Code of the Town in order to provide complete requirements for the installation and maintenance of heating, ventilating, cooling and refrigeration systems; and each and all of the regulations, provisions, and penalties of such 2007 California Mechanical Code, are referred to, adopted and made a part of this chapter as if fully set out in this chapter, subject to the amendments, deletions and additions thereto, as provided in this chapter.

15.16.020 **Permit Fees.**

Permit fees are as established and amended by resolution of the City Council.

Section 5. Chapter 15.18 of the Atherton Municipal Code is hereby added to read as follows:

Chapter 15.18

ENERGY CODE

Sections:

15.18.010 **Adopted.**

15.18.020 **Permit Fees.**

15.18.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Energy Code", including Appendix Chapters, as published by the California Building Standards Commission and identified as California Code of Regulations Title 24, Part 6, is adopted as the Energy Code for the Town regulating energy efficiency and conservation for all buildings and structures.

15.18.020 Permit Fees.

Permit fees are established and amended by resolution of the City Council.

Section 6. Chapter 15.20 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.20 is added to read as follows:

Chapter 15.20

HISTORICAL BUILDING CODE

Sections:

15.20.010 Adopted.

15.20.020 Permit Fees.

15.20.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "2007 California Historic Buildings Code," as published by the International Code Council, and adopted by the California Building Standards Commission as California Code of Regulations Title 24, Part 8, regulating construction in an effort to preserve the character and nature of Historical Buildings within the Town.

15.20.20 Permit Fees.

Permit fees are as established and amended by resolution of the City Council.

Section 7. Chapter 15.22 is hereby added to read as follows:

Chapter 15.22

FIRE CODE

15.22.010 Ratified.

15.22.020 Permit Fees.

15.22.010 Ratified.

The Menlo Park Fire Protection District Ordinance Number 30 entitled "District Prevention Code" which adopts the 2006 International Fire Code with necessary California amendments and is known generally as the 2007 California Fire Code and Local Amendments and which has been adopted by the Menlo Park Fire Protection District Board is hereby ratified.

15.22.020 Permit Fees.

Permit fees are established by the Board of the Menlo Park Fire Protection District.

Section 8. Chapter 15.24 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.24 is added to read as follows:

Chapter 15.24

HOUSING CODE

Sections:

15.24.010 Adopted.

15.24.020 Permit Fees.

15.24.010 Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "Uniform Housing Code, 1997 Edition," published by the International Conference of Building Officials, adopting only Chapters 4, 5 and 6, and Sections 701.2 and 701.3 are adopted as the Housing Code of the Town to provide minimum standards to safeguard life, limb, health, property and public welfare by regulating and controlling the use and occupancy, location and maintenance of all residential buildings and structures within the Town; and each and all of the above-designated regulations, provisions, and penalties of such Uniform Housing Code, 1997 Edition, are referred to, adopted and made a part of this chapter as if fully set out in this chapter, subject to the amendments, deletions and additions thereto, as provided in this chapter.

15.24.020 Permit Fees.

Permit fees are as established and amended by resolution of the City Council.

Section 9. Chapter 15.28 of the Atherton Municipal Code is hereby repealed and a new Chapter 15.28 is added to read as follows:

Chapter 15.28

DANGEROUS BUILDING CODE

Sections:

15.28.010 Adopted

15.28.020 Permit Fees.

15.28.010 Adopted

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the "Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition," published by the International Conference of Building Officials, is adopted by the City Council of the Town, for the purpose of providing a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by the Building Code, Housing Code, or otherwise available at law, whereby buildings or structures which, from any cause, endanger the life, limb, health, morals, property, safety or welfare of the

general public or their occupants may be required to be repaired, vacated or demolished; and each and all of the regulations, provisions, penalties of such Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, are referred to, adopted and made a part of this chapter as if fully set out in this chapter, subject to the amendments, deletions and additions thereto, as provided in this chapter.

15.28.020 Permit Fees

Permit fees are as established and amended by resolution of the City Council.

Section 10. A new Chapter 15.44 is hereby added to read as follows:

Chapter 15.44

SEISMIC HAZARD CODE

15.44.010 Adopted.

15.44.020 Permit Fees.

15.44.010. Adopted.

That certain document, one copy of which is on file in the office of the Building Official of the Town, being marked and designated as the “2007 California Existing Buildings Code” Appendix Chapter A1, as published by the International Code Council and adopted by the California Building Standards Commission, as California Code of Regulations Title 24, Part 10, is adopted as the code for the maintenance of existing buildings and structures throughout the Town that are constructed of Unreinforced Masonry and establishing a program for the same.

15.44.020. Permit Fees.

Permit fees are as established and amended by resolution of the City Council. INCLUDE?

Section 11 Except as hereby amended, said Atherton Municipal Code as amended shall be and remain in full force and effect.

Section 12. A public hearing is hereby set for December _____, 2007 for consideration of adoption of this ordinance. The City Clerk is directed to publish in a newspaper of general circulation once a week for two successive weeks prior to the public hearing notice of said hearing. At the time of the initial notice, copies of the codes to be adopted shall be made available for inspection in the Office of the City Clerk where they are to be on file and to remain on file through and including the date of adoption of this ordinance.

Section 13. If any section, subsection, sentence, clause, phrase, or portion of this ordinance 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 ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 14. This Ordinance shall be posted in at least three public places within the Town of Atherton and shall be effective from and after thirty (30) days following its adoption.

* * * * *

I hereby certify that the foregoing ordinance was introduced at a special meeting of the City Council of the Town of Atherton held on November 14, 2007, and was adopted by said City Council at a regular meeting held on December 19, 2007, by the following roll call vote:

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

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
WENDÉ PROTZMAN, INTERIM CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF DECEMBER 19, 2007

**SUBJECT: PERFORMANCE REPORT OF TOWN LANDSCAPING CONTRACT
WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE**

RECOMMENDATION:

Staff recommends that Commercial Environmental Landscape (CEL) is retained to continue performing landscaping duties in various locations in the Town of Atherton.

BACKGROUND:

CEL was hired as the lowest bidding contractor in August 2002 to perform Landscaping duties in/around 23 different locations in Atherton. In 2006, it was brought into question as to whether the company was successfully performing the duties as required by contract. The Town's Public Works Superintendent was asked to closely monitor the contracted agreement of spot performance and to report on those findings.

ANALYSIS:

After discussions by the Superintendent with senior CEL representatives, CEL adequately performed up to its scheduled maintenance patterns during the timeframe of December 5, 2006 to July 11, 2007. During this third report covering the timeframe from July 11, 2007 to December 13, 2007, CEL landscaping has adequately performed up to their duties as required by our current contract.

It has become necessary to adjust some of their weekly performance duties to gain a foothold on some of the inherent landscape problems that have occurred that are not necessarily due to lack

of performance by CEL. An example of this would be the acute dieback that has been taking place of some of the native landscaping around the Town Center and El Camino Real. Most of this has occurred to Manzanita, Cistus and Ceanothus varieties of landscape planted in our planting strips. This dieback appears to have been caused by natural causes not associated with landscape practices, although water patterns were reduced amongst first sightings of dieback. This material needed to be culled out of our plantings, and this delayed some weekly duties along Middlefield Road and in island plantings in West Atherton and near the Circus Club.

During this timeframe, the Town received only one complaint regarding maintenance issues in a Town-landscaped area. That area was along the Lloyd Park entrance from Fair Oaks Ave. The residents recently added holiday wreaths to the entry gates and requested an additional "sprucing up" of the gated area for the holidays. This was done the day following the request.

FISCAL IMPACT:

CEL is performing the duties for the same price in July 2007 as won them low-bidder in August 2002. That price is \$30,686.22 annually, or \$2,555.85 per month for the care and maintenance of approximately 12.27 acres of landscaped area.

Prepared by:

Approved by:

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

Wende Protzman
Interim City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: CITY COUNCIL MEETING OF DECEMBER 19, 2007

**SUBJECT: REVIEW AND APPROVAL OF PROPOSAL FROM PMC FOR EXPANDED
SCOPE OF SERVICES AND BUDGET FOR TOWN OF ATHERTON
ZONING CODE UPDATE**

RECOMMENDATION:

Staff and the General Plan Committee recommend that the City Council authorize PMC's expanded scope of services and budget for the zoning code update.

INTRODUCTION:

The City Council authorized Pacific Municipal Consulting (PMC) to prepare an update to the Zoning Code (Title 17 of the Atherton Municipal Code). The scope of services included one public outreach meeting and two public hearings (one Planning Commission hearing and one City Council hearing). The City Council held a study session on October 29, 2007, to provide initial review of the document. At that meeting, the Council referred the draft zoning code update to the General Plan Committee for review and directed staff and the consultant to expand the opportunity for public review.

The General Plan Committee, at its November 13, 2007, meeting, reviewed the draft zoning code and provided direction to staff and the consultant regarding the need for expanded public outreach meetings as well as outreach materials. The General Plan Committee, at its December 12, 2007, meeting, reviewed the attached expanded scope of services and recommended the City Council approve.

ANALYSIS:

PMC has prepared the attached expanded scope of services and budget for the zoning code update based on direction provided by the City Council and the General Plan Committee. Based on PMC's professional expertise, they recommend a series of workshops that are structured to provide meaningful public involvement in an expedited fashion (see attached proposal for details). PMC staff would also utilize their public affairs specialist and graphics team to prepare the meeting invitations and fact sheets.

In reviewing the proposed scope, Committee members stressed the importance of clear and concise outreach materials that convey any substantive changes to the code. Committee members also expressed the importance of the public workshops being well prepared and engaging for the participants. Committee members were supportive of PMC's public workshop approach and appreciated the use of public affairs and graphics specialists.

FISCAL IMPACT:

PMC's contract was approved by the City Council at \$64,000. The expanded scope is proposed at \$29,020 (contract is billed based on time and materials), with a carryover from existing scope of \$5,000, for a total of \$24,020.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders
Lisa Costa Sanders
Deputy Town Planner

Wendé C. Protzman
Interim City Manager

Attachment - PMC proposal dated December 6, 2007; Expanded Scope of Services and Budget for the Town of Atherton Zoning Code Update



MEMO

To: Lisa Costa Sanders, Deputy Town Planner
TOWN OF ATHERTON

From: Pam Johns, AICP
Christopher Jordan

Cc:

Date: December 14, 2007

Re: Expanded Scope of Services and Budget for the Town of Atherton Zoning Code Update

Project Understanding and Approach

Based on recent communications with decision makers and staff, it is our understanding that the Town is looking to expand consultant services for additional public participation and likely code revisions in the update of the Zoning Code. The objective of the expanded public participation is to allow the community an opportunity to fully discuss and investigate relevant zoning issues in a public forum and therefore facilitate public buy-in of the proposed amendments prior to public hearings.

In order to ensure a successful outcome, PMC is proposing a series of public workshops that are carefully structured to provide meaningful public involvement in an expedited fashion. The plan calls for a public workshop series, led by a team of both Town and consultant staff. The PMC team will also prepare a corresponding series of fact sheets and invitation mailings to invite members of the public to the events and welcome and encourage their participation in the process.

The following items represent key components of the work scope:

I. Role of the General Plan Committee

The participation of the General Plan Committee is critical to the success of this process. The structure of the committee, with Council members, Planning Commissioners, and members of the general public, provides a representative cross-section of interests and viewpoints within the Town. While we are recommending the public workshops would be facilitated and hosted by the staff-consultant team, the Committee will be invited and encouraged to attend and to provide valuable input. Through this process, the Committee can hear the comments and concerns of the public prior to their formal meeting for recommendation to the Planning Commission. It is our expectation moving forward that they will take an advocacy role in the proposed changes to the Zoning Code.

2. Involvement of Public Affairs Team

As part of the expanded scope, PMC's Public Affairs staff will join the project team. Their role and responsibility will be focused on helping coordinate outreach to the public, including noticing of meetings, creation of outreach materials, and communication with the local press. They will also assist in planning and facilitating the public workshops, ensuring that the meetings are productive, informative, and fun.

3. Public Hearings

Through the public workshop process, the majority of the community's issues and concerns will be discussed and appropriate and effective solutions reached. This will allow the public hearing process to be streamlined and efficient. Decision makers will be presented with a revised draft Zoning Code that incorporates community-supported solutions, thereby reducing the potential for divisive hearings.

Scope of Work

Public Outreach and Workshops

PMC recommends three public workshops at which key issues will be discussed in a format that allows for a question and answer period with the attendees. Ideally, the meetings will be scheduled approximately a month apart in February, March, and April. Collateral materials will be developed to both promote the meetings and encourage attendance. The materials will also play a key role in conveying the City's messaging on any key or potentially contentious issues before and after the meetings.

1. Meeting Invitations and Fact Sheets. PMC will develop invitations and fact sheets for each of the public workshops. These materials will not only advertise the meetings but will inform the public about the Zoning Code, the update process, and key issues and topics of interest to residents, designers, builders, and other relevant stakeholders to be discussed at the meetings. Each fact sheet will focus on the topics to be discussed at that meeting. The fact sheets will be designed to effectively communicate concepts and issues in clear, concise text that the average resident can understand. Graphics and other diagrams will be used to help communicate complex topics as appropriate.

2. Public Workshops. A series of three public workshops will be held. The first two meetings will focus on topics that are of interest and concern to residents, designers, builders, and other key stakeholders (e.g., building height measurement, basements, lightwells). Participants will be asked to provide information and feedback on the topics including concerns and preference for possible solutions. The third meeting will be a feedback opportunity for the public. Changes drafted by the consultant, based upon the public input in the first two meetings, will be presented and participants will be asked if the draft changes address their concerns.

At the December 12 General Plan Committee meeting, the consultant team will present a tentative list of topics to be covered at the meetings. At that time, the Committee will be asked to provide input and direction on additional topics to be covered. It is envisioned that the topics will focus on development standards, rather than on administrative aspects.

Revised Public Draft

At the completion of the public workshops, PMC will prepare a revised public draft Zoning Code. This document will incorporate the comments and community-identified solutions from the workshops.

General Plan Committee Meeting

The General Plan Committee will review the revised public draft Zoning Code and provide feedback to the consultant team. Ultimately, the Committee will make a recommendation the Planning Commission on whether or not to adopt the draft Code. Because of the success of the public workshops, it is envisioned that only one General Plan Committee meeting will be necessary.

Cost Estimate

The following cost estimate is broken down by project task and is based on existing billing rates.

Total Estimated Budget: \$29,020

Carryover from existing scope: \$5,000

Total: \$24,020

Task	Task Description											Indirect Costs	Totals	
		Project Manager		Senior Planner		Associate Planner		Public Affairs Specialist		Graphics			Hours	Costs
		Hours	\$120	Hours	\$100	Hours	\$85	Hours	\$100	Hours	\$65			
Task A	Public Outreach and Workshops													
1	Meeting Invitations and Fact Sheets*													
	Initial Design and layout	1.0	\$120	0.0	\$0	1.0	\$85	4.0	\$400	10.0	\$650	\$50	16.0	\$1,305
	Content and layout - fact sheet #1	1.0	\$120	0.0	\$0	4.0	\$340	12.0	\$1,200	26.0	\$1,690	\$50	43.0	\$3,400
	Content and layout - fact sheet #2	1.0	\$120	0.0	\$0	4.0	\$340	12.0	\$1,200	26.0	\$1,690	\$50	43.0	\$3,400
	Content and layout - fact sheet #3	1.0	\$120	0.0	\$0	4.0	\$340	12.0	\$1,200	26.0	\$1,690	\$50	43.0	\$3,400
	<i>Subtotal</i>	<i>4.0</i>	<i>\$480</i>	<i>0.0</i>	<i>\$0</i>	<i>13.0</i>	<i>\$1,105</i>	<i>40.0</i>	<i>\$4,000</i>	<i>88.0</i>	<i>\$5,720</i>	<i>\$200</i>	<i>145.0</i>	<i>\$11,505</i>
2	Public Workshops (3x)**	20.0	\$2,400	20.0	\$2,000	30.0	\$2,550	30.0	\$3,000	20.0	\$1,300	\$250	120.0	\$11,500
Task B	Revised Public Draft Zoning Code	4.0	\$480	20.0	\$2,000	20.0	\$1,700	0.0	\$0	5.0	\$325		49.0	\$4,505
Task C	General Plan Committee Meeting	4.0	\$480	3.0	\$300	8.0	\$680	0.0	\$0	0.0	\$0	\$50	15.0	\$1,510
Total Project Hours		32.0		43.0		71.0		70.0		113.0			329.0	
Total Project Costs			\$3,840		\$4,300		\$6,035		\$7,000		\$7,345	\$500		\$29,020
Carryover from existing scope														\$5,000
Total														\$24,020

Notes: * Includes generation of template, creation of document content, layout, and two rounds of edits with Town staff for each fact sheet.

** Includes meeting preparation (agenda, handouts, presentation), collateral materials (sign in sheets, comment cards), meeting attendance, and coordination with Town staff.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF DECEMBER 19, 2007

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH
KIKUCHI & ASSOCIATES FOR LANDSCAPE CONSTRUCTION
DOCUMENT DESIGN SERVICES FOR THE HOLBROOK-PALMER
PARK MAIN HOUSE LAWN, PLAYGROUND RESTROOMS AND
TENNIS COURT BUFFER LANDSCAPE PROJECT, IN AN AMOUNT
NOT TO EXCEED \$32,700 PLUS A TEN PERCENT CONTINGENCY,
FOR A TOTAL AUTHORIZATION OF \$35,970.**

RECOMMENDATION:

Accept the proposal and authorize the Interim City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape construction document design services for the Holbrook-Palmer Park Main House Lawn, Playground Restrooms and Tennis Court Buffer Landscape Project in an amount not to exceed \$32,700, plus a 10% contingency, for a total authorization of \$35,970.

BACKGROUND:

Kikuchi & Associates was selected by a qualifications based selection process to provide conceptual design services and a PSA for these services was awarded in May 2007. The services under that PSA have been completed and conceptual plans for the three projects have been prepared. Copies are attached.

The Park & Recreation Commission has reviewed the conceptual plans and recommended approval at its November 2007 meeting. The conceptual plans will be presented to the City Council at the beginning of the December 19, 2007, Council meeting.

ANALYSIS:

Kikuchi & Associates prepared preliminary construction cost estimates for the three projects, which are attached. The total estimated construction cost for the three projects is \$358,926. Kikuchi also prepared an estimate for design services to prepare the detailed construction documents for the three projects. Their estimate is \$32,700, or 9.1% of the construction estimate. This is a reasonable final design fee estimate, although \$12,700 more than the \$20,000 staff originally budgeted before the conceptual designs were begun.

FISCAL IMPACT:

Parcel Tax funds in the amount of \$20,000 are budgeted for this project in FY 2007-08. An additional \$20,000 is budgeted for Town Center landscaping. The conceptual designs for the Town Center landscaping are not yet underway, and staff recommends that the Town Center landscaping final design budget be used for the Park landscaping projects and that the Town Center Landscaping be re-budgeted in FY 2008-09.

The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$32,700. A 10% contingency of \$3,270 would bring the total authorization to \$35,970, which is \$4,030 under the combined landscaping design budgets.

Prepared by:

Approved by:

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

Wendé C. Protzman
Interim City Manager

Attachments: Professional Services Agreement
Conceptual Plans
Construction Cost Estimates

PROFESSIONAL SERVICES AGREEMENT FOR HOLBROOK-PALMER PARK
MAIN HOUSE LAWN, PLAYGROUND RESTROOMS AND TENNIS COURT BUFFER
LANDSCAPE CONSTRUCTION DOCUMENTS DESIGN SERVICES

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and Kikuchi & Associates, hereinafter referred to as the "Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the City to perform landscape construction documents design services in connection with the project designated as Holbrook-Palmer Park Main House Lawn, Playground Restrooms and Tennis Court Buffer Landscape

2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.

3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 120 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.

4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:

a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$32,700 without express written modification of the agreement signed by the City.

b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.

c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.

e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.

8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.

10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

12. Non-Waiver. Waiver by the City of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

13. Termination.

a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.

b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

14. Notices. Notices to the Town of Atherton shall be sent to the following address:

Duncan Jones, Atherton Public Works Director
91 Ashfield Road
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

Christopher Kankel, Vice President
Kikuchi & Associates
730 Mill Street
Half Moon Bay, CA 94019

15. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both City and Consultant.

DATED this _____ day of _____, 200_.

Town of Atherton

Consultant

By _____
City Manager

By _____

Approved as to Form

By _____
City Attorney

EXHIBIT "A" & "B-1"

November 27, 2007



Kikuchi & Associates
Landscape Architecture
Site Planning

Duncan Jones, PE
Director of Public Works
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

RE: Landscape Architectural Construction Document Services – Holbrook-Palmer Park

Dear Duncan,

It has been a pleasure to work with you on the Holbrook-Palmer Park landscape improvements. The committee, commission, and public input throughout the design process have been positive, and the experience has been enjoyable. We look forward to our continued working relationship and to the improvements that will take place in the park.

Per your request we have determined our professional fees for documenting the approved designs. Now that we have defined the design and scope of construction, the next step in our process is to commence the Construction Documentation Phase of the project necessary for contractor bidding. Please find this letter a detailed description of our services and fees. Note that our services at this time reflect documenting improvements to the three areas of the park per our three Conceptual Landscape Plans dated 11/7/07 as approved by the Parks and Recreation Commission on November 7, 2007. These three project areas include the fountain installation at the entry lawn, landscape improvements around the children's playground restroom, and landscape screening and improvements between the tennis court and baseball diamond.

CONSTRUCTION DOCUMENTS PHASE: Upon your authorization, we will commence construction documents, necessary for construction bidding purposes, as well as determining a specific quality of construction. These construction documents will consist of:

1. Demolition Plan: indicating existing paving, vegetation and all other site features to be removed, and/or to be retained or relocated.
2. Layout Plan: providing horizontal dimensional control for all exterior elements, including pavement, steps, fountain, benches, walls, etc. with materials and finishes indicated.

Holbrook-Palmer Park, Atherton, CA
Landscape Architectural Services

Page 2 of 3

3. Grading and Drainage Plan: indicating elevation controls on all structures, pavements, drain inlets, etc. and underground piping in order to provide storm drainage and groundwater control.
4. Construction Details: specific sectional and enlarged detailed drawings for such items as concrete paving, fountain base and plumbing, gravel paths, steps, seat walls, drainage items, and other miscellaneous items as necessary to implement construction.
5. Electrical Plan: indicating schematic routing of power for fountain pumps and equipment.
6. Irrigation Plan: indicating head, valves (if necessary), drip system (if applicable), spray system, and hydraulic engineering for line sizes.
7. Planting Plan: specifying plant material botanical names, quantities, sizes, locations, and installation method details.
8. Specifications: written documents identifying materials and execution methods.

During this phase we will meet with you to review these documents and the progress of our drawings at critical stages. We will also be available to attend a bidding administration meeting for the purpose of answering any questions bidders may have.

Our fees for this phase are based upon our estimated personnel time to accomplish the above outlined scope of work. At this time we anticipate a total of approximately 340 hours over a four month period of time in order to produce a twenty-seven sheet set of construction documents. We shall invoice our fees monthly for this phase on a time and materials basis based on a lump sum amount of . . . \$32,700.00

Please note that Construction Observation is not included in the above fees. Time, if required, will be determined in the future upon completion of this scope of work.

Fee Schedule

Sr. Principal time	\$135.00/hr.
Jr. Principal time	\$120.00/hr.
Associate time	\$100.00/hr.
Project Manager time	\$90.00/hr.
Draftsman time	\$80.00/hr.
Clerical time	\$45.00/hr.
Reproductions	cost plus 10% handling
Mileage	\$.40/mile

Holbrook-Palmer Park, Atherton, CA
Landscape Architectural Services

Page 3 of 3

Any services not included with the described scope of work, beyond the control of the Landscape Architect are Additional Services to be billed at the hourly rates. Design revisions beyond the scope listed above may result in additional fees. Printing and reproduction costs other than for inner-office use are reimbursable expenses as noted. Billings shall be submitted monthly for the time expended and are due within 30 days or subject to a 1-1/2% interest charge.

Kikuchi & Associates maintains a \$1,000,000 professional liability policy and a \$2,000,000 general office insurance policy.

We are looking forward to working with the Town of Atherton on the Holbrook-Palmer Park improvements. If you have any questions in regards to the process, our fee structure, or any other item as described above, please feel free to call. Please let us know if there is any additional information needed in order for the Town to execute an Agreement.

Sincerely,



Christopher Kankel, ASLA, Vice President
California Registration Number 4051

EXHIBIT "B"
PAYMENT

1. Consultant shall be paid up to \$32,700 as per Exhibit B-1 to complete the scope of work as outline in Exhibit "A".
2. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

Holbrook-Palmer Park

Landscape Improvements

Summary of Area-Specific Design Solutions

December 19, 2007

AREA I – Fountain Placement

Problems:

- fountain needs to be located so it is accessible to all, but not a major park feature
- needs to be kept clean and free of leaf litter – keep maintenance needs to a minimum
- water splash makes surrounding surfaces muddy
- surrounding space needs to be in scale with size and style of fountain
- since removal of fountain, lawn care has been used a lot – continuity of lawn should be maintained

Solutions:

- generally maintains original location and closely follows Master Plan
- connects to existing circulation path for accessibility to all park visitors
- raising fountain reduces amount of litter that can get in water and reduces amount of water that will splash onto surrounding surfaces
- surrounding trees are deciduous and only drop leaves once a year – not continuous as with evergreen trees
- brick and decomposed granite are appropriate materials for time period of fountain

AREA II – Restroom Screening

Problems:

- unsightly as viewed from pavilion and terrace
- need location for new drinking fountain
- surroundings need to be transformed from drab and void to green while maintaining safety and visibility

Solutions:

- access to restrooms is generally the same – just cleaned up
- benches near restroom provide care-givers or siblings a safe place to wait while others use the facility
- additional picnic tables and benches utilize an existing tree and take advantage of an unused space
- drinking fountain is removed from restrooms and is directly accessible to playground
- mass groundcover behind building provides greenery but maintains safe visibility; minimal shrub masses are used to screen view of facility from terrace and pavilion

AREA III – Tennis Court Screening

Problems:

- too much wind from west onto courts
- no significant visual or physical separation between tennis court and baseball field
- existing soil does not support plant growth well

Solutions:

- seat wall prevents drainage and run-off onto tennis courts
- soil berms in conjunction with new seat wall allow for import top soil as a new, better growing medium than existing
- trees on berms help knock down wind on courts as well as provide shade
- soil berms provide play/seating areas for siblings of baseball players; also provides seating for tennis viewing

FOUNTAIN PLACEMENT CONCEPTUAL PLAN

HOLBROOK - PALMER PARK

150 WATKINS AVENUE



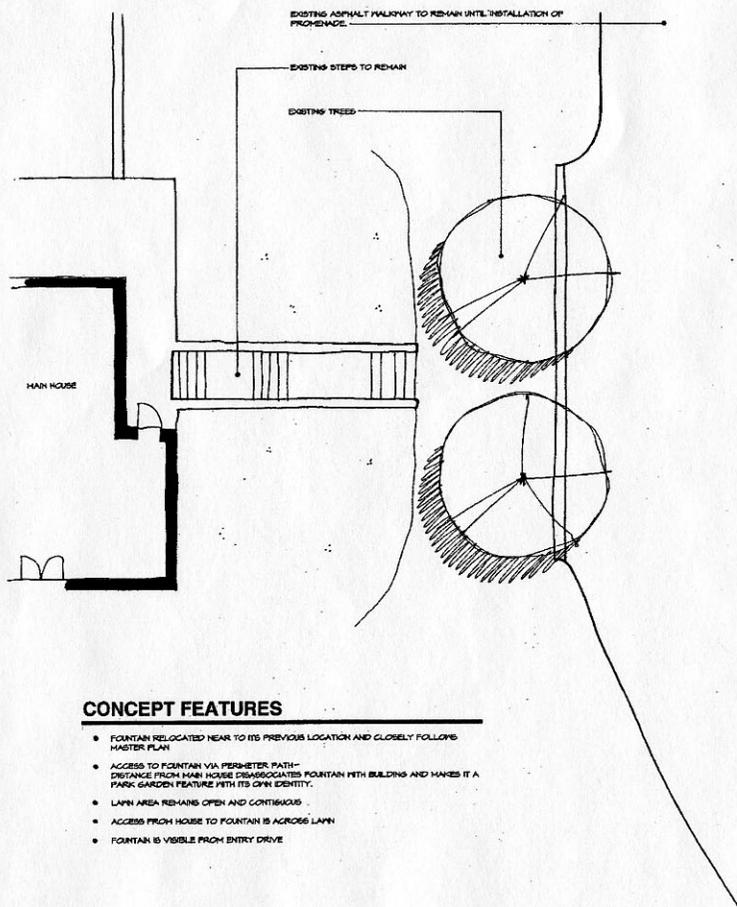
DECEMBER 19, 2007



ATHERTON, CA

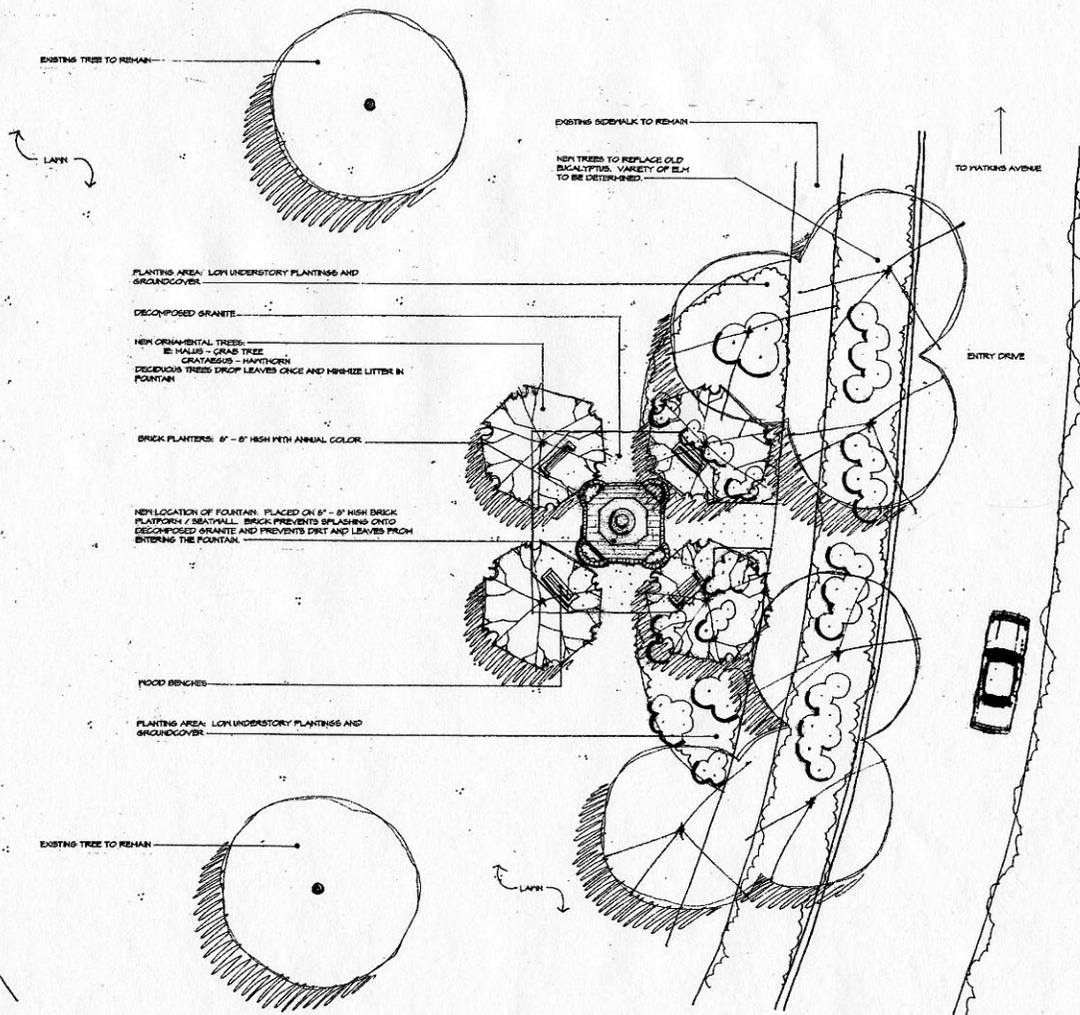


SCALE: 1/8" = 1'-0"



CONCEPT FEATURES

- FOUNTAIN RELOCATED NEAR TO ITS PREVIOUS LOCATION AND CLOSELY FOLLOWS MASTER PLAN
- ACCESS TO FOUNTAIN VIA PERIMETER PATH- DISTANCE FROM MAIN HOUSE SUBORDINATES FOUNTAIN WITH BUILDING AND MAKES IT A PARK GARDEN FEATURE WITH ITS OWN IDENTITY.
- LAWN AREA REMAINS OPEN AND CONTIGUOUS
- ACCESS FROM HOUSE TO FOUNTAIN IS ACROSS LAWN
- FOUNTAIN IS VISIBLE FROM ENTRY DRIVE



PLAYGROUND BATHROOM SCREENING CONCEPTUAL PLAN

HOLBROOK - PALMER PARK

150 WATKINS AVENUE

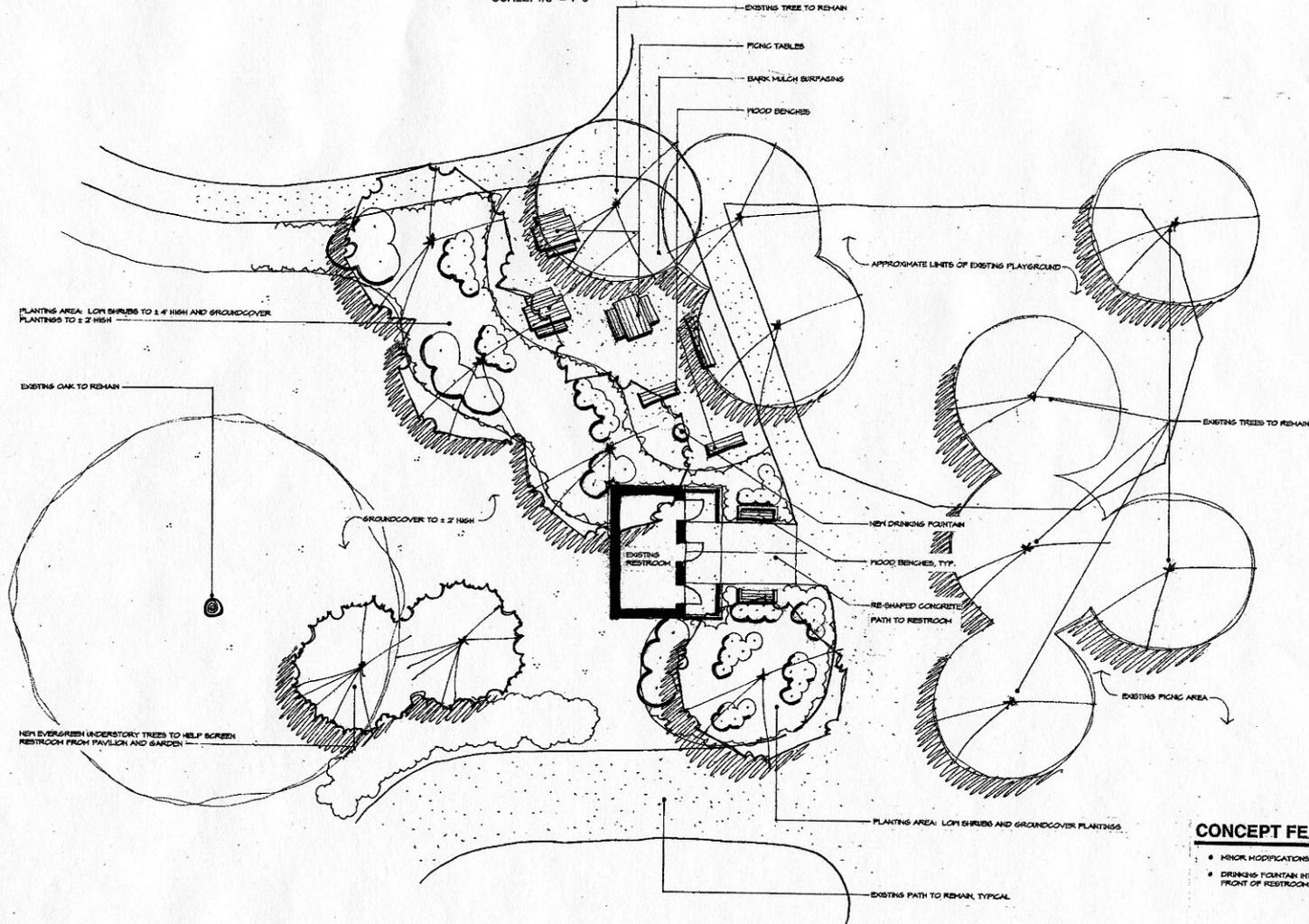


DECEMBER 19, 2007

ATHERTON, CA



SCALE: 1/8" = 1'-0"



- CONCEPT FEATURES**
- MINOR MODIFICATIONS TO RESTROOM PAVING.
 - DRINKING FOUNTAIN INTEGRATED WITH PICNIC TABLE AREA AND REMOVED FROM FRONT OF RESTROOM.

TENNIS COURT SCREENING CONCEPTUAL PLAN

HOLBROOK - PALMER PARK

150 WATKINS AVENUE



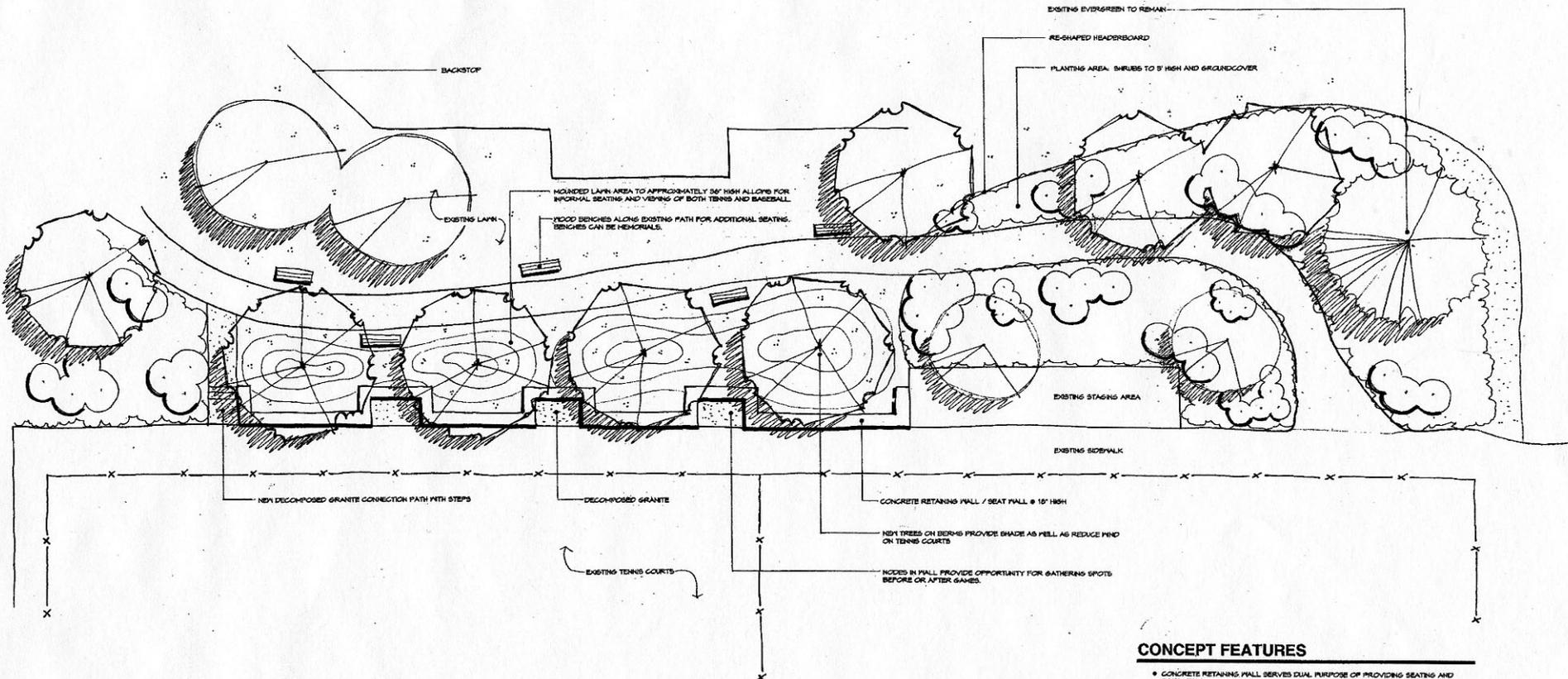
DECEMBER 19, 2007



ATHERTON, CA



SCALE: 1/8" = 1'-0"



CONCEPT FEATURES

- CONCRETE RETAINING WALL SERVES DUAL PURPOSE OF PROVIDING SEATING AND RAISING GRADE TO PROVIDE IMPORT SOIL FOR LAWN AND TREE PLANTINGS.
- IMPORT OF SOIL FOR BERMS PROVIDE BETTER SOIL THAN EXISTING.



Kikuchi & Associates CONSTRUCTION COST ESTIMATE

Landscape Architecture
Site Planning

730 Mill Street
Half Moon Bay, CA 94019
(650) 726-7100 Fax (650) 726-7677

HOLBROOK-PALMER PARK LANDSCAPE IMPROVEMENTS

11/28/07

ITEM	QTY	UNIT COST	ITEM TOTAL	SUBTOTAL
FOUNTAIN INSTALLATION				
Demolition				
Remove lawn	1,504 sf	\$1.00	\$1,504.00	
Remove eucalyptus trees	3 ea	\$1,000.00	\$3,000.00	
Misc. clean up, prep.	4,150 sf	\$0.50	\$2,075.00	\$6,579.00
Construction				
Fine grading	4,150 sf	\$1.00	\$4,150.00	
Decomposed granite paving	610 sf	\$4.00	\$2,440.00	
Concrete base for fountain	109 sf	\$25.00	\$2,725.00	
Brick surfacing around fountain	71 sf	\$40.00	\$2,840.00	
Brick planter walls (9" high)	32 lf	\$60.00	\$1,920.00	
New benches	4 ea	\$800.00	\$3,200.00	
Headerboard	183 lf	\$5.00	\$915.00	
Fountain equipment vault		allow	\$3,000.00	
Install & plumb fountain		allow	\$12,500.00	
Electrical		allow	\$7,500.00	\$41,190.00
Planting & Irrigation				
Turf (sod)	570 sf	\$2.50	\$1,425.00	
Trees, 24" box	5 ea	\$750.00	\$3,750.00	
Trees, 15 gallon	4 ea	\$300.00	\$1,200.00	
Soil preparation	3,335 sf	\$0.75	\$2,501.25	
Shrub and groundcover planting area	2,765 sf	\$6.00	\$16,590.00	
Bark mulch	2,765 sf	\$0.50	\$1,382.50	
Irrigation, new	3,335 sf	\$1.50	\$5,002.50	
Modify existing turf irrigation	1,385 sf	\$1.00	\$1,385.00	\$33,236.25
			Subtotal:	\$81,005.25
			10% contingency	\$8,100.53
			20% profit, overhead, general conditions	\$16,201.05
			Area Total:	\$105,306.83

ITEM	QTY	UNIT COST	ITEM TOTAL	SUBTOTAL
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PLAYGROUND BATHROOM SCREENING

Demolition

Saw cut existing concrete	11 lf	\$25.00	\$275.00	
Remove portion of existing concrete	33 sf	\$1.50	\$49.50	
Remove plantings	132 sf	\$1.50	\$198.00	
Misc. clean up, prep.	8,013 sf	\$0.50	\$4,006.50	\$4,529.00

Construction

Fine grading	8,013 sf	\$1.00	\$8,013.00	
Concrete paving	114 sf	\$20.00	\$2,280.00	
Install (existing) drinking fountain		allow	\$1,000.00	
Water line to drinking fountain	22 lf	\$25.00	\$550.00	
Benches	5 ea	\$800.00	\$4,000.00	
Picnic tables	3 ea	\$2,000.00	\$6,000.00	
Headerboard	233 lf	\$5.00	\$1,165.00	\$23,008.00

Planting & Irrigation

Trees, 24" box	6 ea	\$750.00	\$4,500.00	
Soil preparation	8,013 sf	\$0.75	\$6,009.75	
Shrub planting area	1,933 sf	\$5.00	\$9,665.00	
Groundcover planting area	6,080 sf	\$3.00	\$18,240.00	
Fibar wood mulch surfacing	1,210 sf	\$4.00	\$4,840.00	
Bark mulch	8,013 sf	\$0.50	\$4,006.50	
Irrigation	8,013 sf	\$1.50	\$12,019.50	\$59,280.75

	Subtotal:	\$86,817.75
	10% contingency	\$8,681.78
	20% profit, overhead, general conditions	\$17,363.55
	Area Total:	\$112,863.08

ITEM	QTY	UNIT COST	ITEM TOTAL	SUBTOTAL
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TENNIS COURT SCREENING

Demolition

Remove d.g. path	92 sf	\$1.00	\$92.00	
Remove plantings	3,219 sf	\$1.50	\$4,828.50	
Misc. clean up, prep.	6,279 sf	\$0.50	\$3,139.50	\$8,060.00

Construction

Fine grading	6,279 sf	\$1.00	\$6,279.00	
Concrete retaining wall, 18" high	150 lf	\$175.00	\$26,250.00	
Drainage	150 lf	\$15.00	\$2,250.00	
Decomposed granite surfacing	208 sf	\$4.00	\$832.00	
Steps for d.g. path	15 lf	\$30.00	\$450.00	
Soil import for mounded areas	90 cy	\$50.00	\$4,500.00	
Benches	5 ea	\$800.00	\$4,000.00	
Headerboard	59 lf	\$5.00	\$295.00	\$44,856.00

Planting & Irrigation

Trees, 24" box	8 ea	\$750.00	\$6,000.00	
Soil preparation	6,279 sf	\$0.75	\$4,709.25	
Shrub and groundcover planting area	4,340 sf	\$6.00	\$26,040.00	
Turf (sod)	1,940 sf	\$2.50	\$4,850.00	
Bark mulch	4,340 sf	\$1.00	\$4,340.00	
Irrigation	6,279 sf	\$1.50	\$9,418.50	\$55,357.75

	Subtotal:	\$108,273.75
	10% contingency	\$10,827.38
	20% profit, overhead, general conditions	\$21,654.75
	Area Total:	\$140,755.88
	Project Total:	\$358,926

These costs are preliminary for feasibility purposes only and are subject to change depending upon design refinement, time of construction, and economic climate. These costs are general guidelines based on design concepts only, and are not to be construed as actual bid or construction costs. These costs do not include soft costs such as permits, engineering, or processing.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF DECEMBER 19, 2007

**SUBJECT: APPROVAL OF AGREEMENT - REACT TASK FORCE
(RAPID ENFORCEMENT ALLIED COMPUTER TEAM)**

RECOMMENDATION:

Staff recommends that the City Council authorize the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.

BACKGROUND:

The Town has previously agreed to enter into this agreement with a number of participating agencies including the San Mateo County Sheriff's Office; the Internal Revenue Service and Federal Bureau of Investigation; as well as the California Department of Justice relating to protection from and prosecution of high technology/cyber crimes and identity thefts.

The agreement has recently been revised to change the administering agency to the Santa Clara County District Attorney's Office. The agreement, as revised is attached as an exhibit. As the REACT Task Force is principally established to coordinate applicable investigations, the agreement makes clear that employees of participating agencies are not employees of the Task Force. They remain subject to the direction and control of their respective agency.

In view of the Town's past commitment to the detection and prosecution of high technology crimes and identity theft issues, and its previous approval of the agreement, it is appropriate to enter into the agreement.

FISCAL IMPACT:

The Town has previously developed a cyber crime/identity theft function in the Police Department. By entering this agreement, no additional impacts are anticipated.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

Attachment

REACT (Rapid Enforcement Allied Computer Team) TASK FORCE MEMORANDUM OF UNDERSTANDING

September 18, 2007

I. AUTHORITIES

California Penal Code Sections 13848 through 13848.8 provide the authorities and grant funding for the "High Technology Theft Apprehension and Prosecution Program." REACT is a task force within this Program. The grant administrator of this Program is the California Governor's Office of Emergency Services, Law Enforcement/Victim Services Division (OES). This Memorandum of Understanding (MOU) is required by OES for REACT's grant funding.¹

II. PARTIES

This MOU is a formal agreement between the Grant Recipient, the County of Santa Clara Office of the District Attorney, and the Participating Agencies of REACT.

The Grant Recipient is the agency responsible for the implementation of the grant award.²

The Participating Agencies are government agencies that receive high technology, identity theft, or related funding, including OES grant funding, from the State of California to participate and achieve the goals of REACT.³ The individual Participating Agencies are indicated on the Participating Agency Signatories attached and incorporated by reference hereto.

A federal agency may contribute to REACT pursuant to 28 U.S.C. § 533, 42 U.S.C. § 3771, and 28 C.F.R. § 0.85. Federal Agencies are distinguished from Participating Agencies, because in contributing to REACT, federal agencies do not receive grant or other funding from the State of California. Nevertheless, federal agencies may assign agents and devote resources and efforts to REACT. Those agents assigned would be REACT members.

III. PURPOSE

This MOU describes the responsibilities and commitments of the Recipient and the Participating Agencies in REACT. The MOU also outlines the mission and objectives for REACT. This MOU supercedes all previous REACT Task Force MOUs.

IV. MISSION

REACT is a high technology/cyber crime and identity theft task force. It is a partnership of

¹ This MOU fulfills the "Operational Agreement" requirement specified in the OES 2006 Grant Recipient Handbook, Sections 4000-4500. The Recipient Handbook and grant request for application documents contain OES guidelines regarding grant award requirements. The Recipient Handbook can be located on the OES website at: www.oes.ca.gov.

² See OES Grant Recipient Handbook Section 1311, Responsible Agency. The County of Santa Clara Office of the District Attorney has been the Grant Recipient since 1999.

³ See OES Grant Recipient Handbook Section 14000, Glossary of Terms, under "Participating Agency."

government agencies working together to identify, investigate, and prosecute computer and high technology related crimes. Its mission is two-fold: (1) to apprehend and prosecute high technology criminals and to protect our communities from high technology crime and threats involving computers and computer networks; and (2) to apprehend and prosecute criminals who engage in the unlawful practice of identity theft. REACT was established on the premise that the effectiveness of high technology crime investigations would be enhanced in a task force setting where there is the sharing of multi-agency resources and expertise.

REACT will utilize its specialized resources to investigate cases when:

1. Computers and high technologies are the target of a crime;
2. Computers and high technologies are the principal instrumentality of a crime; and
3. Computers and high technologies are misused to facilitate violations of other criminal laws, and a specialized understanding of technology is required for investigation or prosecution.

The types of cases meeting these criteria include, but are not limited to, the following⁴:

1. The unlawful access, destruction of, or unauthorized entry into private or government computers or computer networks;
2. The dissemination of malicious software, often known as viruses and worms, which result in the criminal misuse of computers or computer networks;
3. Software piracy and other unlawful use of intellectual property;
4. Large-scale identity theft wherein the majority of the fraud involved the Internet, network access, or other sophisticated computer technology, as well as large-scale multi-jurisdictional identity theft crimes where computers are not used;
5. All types of Internet fraud, where the substantive crime is principally conducted over the Internet;
6. Theft of trade secrets; and
7. Threats made over the Internet.

V. **ADMINISTRATIVE RESPONSIBILITIES**

- A. **Project Director**: A Project Director shall be designated by the Grant Recipient Agency. The Project Director is responsible for managing REACT and has general administrative authority for implementing REACT activities. The Project Director is also responsible for signing all Task Force reports, requests, claims, and certificates, and ensuring that all REACT activities comply with OES program guidelines and grant management requirements.⁵

In addition, the Project Director will act as a liaison of the Task Force to the Executive Board and the Steering Committee. Both are described below. The Project Director will provide details regarding task force operations and budget updates to the Executive Board for comment and review.

⁴ California Penal Code Section 13848(b)(1)-(8) provides the general description of specific high technology crimes for which grant funds are to be used.

⁵ See OES Grant Recipient Handbook Section 2111 for the general duties of Project Director.

The Project Director shall designate appropriate personnel to positions as needed to maintain REACT's overall effectiveness.

- B. Financial Officer: The Financial Officer oversees the actual receipt and payment of grant monies. The Financial Officer is responsible for maintaining proper accounting records; signing fiscal reports, grant modifications and progress reports where appropriate; and ensuring the appropriate expenditure of grant funds. The Financial Officer shall be designated by the Grant Recipient Agency and must be someone other than the Project Director.⁶
- C. Steering Committee: Pursuant to OES guidelines, a local steering committee shall be established and maintained. The committee is to be comprised of representatives from the Recipient and Participating Agencies, federal agencies, the local high technology industry, and other interested parties. The Steering Committee shall, at minimum, meet quarterly to review REACT activities, provide recommendations, strategic input, and direction for consideration of the task force.
- D. Executive Board: The REACT Executive Board will be comprised of executive management designees from the Participating Agencies that have assigned personnel to the task force on a full time basis. Federal or non-funded agencies who assign staff to the task force may assign an executive management designee to participate on the Executive Board. There will also be one representative from the high technology industry on the Executive Board. That representative shall be elected by the Executive Board during the first quarter of every year.

The Executive Board members will work jointly to represent the interests of their agencies, communities, and jurisdictions. They will meet every six months, or as needed, to provide directions, recommendations, and guidance on the policies, budget, and direction of the Task Force, and issues relating to the overall effectiveness of REACT. The Project Director and Operations Manager, described below, shall advise the Executive Board of Task Force operations.

- E. Operations Manager: The Operations Manager shall be a Peace Officer of supervisory rank from the San Jose Police Department. The Operations Manager shall oversee all field operations, facilitate tactical operations, assign cases and forensic responsibilities, and provide direct supervision of the Team Supervisors described below. The Operations Manager shall maintain a comprehensive case management system to track the progress of REACT investigations. The Operations Manager shall report to the Project Director.
- F. Team Supervisors: REACT will utilize at least three (3) Team Supervisors. Each of the Team Supervisors will be full-time California Peace Officer of a supervisory rank. The Team Supervisors will be responsible for the day-to-day operations of their respective Task Force Team. The Team Supervisor will provide direct supervision of his/her Task Force Team, and is a working member of that team. The Team Supervisors shall hold regular case reviews with team members and

⁶ See OES Grant Recipient Handbook Section 2112 for the general duties of Financial Officer

provide case status to the Operations Manager. The Team Supervisors shall report to the Operations Manager.

- G. Task Force Investigators and Prosecutors: REACT shall be staffed by qualified investigators and prosecutors recommended by Participating Agencies and federal agencies. Assignment to REACT shall be for a minimum of one year. Consideration for placement on REACT will be based upon past job performance, investigative or prosecutorial experience and the ability to work with others in a close team relationship. Task Force Investigators will be assigned to a Task Force Team supervised by a Team Supervisor.
- H. Federal Liaison: A federal agency may assign one of its agents to serve as the Federal Liaison to the REACT Task Force. The Federal Liaison shall be responsible for providing advice, assistance, and updates on relevant federal REACT cases. The Federal Liaison shall also assist in maintaining good communication and working relationships between REACT and federal agencies.

All Task Force members shall work together to maximize React's effectiveness.

VI. PERSONNEL

- A. Membership: The REACT Task Force consists of investigators and prosecutors from the Recipient and Participating Agencies, as well as federal agencies.
- B. Assignment to the REACT Task Force: Each particular agency and each federal agency shall select its personnel to be assigned to REACT.
- C. Personnel Management: Each member of REACT will be subject to the personnel rules, regulations, and policies of his or her parent agency.

If any REACT member's outside employment poses a potential for a "Conflict of Interest," or a conflict with OES guidelines, regulations or any provision of the OES Recipient Handbook, said member may be excluded from REACT.

- D. No Employment by the REACT Task Force of Law Enforcement Personnel: REACT does not directly or indirectly employ any law enforcement personnel assigned to it. REACT is established for the effective coordination of high technology and identity theft investigations, and does not establish employer-employee relationships with the law enforcement personnel assigned to REACT.
- E. Use of Contract Personnel: REACT may employ contract personnel to assist with analytical and administrative tasks deemed necessary by the Project Director. These individuals may be non-law enforcement personnel including, but not limited to, secretaries, financial analysts, computer specialists, linguists, etc. These individuals may be required to pass a background investigation and complete a non-disclosure agreement, as determined by the Project Director.

- F. Responsibility for Conduct: All REACT members remain subject to the direction and control of their respective agency head or designee in all applicable professional and personal matters. The agency head or designee shall be responsible for the conduct and actions of their respective employees. Each REACT member will continue to report to his or her respective agency head for non-investigative administrative matters not described in this MOU.

VII. INFORMATION MANAGEMENT

- A. Records and Reports: All REACT investigative records and reports will be maintained at the REACT Task Force location or in the appropriate law enforcement agency offices. The investigative records and reports shall be kept in a manner that is consistent with applicable state and/or federal laws and regulations.
- B. Non-Disclosure Agreement. REACT information may only be disseminated on a need-to-know basis, and in a manner that is consistent with applicable state and/or federal laws and regulations. .
- C. Media: No REACT member will discuss or otherwise reveal information relating to REACT investigations to any media representatives, unless expressly authorized by the Project Director. All media releases on REACT matters will be mutually agreed upon and coordinated jointly by the Project Director and the Santa Clara County District Attorney's media coordinator or public information officer. Media relations involving federal investigations will be handled by a designee from the appropriate federal agency.

VIII. FACILITIES AND EQUIPMENT

- A. Task Force Office Space: Appropriate and sufficient office space for the Task Force shall be identified and procured by the Project Director, with the assistance of the Operations Manager and the Team Supervisors.
- B. Vehicles: Each agency shall supply its assigned investigator(s) to REACT a suitably equipped unmarked emergency vehicle. Said agency will provide fuel and maintenance for that vehicle. Each agency, whether providing a vehicle or not, will be responsible for any claims arising out of the operation of any REACT Task Force vehicle by the agency's assigned REACT member. This will include both liability and collision.
- C. Other Equipment: REACT Investigators will be provided with computers, cellular telephones, and most other needed electrical equipment to support REACT investigations. At the termination of the Task Force, any and all equipment supplied by agencies will be returned. At times, REACT may request the cooperative assistance of Participating Agencies and federal agencies when it requires specialized support, such as air support, surveillance vehicles, or other unique items.

IX. STANDARD OPERATING PROCEDURES

All REACT members shall abide by policies and procedures including, but not be limited to the following:

- A. When conducting a federal investigation or operation, a Task Force member shall be subject to applicable federal operational regulations and guidelines. When conducting a state or local investigation or operation, a Task Force member shall be subject to applicable state or local operational regulations and guidelines.
- B. The investigation of any officer-involved shootings and vehicle accidents shall be handled by the agency of jurisdiction where the incident occurs. Nothing precludes further investigation or concurrent investigation by the parent agencies of the Task Force members involved;
- C. The Team Supervisors will supply the parent agencies, upon their request, a fair and objective evaluation that reflects the Task Force member's performance while assigned to the Task Force;
- D. The Team Supervisors will be responsible for implementing a monthly reporting system of team activities and accomplishments. The monthly reports will be used to generate the quarterly reports provided to the Executive Board at the end of each calendar quarter.
- E. Complaints against a Task Force member will be forwarded to his or her parent agency for investigation. Disciplinary action will be recommended and approved solely by the concerned parent agency.

X. PROSECUTIONS

After each REACT investigation is completed, a determination shall be made whether the matter should be submitted for prosecution in federal or state court. This determination shall be based on the evidence obtained and consideration of which method of prosecution will best achieve the overall objectives of REACT and the community it serves. Task Force Members who are prosecutors will provide legal review, make charging decisions, and handle the prosecution of REACT cases.

Each prosecutors' office participating in the REACT Task Force shall have prosecutors assigned to work with Task Force investigators.

XI. SALARIES AND FUNDING

- A. Salary and Compensation: Salaries of REACT members shall be paid by their respective agencies. In the event a subsidy is authorized by the Project Director for reimbursement of salary, the terms and conditions of that subsidy will be

defined by and administered by the Project Director.

- B. Overtime: In the event that overtime pay to Task Force members are authorized by the Project Director to be paid out of REACT funding, the Operations Manager and the Team Supervisors will be responsible for authorizing of overtime for investigators and compliance with REACT overtime procedures
- C. Funding: This MOU is a basic statement of the understanding between the Recipient and Participating Agencies and the methods required for a successful task force. The Project Director will be responsible for expending, and accounting for the expenditure of REACT Task Force grant funds.

XII. ASSET SEIZURE/FORFEITURE OF FUNDS

Any and all assets and funds received by REACT as part of administrative, civil, or criminal forfeiture proceedings will be utilized for Task Force operations. The Project Director shall be responsible for expending, and accounting for the expenditure of forfeiture funds.

XIII. DEPUTIZATIONS

Certain local and state law enforcement personnel assigned to REACT may be cross-deputized with a grant of federal authority for federal arrests and the execution of federal legal process. Deputization of non-federal Task Force members may be necessary for such members to engage in certain federal investigations.

Similarly, certain federal law enforcement agents may be cross-sworn as state peace officers so they may engage in state investigations.

Administrative and personnel policies imposed by a parent agency on an assigned Task Force member shall remain effective despite cross-deputization.

XIV. DURATION, MODIFICATION AND TERMINATION OF MOU

Unless modified or terminated, the terms of this MOU shall be for the duration of the REACT Task Force's existence. This MOU may be modified or terminated upon (1) the termination of the Task Force, or (2) the execution of a new, superseding MOU to comply with statutory and/or OES requirements, or to ensure the continued effectiveness of REACT.

Upon the termination of the REACT Task Force, all equipment possessed by the Task Force shall be brought back to REACT. The Project Director shall then properly disburse and return all such equipment.

Each Participating Agency retains the right to terminate its participation by giving a 30-day written notice to the Grant Recipient Agency of its intent to terminate. Similarly, depending on funding availability and performance, the Grant Recipient Agency may terminate an individual's participation in REACT by giving a 30-day notice to the individual's parent agency of the intent to

terminate.

A Participating Agency that wishes to terminate its participation in REACT must return all REACT equipment to the Task Force. Similarly, REACT will return to a withdrawing agency any equipment supplied by the withdrawing agency.

XV. AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING

This MOU is subject to amendment at the direction of OES or its designee, or at the direction of the Grant Recipient Agency when such changes are necessary to comply with grant program requirements.

The undersigned state they represent and have the authority to execute this MOU on behalf of their respective agencies/departments and, in signing this Agreement, concur with and support REACT as set forth in this Agreement and for the period and purpose as stated herein.

XVI. NO THIRD PARTY RIGHTS

This MOU is not intended, and shall not be construed, to create any right, benefit, or enforceable law, substantive or procedural, for any third party against any parties in this MOU, the State of California, the United States, or the officers, employees, agents, or other associated personnel thereof.

REACT Task Force Memorandum of Understanding

PARTICIPATING AGENCY SIGNATORY

SO AGREED:

REACT MEMORANDUM OF UNDERSTANDING

The undersigned has read the above REACT Task Force Memorandum of Understanding, dated _____, and states he/she has the authority to execute this MOU on behalf of his/her respective agency or department. In signing this document, the undersigned concurs with and agrees to support the Rapid Enforcement Allied Computer Team (REACT) Task Force's mission as set forth in this Agreement and for the period and purpose as stated herein.

Name

Dated: _____

Title

Agency

REACT Task Force Memorandum of Understanding

GRANT RECIPIENT SIGNATORY

SO AGREED:

REACT MEMORANDUM OF UNDERSTANDING

The undersigned has read the above REACT Task Force Memorandum of Understanding, dated August 6, 2007, and states he/she has the authority to execute this MOU on behalf of his/her respective agency or department. In signing this document, the undersigned concurs with and agrees to support the Rapid Enforcement Allied Computer Team (REACT) Task Force's mission as set forth in this Agreement and for the period and purpose as stated herein.

Name

Dated: _____

Title

Agency



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: KATHI HAMILTON, ACTING CITY CLERK

DATE: FOR THE MEETING OF DECEMBER 19, 2007

**SUBJECT: ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY
COUNCIL SCREENING COMMITTEE FOR APPOINTMENT TO THE
PARK AND RECREATION COMMISSION**

RECOMMENDATION:

Accept and approve the recommendation of the City Council Screening Committee to appoint Mr. David Wright to the Atherton Park and Recreation Commission to fill the unexpired term of Rodney Washburn, which expires April 30, 2007.

BACKGROUND:

Rodney Washburn was appointed the Park and Recreation Commission on June 14, 2004. He resigned his seat on the Commission on September 13, 2007. The Town of Atherton solicited applications to fill the position which is set to expire April 30, 2008. A Notice of Vacancy was published in the *Almanac* and posted at the Town's posting sites and on the Town's website.

The Screening Committee, consisting of Council Members Jerry Carlson and Kathy McKeithen, interviewed three potential applicants for the vacancy. Following the interviews, the Screening Committee is recommending David Wright to serve on the Park and Recreation Commission. The term would be effective from December 20, 2007 to April 30, 2008.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF DECEMBER 19, 2007

**SUBJECT: ADOPTION OF A RESOLUTION SETTING ASIDE THE
DECISION OF THE CITY COUNCIL TO DENY A PERMIT AT 51
LABURNUM PENDING FUTURE RECONSIDERATION**

RECOMMENDATION:

Adopt the attached resolution vacating and setting aside the Council's action of January 17, 2007, and Resolution 07-01 regarding issuance of a major alteration permit and to hold future related administrative proceedings as set forth in the resolution.

BACKGROUND:

On January 17, 2007, the City Council passed a motion to uphold the appeal of the issuance of a major alteration permit sought by Randolph Lamb and Lisa Carey-Lamb pursuant to the Town's Historical Artifacts Ordinance (contained at Chapter 8.14 of the Municipal Code) to move two urns from 51 Laburnum Road, Atherton, to their residence on Park Lane. On February 21, 2007, the City Council adopted Resolution 07-01 formally upholding the appeal of the Decision of the Planning Commission regarding a major alteration permit at 51 Laburnum Road under Ordinance No. 567 (The Artifact Ordinance). The Lambs subsequently filed suit in San Mateo Superior Court against the Town (*Randolph F. Lamb and Lisa Carey-Lamb v. Town of Atherton, et al.* (Case No. CIV 461630)).

On August 9, 2007, the court issued a Peremptory Writ of Administrative Mandate directing the Town to vacate and set aside its action of January 17, 2007, and Resolution 07-01. The writ also directs the Town to reconsider its action regarding the permit application in light of the court's Statement of Decision and to take further administrative action. The writ states that it shall not limit or control the discretion legally vested in the Town. In its statement of decision, the court found that the Town did not adequately follow certain procedures in connection with the permit application. The court suggested that before reconsidering the Lambs' application that the Town

consider amending the Historical Artifacts Ordinance, conduct additional study of the urns and take evidence, and, if appropriate, designate the urns and place them on the inventory of historical artifacts. Pending the Town's reconsideration of the matter, the court's Statement of Decision also enjoined the Lambs from taking any action inconsistent therewith, including refusing to provide the Town's consultant access to study the urns and/or moving, damaging or destroying the urns.

In order to comply with the terms of the Writ, staff is proposing that the Council adopt a resolution vacating and setting aside its action of January 17, 2007, and Resolution 07-01; and to hold future administrative proceedings including consideration of proposed amendments to Historical Artifacts Ordinance; additional study of the urns located at 51 Laburnum; additional hearings regarding designation of the urns as historical artifacts and inclusion of the urns on the inventory of historical artifacts; and, based on the outcome of those proceedings, reconsideration of whether or not a major alteration permit should or should not issue regarding the proposal to move the urns.

At its January 16, 2008, Council meeting, the Council will consider proposed amendments to the Historical Artifacts Ordinance. Proposed amendments were introduced during a Council meeting on October 29, 2007, but consideration of the item was continued in order to provide additional notice.

Prepared by:

Approved by:

/s/ Marc Hynes

Marc G. Hynes,
City Attorney

Wendé Protzman,
Interim City Manager

Attachment

RESOLUTION NO. 07-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
VACATING RESOLUTION 07-01 UPHOLDING APPEAL OF MAJOR ALTERATION
PERMIT FOR 51 LABURNUM ROAD, ATHERTON**

WHEREAS, on January 17, 2007, the City Council adopted a motion to uphold the appeal of a major alteration permit to move two urns from 51 Laburnum Road, Atherton;

WHEREAS, on February 21, 2007, the City Council adopted Resolution 07-01 formally upholding the appeal of a major alteration permit to move two urns from 51 Laburnum Road, Atherton;

WHEREAS, on or about August 9, 2007, the San Mateo Superior Court issued a writ of mandate in the matter of *Randolph F. Lamb and Lisa Carey-Lamb v. Town of Atherton, et al.* (Case No. CIV 461630) directing the Town to set aside and vacate its decision of January 17, 2007, and Resolution 07-01; and reconsider its action in light of the Court's Statement of Decision dated August 7, 2007;

WHEREAS, the Court's Statement of Decision suggests that the Town take further administrative proceedings including possible amendments to Ordinance No. 567 (Historical Artifacts Ordinance, codified at Municipal Code Chapter 8.14), additional study of the urns located at 51 Laburnum, additional hearings regarding designation of the urns as historical artifacts, inclusion of the urns on the inventory of historical artifacts, and reconsideration whether or not a permit should or should not issue regarding the proposal to move the urns; and

WHEREAS, the Court ordered that, pending the Town's reconsideration of the matter, the urns should not be moved or altered;

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

The City Council of the Town of Atherton having considered the matter hereby makes the following findings and determinations.

1. In compliance with the writ of mandate issued by the San Mateo Superior Court, the Council's decision of January 17, 2007, and Resolution 07-01 is hereby vacated and set aside; and

2. The Town shall take further administrative proceedings including the consideration of proposed amendments to Ordinance No. 567 (Historical Artifacts Ordinance, Municipal Code Chapter 8.14), and, if necessary, additional study of the urns located at 51 Laburnum, hearings regarding designation of the urns as historical artifacts, inclusion of the urns on the inventory of historical artifacts, and reconsideration of the permit application of Randolph Lamb and Lisa Carey-Lamb pursuant to the Historical Artifacts Ordinance (as amended).

3. The foregoing action is being taken with the understanding that pending the proceedings set out in section 2, above, the urns will not be altered, relocated, removed or in any way disturbed pending the additional study, hearings and reconsideration of permit application as described.

This Resolution shall be effective immediately upon adoption.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 19th day of December, 2007, by the following vote.

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

ATTEST:

MAYOR
Town of Atherton

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc Hynes, City Attorney



DATE: FOR THE PLANNING COMMISSION MEETING OF JULY 25, 2007

TO: THE PLANNING COMMISSION

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

SUBJECT: 44 TUSCALOOSA AVENUE (APN 070-103-400)
HERITAGE TREE REMOVAL PERMIT

RECOMMENDATION

Staff recommends that the Planning Commission conduct the public hearing, make the following finding and deny the Heritage Tree Removal Permit request for the removal of one heritage tree at 44 Tuscaloosa Avenue in Atherton for the reasons outlined in this Report.

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Should the Planning Commission want to approve the Heritage Tree Removal Permit for the removal of one heritage tree at 44 Tuscaloosa Avenue it would need to make the following finding:

1. The removal of the tree would not be contrary to the purpose and intent of the Atherton General Plan.

INTRODUCTION

The subject site is approximately 59,242 square feet in area (over one acre) and is located at Tuscaloosa Avenue between Austin Avenue and El Camino Real. The property is the site of a new single-family house (under construction), detached pool house, and pool. The applicant is requesting approval to remove one heritage tree, (a *Quercus agrifolia*, or Coast Live Oak). The Coast Live Oak, referred to as #333 is located at the front center of the subject property.

This item was originally scheduled for the June 27, 2007 Planning Commission meeting. However, the consulting arborist's report mistakenly identified the tree to be removed. In addition to the original arborist report, the applicant has submitted a new letter, dated June 25, 2007 which specifically addresses the tree to be removed.

This property was incorrectly surveyed in the past, resulting in the east property line not being accurately identified. The adjacent neighbor has agreed to sell a strip of this property to the applicant and the applicant is in the process of requesting a lot line adjustment.

The trees were numbered in an early tree survey by Ralph Osterling although the arborist report and letter, as well as subsequent survey were prepared by Econo Tree Service. The early tree survey was done for the demolition phase of the project; no plans had been prepared at that time for the residence.

A tree protection plan was approved for the demolition phase only. The Building Department issued a permit which incorrectly showed two trees (#333 and #340) as being removed. Ms. Kathy Hughes Anderson, Town Arborist, only issued a permit for a dead tree. She informed the applicant that both trees #333 and #340 would need to go before the Planning Commission for removal. The applicant had originally proposed a guest house where #340 is located. They are now proposing the guest house between Tree #39 and Tree #40. The permit for the guest house is pending the lot line situation and review by the Town Arborist. Tree #340 will be preserved.

ANALYSIS

The applicant is requesting Planning Commission consideration for the removal of one tree, a Coast Live Oak. Tree #333 is listed in "Fair" condition. The applicant's consulting arborist, Henry Kramer, Econo Tree Service, Inc., evaluated 23 trees on the site, in his report dated March 30, 2007. On June 25, 2007 Karl Murphy, Econo Tree Service, Inc. evaluated tree #333. He indicates that the tree is currently enclosed within a tree protection fence; however, the area has become compacted dead turf with a 4-inch layer of mulch. He adds that the tree had been raised excessively and that the likelihood of tree failure was increased.

Ms. Kathy Hughes Anderson, Town Arborist, has prepared a memo based on her review, the arborist report and a site inspection. She notes that the area around the tree was previously a lawn and the Oak received its water from this lawn. She states that the recommendation to mulch the area and do deep root watering was made because after the lawn was removed, the Oak could have suffered from lack of water during construction. She adds that many Oaks on the property were not properly pruned; however, she does not agree that the crown was excessively raised. She notes that there had been two additional oaks in close proximity. She believes that the crowded condition may have caused the thin canopy mentioned by the consulting arborist. She adds that the sparse leaf size could be a sign of undetected root problem as stated by the consulting arborist,

or it could be from lack of proper cultural care, drought stress, or other environmental conditions.

Ms. Hughes Anderson notes that the site plan shows a new proposed driveway and motor court within six to seven feet of tree #333. She thinks that with careful consideration of materials and construction technique the tree could be able to accommodate impacts from the proposed driveway and motor court. She notes that the applicant does not mention any reason for removal other than condition of the tree. She states, “Given the potential impacts from construction activity on a number of trees on this property, I find it hard to justify the removal of this tree” (Town Arborist Memo).

The Zoning Code requires that the Commission grant a heritage tree removal permit unless it finds that the removal of the trees would be contrary to the purpose and intent of the General Plan. The Open Space and Conservation Element of the General Plan cites that “trees shall be preserved to the maximum extent feasible while allowing for construction within established parameters for setbacks and lot coverage in accordance with the Municipal Code chapter regulating the removal of and damage to heritage trees.”

Staff is not supportive of the removal request due to the condition and location of the tree. The tree is in fair condition, is not located within the buildable area, and could be accommodated with the proposed driveway and motor court. The tree is not in direct conflict with any site improvements and can be preserved.

CONCLUSION

It is Planning Staff’s professional opinion that the removal of one tree would be contrary to the purpose and intent of the General Plan and the Zoning Ordinance, based on the condition of the tree and no direct conflicts with site improvements.

ALTERNATIVES

The Commission could approve removal of the tree as requested by the applicant, could deny the request or request modification of the proposal.

FISCAL IMPACT

All costs covering the processing of this application are paid for by the applicants.

ENVIRONMENTAL IMPACT

The City Council has declared the removal of two or fewer trees to be less than significant environmental impact and exempt from further CEQA review.

FORMAL MOTION:

I move that the Planning Commission find that the proposed removal of one heritage tree at 44 Tuscaloosa Avenue in Atherton would be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the removal subject to the conditions listed in the draft Heritage Tree Removal Certificate.



Lisa Costa Sanders, Deputy Town Planner

Attachments:

1. Draft Heritage Tree Removal Certificate
2. Memo from Kathy Hughes Anderson, Town Arborist, dated July 19, 2007
3. Letter of Request, undated
4. Arborist Report prepared by Henry Kramer, Econo Tree Service, Inc., dated March 30, 2007
5. Photos
6. Letter describing condition of tree #333, prepared by Karl Murphy, Econo Tree Service, Inc., dated June 25, 2007
7. Landscape Site Plan, prepared by Louis J. Marano, dated May 7, 2007

Draft
TOWN OF ATHERTON
PLANNING COMMISSION
HERITAGE TREE REMOVAL PERMIT

THIS IS TO CERTIFY THAT the Atherton Planning Commission at a regular meeting thereof, held on Wednesday, July 25, 2007, did grant a Heritage Tree Removal Permit to Pietro Dova pursuant to Atherton Municipal Code Section 8.10 to allow the removal of one heritage tree at 44 Tuscaloosa (Assessor's Parcel Number 070-103-400). The Permit was approved subject to the following conditions:

1. Heritage tree removal shall be limited to one trees identified as #333 as shown on the plan prepared by Louis J. Marano, dated May 7, 2007. Any substantive changes to the plans shall be reviewed by the Planning Commission.
2. The applicant shall follow the recommendations in the arborist reports for the preservation of all remaining trees on-site.
3. The replacement planting shall be a minimum of one 48" native oak tree and one 36" box size native tree species mitigation for the removal of the tree and shall be planted to the satisfaction of the Town Arborist and Building Official.

Lisa Costa Sanders,
Deputy Town Planner

Effective Date: _____
Atherton, CA

Memo



To: The Atherton Planning Commission
From: Kathy Hughes Anderson, Town Arborist
CC: Lisa Costa Sanders, Senior Planner
Date: 07/19/07
Re: Heritage Tree Removal Application, 44 Tuscaloosa Avenue

I have reviewed the tree removal application for 44 Tuscaloosa Avenue and offer the following observations for your review.

- The applicant Pietro Dova is requesting permission to remove a 22.5 dbh Coast Live Oak, *Quercus agrifolia*. The tree is #333 per the original tree survey for the property. Karl Murphy, Econo Tree Service, has prepared an arborist letter describing the condition of the tree. The survey prepared by Henry Kramer, Econo Tree Service, dated 3/30/07, lists the tree as being in Fair condition. The trees were numbered in an earlier survey prepared by Ralph Osterling, Osterling Consulting Arborists, dated May 2006, for the demolition phase of the project. At that time, plans had not been prepared for the new residence.
- As noted in the arborist report, the area around Tree #333 was previously a lawn. The recommendation to mulch the area and do deep root watering during the summer was made because it was getting water from the lawn and even Oak trees can suffer from lack of water during construction. Even though summer water is what we don't recommend for oaks, they can suffer from drought if suddenly deprived of water. The arborist further notes that the upper canopy is sparse, with small leaves and little interior growth. While I do feel that most of the Oaks on the property were not properly pruned in the past, as evidenced by decaying old flush cuts and over thinning of the canopies, I don't think we can say that the crown was excessively raised. In addition to the two oaks in close proximity at the front property line, there was another oak on the front property line adjacent to the pedestrian gate that was removed last year when it died from oak root fungus. This crowded condition may have resulted in all of these trees developing high thin canopies due to competition for light. Under those conditions, lower branches will die off. The sparse leaf size and sparse canopy could be a sign of an undetected root problem as stated in the arborist report, it could also be from the lack of proper cultural care, drought stress or other environmental conditions.
- The site plan shows a new proposed driveway and motor court within 6-7' of Tree #333. While this is a preliminary plan and the pavement material is not called out, the combined impact of the new garage structure and the hardscape surfaces will have an impact on the health of this tree. I think with careful consideration of the materials and construction techniques used, it may be able to accommodate these improvements with minimal impact, or these improvements could also cause the tree to decline. The applicant does not state any reason for wanting to remove the tree other than what he feels to be a condition issue, but I think the close proximity to the new driveway and motor court may be what is driving this removal request.
- This property was incorrectly surveyed, resulting in the east property line not being accurately identified and the new structure in violation of the setback requirement. In order to correct this situation without demolishing the new construction, the adjacent neighbor has agreed to sell a strip of his property to the applicant. He will be requesting a lot line adjustment in order to bring

the project into compliance. The portion of the new home near Tree #336 is a pier and grade beam foundation and is in the same location as the foundation of the previous home.

- As I stated above, when the home was first purchased, a demolition permit was granted with a tree protection plan for the demolition phase only. In the meantime, the landscape architect and the arborist I was working with were no longer on the project. The Building Department issued the building permit showing trees #333 and Tree #340 as being removed. I was not aware that the building permit had been issued until the contractor called to say he was removing the trees, which came as a surprise to me as it was my understanding that no trees were being removed other than the dead tree that I had issued a permit for. After reviewing the situation with the contractor, I told him that both trees would need to go before the Planning Commission. The new guest house was originally sited where tree #340 stands. I tried to convince them to relocate the guest house to the opposite side of the property, however they relocated to squeeze between Tree #340 and Tree #339. While I am not pleased that the new structure will have a potential impact on both trees, I did not feel that the removal of Tree #340 was justified when there are clearly other options for the size and location of the guest house. They have been told that they need to submit an arborist report addressing the tree protection measures and foundation specifications, including hand digging for the construction of the guest house. The permit for the guesthouse has not been approved and is pending the outcome of the lot line situation and my review.
- Given the potential impacts from construction activity on a number of trees on this property, I find it hard to justify the removal of this tree. I think the tree's condition could be improved and would like to see it have a chance. I would recommend denial of this request.

APPLICATION FOR HERITAGE TREE REMOVAL

Item #6

The attached tree report was prepared by Econo Tree Service Inc. on 03/30/07 and details the condition of all "heritage" trees located on the property at 44 Tuscaloosa Avenue in Atherton. The accompanying plot plans show the location of every major tree on the property.

This request is for the removal of tree #333 (*Quercus Agrifolia*) situated at the front of the property. The condition of the tree is listed as "Fair" in the accompanying report with most of its growth is located in the top third section. The tree has also been visually inspected by Kathy Hughes Anderson who commented that it wasn't looking very good.

The property is currently under construction by Lencioni Construction LLC. The owner has retained Lou Morano, Landscape Architect based in San Mateo, to prepare the master landscape design. In lieu of removing tree #333, we have discussed the possibility of planting another 72" box specimen somewhere in the front of the property.

A majority of the work described in the report prepared by Econo Tree Service has already been completed by Chris Hall (Certified Arborist) from West Coast Trees in San Jose. The deep root watering is the only outstanding item at this point. (Note: the owner, Lou Morano and Kathy Hughes Anderson walked the property in late April and (in accordance with the tree report) agreed that clearing several of the small redwoods around trees #342 and #343 would give more light and aeration for the remaining trees to flourish. That work was also completed.)



Tree survey and condition report

Prepared for

Pietro Dova

for the property at

44 Tuscaloosa, Atherton, CA

ARBORISTS



CONTRACTORS

1914 Spring St. Redwood City, CA 94063
650 367-4900
www.econotree.com
fax 650 367-4901

03/30/2007

Mr. Pietro Dova
814 Intrepid Lane
Redwood City, CA 94065

Re: Status of tree preservation at 44 Tuscaloosa, Atherton, CA

Mr, Dova,

At your request, Econo Tree Service performed an inspection of the trees on the above property. The report is separated into two sections. There is a detailed report on tree number 340 stating its current condition and its relation to the proposed construction of a pool house.

The second section is a survey of the remaining trees, along with short recommendations on how to best care for them in the immediate future.

A detailed Tree Protection Plan can be compiled and provided at your request.

Summary

This property was surveyed by Ralph Osterling Consultants, Inc. in April of 2006. At this time the trees were marked with numbered metal disks. We have continued the use of that numbering system, however, the trees were all remeasured and reinspected independently of the previous survey.

With the exception of tree number 340, all inspections were made at ground level, with no root crown excavations or invasive testing done. Tree 340 did have a root crown excavation performed and the results of that inspection are included in that tree's detailed report. If any further inspection seems warranted, it will be noted under the recommendations for that tree.

General Observations

Most of the trees on the site have adequate fencing, however there is little to no mulch present to reduce soil compaction. Much of the site has been subjected to heavy foot and vehicle traffic and this has caused extensive soil disturbance.

Tree reports and recommendations

Detailed report on tree number 340

This is a report on tree #340 to evaluate the present condition of this Coast Live Oak (*Quercus agrifolia*) located in the north east corner of the property nearest the existing tennis court. The tree has two main stems (M2,26",28") bifurcating slightly above grade. The original tree survey labels the tree for removal due to various conditions.

Observation:

The above Oak tree #340 has been amply fenced to protect a reasonable root zone (TPZ). The tree is away from the current construction. Hence forth, plans show a pool house to be constructed inside the TPZ of this Oak and the adjacent Oak to the south. This report is to determine the condition of the Oak tree labeled #340 and request that it be removed. Its' removal will give space for the pool house and subsequently relieve impingement on the adjacent Oak, #339. Alternatively, the pool house is to be sandwiched between the two Oaks.

The original report, dated April 27th, 2006, indicates Oak tree #340 having low vigor despite new seasonal growth. The leaf crown is thin. This appears due mainly to the loss of mature leaves. The result of cooler longer winters as of recent, and a shallow indication of decline. Photo 1.

The report also mentions a bleeding lesion on one of the two main stems. This portion should be traced to determine the size and extent of the bleeding lesion, and what might be done. It is located 10 feet up the west stem. Photo 4.

The tree has two stems, which bifurcate from the main trunk at approximately three feet above grade. At this union a cavity has developed. Photos 2&3. Due to this structure, the two stems have been cabled. A total of three cables support the union. The cables were installed on two if not three separate occasions.

Further investigation was needed to evaluate the extent and condition of these sections. Therefore, tracing of the lesion, excavation of the root collar, and sounding of the cavity were performed on Friday the 2nd of March.

The tracing would reveal the extent of the lesion. The sounding would show the general size of the cavity, and the root collar excavation would show any destruction or deterioration of the root collar.

Discussion:

The root collar excavation showed the trunk to have an intact buttress flair on 100% of the circumference with minor recessions but no deterioration due to fungal development or other impact. Photos 2&3.

The cavity was holding water and a probe indicated that it extend well into the trunk and below grade. It subsequently drained by the technician.

The cables had been installed to protect and secure this union and had been augmented on three occasions. The cable and attachment appeared secure at this juncture despite the cavity. The cables were viewed to be solid. A new cable had been recently installed and the other two remain under proper tension

The tracing of the bleeding lesion revealed that to be slime flux, a localized bacterial development. A technician traced and cleaned the affected area. Exposing it to open air. The affected section was only 12" by 2" by 1". Most commonly, slime flux will clear with exposure, but can be

treated further if required or persistent.

The thinning foliar crown shows good seasonal shoot growth but the lack of sustainable older leaf growth. Much of this condition results from the cooler wetter weather we experienced the several seasons. This may also indicate some signs of decline in the tree's vigor.

Recommendation:

The Oak tree under discussion has had continued care and maintenance. This will need to continue due to the above mentioned situations and the proximity to living space.

The lack of vigor will need to be addressed quarterly. Both sub-surface soil and foliar treatments need to be employed to reduce leaf loss and enhance leaf development.

The attachment and limb weight will need to be regularly monitored to stabilize the weak attachment. This will require pruning and cable observation.

The cavity will need to be watched with the same consistency and treated as required.

A low impact landscape will need to be imparted to the TPZ after construction to encourage continued root growth and reduce any damage. This should persist with all the Oak trees on the property.

Conclusion:

This tree does required more attention because of it's location and condition. The removal of the tree would give the adjacent trees more space and root area when protected before, during and after construction.

If the tree is to remain, we suggest professionals guide its' care and others on the property.

Contact Econo Tree Service to assist with any area of this project. Thank you.

Sincerely,

Henry Kramer
Certified Arborist
WE1559A
henryk@econotrec.com

Photo 1: Oak tree #340 showing twiggy lower leaf crown, the result of mature leaf drop.



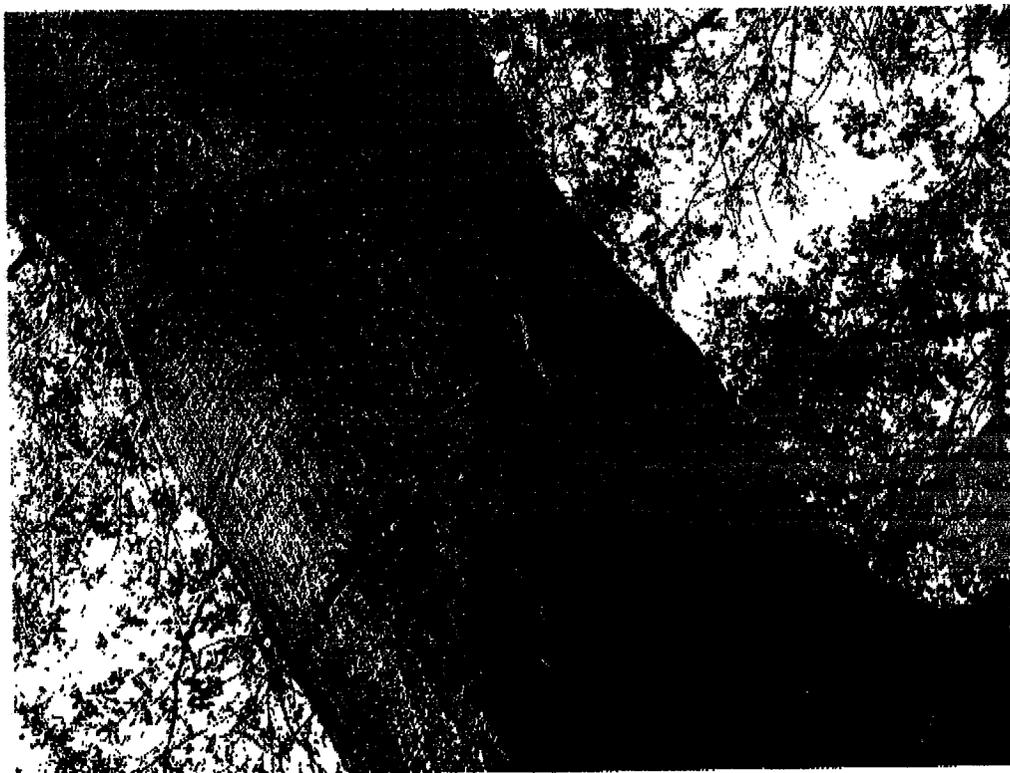
Photo 2 : Root collar buttress, and stem bifurcation.



Photo 3: Bifurcation cavity



Photo 4 : Traced lesion at 10 feet on west stem



Section Two

Tree Survey and Condition Report

All the trees at this location have previously been marked with numbered metal disks and are referred to by those numbers in this report. The inspection focused on the following criteria:

1. Verification of location and species.
2. Tree size, in diameter inches at 48 inches above grade.
3. Presence and condition of tree protection measures.
4. Tree structure.
5. General condition of the tree.
6. General tree health.

The report also includes specific recommendations for each tree. General recommendations are given at the end of the report.

Tree Survey Report
 44 Tuscaloosa
 Atherton, CA

Tree #	Species	Diameter (inches)	Structure	Health	Condition	Comments/Recommendations
331	<i>Quercus lobata</i>	31	Fair	Fair	Stable	Some decline. Remove deadwood > 1"
332	<i>Quercus agrifolia</i>	29	Good	Fair	Stable	Sparse canopy. Install mulch in drip line area.
333	<i>Quercus agrifolia</i>	23	Fair	Fair	Stable	Most growth is in top 1/3rd of tree. Install mulch in adjoining high traffic area.
334	<i>Cedrus deodara</i>	19	Fair	Fair	Stable	Sparse canopy, could use supplemental watering
335	<i>Quercus agrifolia</i>	24	Fair	Fair	Stable	Neighbors tree, not inspected
336	<i>Quercus agrifolia</i>	23	Fair	Fair	Declining	Install mulch, remove deadwood
337	<i>Quercus agrifolia</i>	24	Fair	Fair	Stable	Sparse canopy, Install mulch and mitigate compaction from construction access. Remove deadwood.
338	<i>Quercus agrifolia</i>	30	Fair	Fair	Stable	Sparse canopy, Install mulch and mitigate compaction. Remove deadwood
339	<i>Quercus agrifolia</i>	37	Fair	Fair	Stable	Install mulch, remove swing.
340	<i>Quercus agrifolia</i>	54m2	Poor	Fair	Stable	Co-dominant trunks with cavity, check cables. See attached condition report.
341	<i>Quercus agrifolia</i>	23	Poor	Fair	Stable	Co-dominant trunks with included bark. Sparse canopy. Remove deadwood.
342	<i>Quercus agrifolia</i>	20	Poor	Fair	Stable	Pronounced lean toward neighbors. Crowded by small redwoods. Reduce weight and crown clean.
343	<i>Quercus agrifolia</i>	29	Poor	Fair	Stable	Co-dominant trunks with included bark. Crowded by small redwoods. Some decline. Deadwood and consider thinning redwood stand.

Tree Survey Report
 44 Tuscaloosa
 Atherton, CA

Tree #	Species	Diameter (inches)	Structure	Health	Condition	Comments/Recommendations
344	<i>Quercus agrifolia</i>	32	Poor	Good	Stable	Outside of property line. Included bark in major limbs. Deadwood and reduce weight of heavy ends.
345	<i>Quercus agrifolia</i>	29	Poor	Fair	Stable	Over weight on west side. Buried root crown. Reduce weight on heavy ends, excavate root crown.
346	<i>Quercus agrifolia</i>	36	Fair	Fair	Stable	Buried root crown. Remove ivy and excavate root crown. Reduce weight on neighbors side.
349	<i>Quercus agrifolia</i>	49	Poor	Poor	Poor	<i>Ganoderma sp.</i> fruiting body indicates decay in lower trunk. Over watered in past, compacted soil. Excavate root crown.
350	<i>Quercus agrifolia</i>	34	Fair	Fair	Stable	Has been wounded by construction equipment. Wrap limb with orange fencing to improve visibility. Mitigate soil compaction. Install mulch under entire drip zone. (Access road included)
351	<i>Sequoia sempervirens</i>	35	Good	Good	Growing	Mitigate soil compaction after construction.
352	<i>Sequoia sempervirens</i>	43	Good	Good	Growing	Mitigate soil compaction.
353	<i>Sequoia sempervirens</i>	62	Good	Good	Growing	Mitigate soil compaction.
354	<i>Quercus lobata</i>	51m2	Poor	Fair	Stable	Co-dominant trunks. Most of weight over neighbors Crowded by neighbors tree.
355	<i>Sequoia sempervirens</i>	38	Good	Good	Growing	

Definition of terms: Growing: Young tree maintaining active growth. Stable: Mature tree, some minor defects.
 Good: No obvious defects or disease. Fair: Mature tree, moderate defects and/or pest or disease symptom
 Poor: Major defects, major areas of deadwood. Dead: No signs of living tissue.

03/12/2007

Conclusions

Almost all the trees surveyed show some degree of decline. Not having been involved with the previous survey we can not make a determination whether the decline is new or was present before construction began. At this point all we can do is take measures to decrease the trees stress and give them a better chance of surviving the continuing construction.

Recommendations

General

Tree specific recommendations are outlined in the survey. Any pruning and root crown excavations should be performed as soon as possible, before exterior construction begins.

Hydration

To improve the vigor and decrease future stress it is recommended that all the trees on the property be given a deep root watering at the rate of 10 gallons per diameter inch with a dilute (2 lbs / 100 gallons) concentration of 22-14-14 fertilizer. Because this last winter has been unusually dry, the supplemental irrigation will help prevent the possibility of drought stress, particularly in any trees that have had their root zones compromised. This deep root watering should be applied as soon as possible to coincide with the trees active growth period. In addition to the deep root watering a regular irrigation plan should be put into practice during the dry season.

Mulching

The entire site needs mulch, not just the areas protected by fencing. This will help prevent compaction and increase water retention in the soil. It will also help decrease dust during the dry season to come. A 5-7 inch layer of wood chips or other coarse biodegradable mulch should be applied within the tree protection zones and a 4-6 inch layer should be applied to the remainder of the site, particularly any areas that receive vehicle traffic or heavy foot traffic. The mulch over the high traffic areas should be replaced as needed during the project.

Trenching

During any future trenching the project arborist should be consulted before any roots of over 1 inch diameter are cut. If trenches need to remain open longer than 1/2 hour any roots should be covered with wet burlap. In case of long term exposure a layer of burlap or other porous fabric should be placed in the trench, then covered with wood chips and kept moist. This also has the advantage of being easy to move for access to the trench.

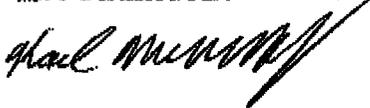
Final Statements

A tree protection program seems to have been started but not followed up on. The fencing is up to standards but is in need of some repair and more signing. There was no mulch present under the trees at the time of inspection and this should be installed as soon as possible. A project arborist should be under contract to insure the steps recommended in this report are followed.

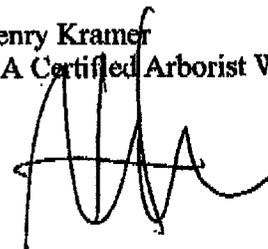
If you have any questions or are in need of any assistance performing the work detailed in this report please let us know.

For Econo Tree Service, Inc.

Karl Murphy
ISA Certified Arborist WE-1740-A



Henry Kramer
ISA Certified Arborist WE-1559-A



ARBORISTS



CONTRACTORS

1914 Spring St. Redwood City, CA 94063
650 367-4900
www.econotree.com
fax 650 367-4901

06/25/07

Pietro Dova
814 Intrepid Lane
Redwood City, CA 94065

RE: 44 Tuscaloosa Ave. Atherton, CA, tree #333

Mr. Dova ,

You have asked me to give a short letter on the condition of tree #333 on the above property. I inspected the tree on 6/25/2007 and the following are the results of that inspection and my recommendations.

No invasive testing such as root crown excavation or core sampling was performed. The inspection was limited to a ground level visual inspection.

Tree 333

Species: Coast live oak, *Quercus agrifolia* **Size:** 22.5 inches DBH (diameter (in inches) at 48 inches above grade. Height = 35 feet, Spread = 30 feet diameter.

Location \ Site: The tree has been recently inventoried and marked with an aluminum tag as tree #333. It is situated in the center front of the property. The area was previously a well watered turf area but since construction began it has turned from well watered turf to compacted dead turf to compacted dead turf with a 4 inch layer of mulch. The area is enclosed in a tree protection fence extending out to 3/4 of the drip-line. The site is currently undergoing extensive construction.

Condition: The root crown of the tree seems solid, with no obvious damage or decay. A thick layer of mulch has been installed directly against the trunk. The lower trunk does not show any cavities or decay extending beyond the bark. An 8 inch flush cut has callused over 4 feet above ground level.

The tree has been trimmed such that there are no limbs originating from the bottom 18 feet of the trunk. The upper canopy is sparse, with small leaves and little interior growth. Deadwood up to 6 inches in diameter is present.

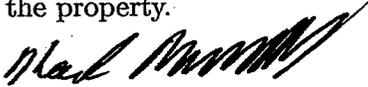
Discussion \ Recommendation:

Historically this tree has been growing in a well watered turf area. This is known to accelerate root decay on our native oaks. While no outward evidence of decay was seen during the limited inspection, signs such as the sparse canopy and small leaf size can be symptoms of a undetected root problem. The soil compaction that has developed during the construction has only made the condition worse by excluding oxygen and water from the root area.

The callused over flush cut could be hiding decay in the lower trunk.

The tree has also been raised excessively. The ideal is for 2/3 of a trees limbs to originate from the lower 1/3 of the trunk. In this case it is the exact opposite, with all of the limbs originating from the upper 1/3 of the trunk. The resulting raising of the moment arm to mid trunk, instead of at the root mass, increases the likely-hood of tree failure.

Continuing construction at the site will only exacerbate these problems. Alone, each defect is not a reason for removal, but together they produce a potential hazard. My recommendation is to remove this tree and replace it with another *Quercus agrifolia* elsewhere on the property.



Karl Murphy

ISA Certified Arborist WE-1740-A



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE CITY COUNCIL MEETING OF DECEMBER 19, 2007

**SUBJECT: APPEAL OF THE DECISION OF THE PLANNING COMMISSION TO DENY
A HERITAGE TREE REMOVAL PERMIT AT 44 TUSCALOOSA**

RECOMMENDATION:

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit for the reasons outlined in this report.

INTRODUCTION:

The subject site is approximately 59,242 square feet in area (over one acre) and is located at 44 Tuscaloosa Avenue between Austin Avenue and El Camino Real. The property is the site of a new single-family house (under construction), detached pool house, and pool. The applicant requested approval to remove one heritage tree (a *Quercus agrifolia*, or Coast Live Oak). The Coast Live Oak, referred to as #333, is located at the front center of the subject property.

The Planning Commission reviewed this item at its July 25, 2007, meeting. At that meeting, Commissioners expressed concern with the removal citing no compelling reason to remove the tree and that the tree has nice shape and should be retained. The Planning Commission voted 4-0 to deny the request to remove the heritage Oak tree (minutes attached).

Notice of the Appeal and the City Council meeting in which it will be considered was mailed to property owners within 500 feet of the subject site.

ANALYSIS:

Please review the attached staff report to the Planning Commission for project analysis and the memo from the Town Arborist.

The applicants, in their letter of appeal, expresses concern that the failure of this tree could cause significant damage to the house and possibly to its inhabitants or any onsite guests or workers. City Attorney Marc Hynes has prepared a memo, as attached to this staff report, responding the applicants claim that the Town would be held responsible for any damage should the tree fail.

Staff is not supportive of the removal request due to the condition and location of the tree. The tree is in fair condition, is not located within the buildable area, and can be accommodated with the proposed driveway and motor court. The tree is not in direct conflict with any site improvements and can be preserved.

ALTERNATIVES:

The Council has the following options:

- Uphold the decision of the Planning Commission and deny the appeal, thereby denying the request for a Heritage Tree Removal Permit.
- Approve the appeal and thereby approve a Heritage Tree Removal Permit to allow the removal of one heritage tree as requested or as further amended by the Council.

FISCAL IMPACT:

All costs covering the processing of this application are paid for by the applicants.

ENVIRONMENTAL IMPACT:

The City Council has declared the removal of two or fewer trees to be less than significant environmental impact and exempt from further CEQA review.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders
Lisa Costa Sanders
Deputy Town Planner

Wendé C. Protzman
Interim City Manager

Attachments:

1. Draft Heritage Tree Removal Permit
2. Memo from Marc Hynes dated September 12, 2007
3. Letter of Appeal from Pietro Dova, dated August 2, 2007
4. Planning Commission Staff Report for the July 25, 2007 meeting with attachments
5. Minutes from the July 25, 2007 Planning Commission meeting

draft

**TOWN OF ATHERTON
CITY COUNCIL
HERITAGE TREE REMOVAL PERMIT**

THIS IS TO CERTIFY THAT the Atherton City Council at a regular meeting thereof, held on Wednesday, September 19, 2007, did grant a Heritage Tree Removal Permit to Pietro Dova pursuant to Atherton Municipal Code Section 8.10 to allow the removal of one heritage tree at 44 Tuscaloosa Avenue (Assessor's Parcel Number 070-103-400). The Permit was approved subject to the following conditions:

1. Heritage tree removal shall be limited to one Oak tree identified as #333 as shown on the plan prepared by Louis J. Marano, dated May 7, 2007. Any substantive changes to the plans shall be reviewed by the Planning Commission.
2. The applicant shall follow the recommendations in the arborist reports for the preservation of all remaining trees on-site.
3. The replacement planting shall be a minimum of one 48" box size native oak tree and one 36" box size native tree species to the satisfaction of the Town Arborist and Building Official.

Lisa Costa Sanders,
Deputy Town Planner

Effective Date: _____
Atherton, CA

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

REPLY TO:
MARC G. HYNES

660 WEST DANA STREET
P.O. BOX 279
MOUNTAIN VIEW, CALIFORNIA 94042
TELEPHONE (650) 967-6941
FACSIMILE (650) 967-1395

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

MEMORANDUM

TO: Lisa Costa Sanders, Deputy Town Planner, Town of Atherton
FROM: Marc G. Hynes, City Attorney
RE: 44 Tuscaloosa Avenue
Appeal of Planning Commission Decision
Heritage Tree Removal Permit Application Denial
DATE: September 12, 2007

Dear Lisa:

This follows our discussion concerning the August 2, 2007, appeal filed by Pietro Dova concerning the denial by the Planning Commission of his application to remove a heritage tree at 44 Tuscaloosa.

The appeal letter purports to serve as a record in case the appeal is denied. Mr. Dova states that "should the tree in question (identified as tree #333 in the permit removal application) subsequently fail causing any damage whatsoever, physical injuries or other, the Town of Atherton will be held responsible and liable to the fullest extent of the law.

As I explained, the Town and its officials are immune from liability related to any determination as to denial of licenses or permits. Government Code section 818.4, which is included within what is known as the "California Government Claims Act" (sometimes referred to as the California Tort Claims Act) provides in section 818.4 that a public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

Title 8.10 of the Town of Atherton provides in Section 8.10.040 for the issuance of heritage tree removal permits. This authorization is in conformance with the immunity envisioned in Government Code section 818.4. Case law has recognized this immunity as a bar to damages cause of action. (Thompson v. City of Lake Elsinore (1993) 18 Cal.App.4th 49; Burchette v. City of Newport Beach (1995) 33 Cal.App.4th 1472.)

Respectfully,

MGH:cwb
C Interim City Manager

MARC G. HYNES

RECEIVED
TOWN OF ATHERTON

2007 AUG -3 P 2: 42

August 2, 2007

City Council
Town of Atherton
91 Ashfield Road
Atherton, CA 94027-3896

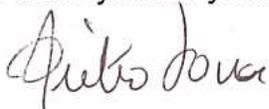
RE: 44 Tuscaloosa Avenue
Appeal of July 25, 2007 Planning Commission decision to deny application
for heritage tree removal.

I applied to the Planning Commission to remove tree #333 at 44 Tuscaloosa. This tree, located in close proximity to the front façade of my house, currently under construction, has been found by Karl Murphy of Econo Tree Service to have several defects that together produce a potential hazard and increase the likelihood of tree failure. Town staff and the planning commission did not approve my request, based on conclusions that the tree is not in a buildable area and not in direct conflict with proposed site improvements. My concern, however, is that the failure of this tree could cause significant damage to the house, and possibly to its inhabitants or any onsite guests or workers.

I would like the City Council to reverse the planning commission's decision and approve a permit for the removal of the tree. The site contains many other heritage trees that are now being actively cared for after many years of neglect under previous ownership of the property.

Please note that this letter will also serve for the record in case the appeal is denied. Should the tree in question subsequently fail causing any damage whatsoever, physical injuries or other, the Town of Atherton will be held responsible and liable to the fullest extent of the law.

Thank you for your consideration,



Pietro Dova

**APPROVED MINUTES
PLANNING COMMISSION MEETING
July 25, 2007
6:00 p.m.**

**ATHERTON TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California**

REGULAR MEETING

Chair Oster called the meeting to order at 6:00 p.m.

1. ROLL CALL:

PRESENT: Marion Oster
James Dobbie
Philip Lively
Herman Christensen, Jr.

EXCUSED: Kristi Waldron

City Attorney Marc Hynes, Deputy Town Planner Lisa Costa Sanders, Building Official Mike Wasmann, and Town Arborist Kathy Hughes Anderson were also present.

2. APPROVAL OF MINUTES

MOTION approval of the June 27, 2007 meeting minutes as corrected.

M/S Dobbie/Lively Ayes: 4 Noes: 0 Excused: 1

3. PUBLIC COMMENTS

None.

4. COMMISSIONER'S REPORTS

None.

5. GENERAL PLAN COMMITTEE REPORTS

The General Plan Committee has not met since the last Planning Commission meeting. The next meeting is scheduled for August 1, 2007.

6. NEW BUSINESS

None.

7. STAFF REPORTS

Marc Hynes reported that a hearing was scheduled for July 13, 2007 with a final ruling by the end of this month regarding 51 Laburnam.

PUBLIC HEARINGS

8. **Conditional Use Permit – 94 Tallwood** – Conditional Use Permit request to allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties. Atherton Municipal Code section 17.36.190.

Marc Hynes introduced Jean Savaree, special legal counsel for the Town and Brian Wenter, special legal counsel for the Town. Deputy Town Planner Lisa Costa Sanders presented the staff report and introduced Dick Loewke, outside planner for the Town to respond to additional questions.

Commissioner Christensen asked if the basement area was included in the plans for the home and if it was intended to count in the floor area, and if there is any other way to calculate the cross-slope. Mr. Loewke responded that the average cross-slope determination is accurate and the correct method based on the code.

Commissioner Christensen asked if the building was constructed to the height shown on the plans? Mr. Loewke stated that there is disagreement as to what the average natural grade is.

Commissioner Christensen asked what constitutes substantial compliance? Jean Savaree stated when a code section references a specific number, you rely on that number.

Commissioner Dobbie asked at what point was the discrepancy determined. Mike Wasmann stated that it was discovered during the audit prior to the house completion.

Commissioner Dobbie asked if this should have been caught earlier? Mike Wasmann replied that the height is verified by a survey at the framing stage and that the house was built to an approved set of plans issued by the former Building Official. The approved plans included a determination of average natural grade.

Commissioner Dobbie stated that he would not want to see this happen again and need new procedures. Lisa Costa Sanders stated that Planning is now conducting a review of all plans in addition to the building department plan checker.

Commissioner Christensen asked if the basement was included in the floor area. Staff responded that a portion of the basement was included in the floor area calculations and other areas were not included (garage and porches).

OPEN PUBLIC COMMENT

Bill Ross, attorney representing the property owners, stated that there is no indication to do anything but what was directed by the former Building Official. He stated that he feels substantial compliance relates to percentage of compliance rather than actual compliance. Mr. Ross stated that he feels 18.6% is substantial compliance with the code. He further stated that the Kings relied on approvals granted by the former building official, the cost to remedy the situation is excessive and there is no impact to neighboring property owners. Mr. Ross stated that they are not waiving any rights of the lawsuit and estoppel can serve as basis for issuing permit.

Charles Marsala, Emilie, stated that the Commission needs to look at all the factors. Mistakes were made and where is the solution. The home does not impact neighbors.

Commissioner Dobbie stated that the Planning Commission relies on the Ordinance as written for basis of decision.

Melinda Tevis, Tallwood, stated that she raised concerns to Town management regarding the construction of this home.

Mr. Ross stated that the Commission needs to be rational in the 20% hillside rule. He further expressed concern that this process appears to be undue administrative delay.

CLOSE PUBLIC HEARING

Commissioner Lively stated that he could not approve the request, as the property does not meet the hillside code requirement.

Commissioner Christensen stated that he relies on strict compliance with the code.

Commissioner Dobbie stated he sympathizes with the property owner and stated that any modification to the ordinance with respect to this item must be done by the City Council and not the Planning Commission.

Chair Oster stated that the purpose of the Planning Commission is to enforce the Ordinance and hopes the City Council can resolve the issue

MOTION to deny the Conditional Use Permit allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties at 94 Tallwood based on the following findings:

M/S Lively/Christensen Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The proposed project will not be detrimental or injurious to persons, property or improvement in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience.
2. The proposed project for the subject site is not consistent with the Town of Atherton General Plan and the purposes of that plan and the Zoning Code.

Chair Oster advised of the 10-day appeal period.

- 9. Major Alteration Permit – 133 Atherton Avenue** – Major Alteration Permit to allow relocation of a heritage gate from the Atherton Avenue side of the property to the Elena Avenue side of the property. Atherton Municipal Code section 8.14.090(B).

Deputy Town Planner Lisa Costa Sanders presented the staff report, noted the reasons outlined in the staff report to support the request and introduced Laura Jones, town's historical consultant.

Laura Jones stated that it is important for the gates to remain on the property. She also stated that the house was demolished and there are no significant remaining structures on the property for the gates to relate to.

Commissioner Christensen stated that the gates will lose its relation to the public road that it has been historically located on. Ms. Jones stated that the gates will remain accessible to the public on Elena with relationship to a public street.

OPEN PUBLIC COMMENT

Missy Morris, Elena, stated that Elena is a busy street as a cut-through. She stated that the gates were important to the former property owner.

Benjamin McGriff, Architect, stated that his clients desire for additional privacy along Atherton Avenue with a solid wall and gate.

Commissioner Oster asked what will be located inside the property from the gates. Mr. Benjamin McGriff responded that formal gardens will be located throughout the property. Commissioner Oster asked why the gates could not remain at its current location. Mr. Benjamin McGriff responded that the owner would like a new entry to relate to the residence.

M. Madding, Edwards Lane, spoke in opposition to the request.

CLOSE PUBLIC COMMENT

Commissioner Christensen stated that historic items should remain in place of significance. He stated that he would not object to moving the gate along the Atherton Avenue side of the property, but not to the Elena side of the property. Commissioner Dobbie stated that he would like to see more information on intended use of the property prior to acting on the application. Commissioner Lively stated support for the relocation as long as it retains all elements. Commissioner Oster expressed concern with the relocation.

MOTION to deny the Major Alteration Permit at 133 Atherton Avenue based on the following finding:

M/S Christensen/Dobbie Ayes: 3 Noes: 1 (Lively) Excused: 1 (Waldron)

Finding:

1. Movement of the gate would be contrary to the historic setting of the artifact along Atherton Avenue.

2.

Chair Oster advised of the 10-day appeal period.

10. Heritage Tree Removal Permit – 44 Tuscaloosa – Heritage Tree Removal Permit to allow the removal of one Oak tree. Atherton Municipal Code section 8.10.

Deputy Town Planner Lisa Costa Sanders presented the staff report and stated that staff does not support the tree removal as there are no compelling reasons to remove the tree.

OPEN PUBLIC COMMENT

Eileen Gordon, property architect was present.

CLOSE PUBLIC COMMENT

Commissioner Dobbie stated that the tree is not a great specimen, but there is no compelling reason for its removal.

Commissioner Oster stated that the tree has nice shape and would like to see it retained.

MOTION to deny the Heritage Tree Removal Permit at 44 Tuscaloosa based on the following finding:

M/S Lively/Christensen Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 11. Heritage Tree Removal Permit and Mitigated Negative Declaration – 368 Walsh Road - Heritage Tree Removal Permit to allow the removal of thirteen heritage trees. Atherton Municipal Code section 8.10.**

Deputy Town Planner Lisa Costa Sanders presented the staff report and noted the reasons outlined in the staff report to support the tree removal request based on the mitigation measures contained in the draft negative declaration.

OPEN PUBLIC COMMENT

Steve Swanke, project architect, reviewed the intended use of the property.

CLOSE PUBLIC COMMENT

Commissioner Lively stated that the trees appear to be at the end of their life.

Commissioner Christensen stated support for the request.

Commissioner Dobbie stated concurrence with other Commissioners' comments.

Commissioner Oster stated that the pine trees are in the declining stage.

MOTION that the Planning find that the Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.

MOTION to adopt the Draft Mitigated Negative Declaration for the 368 Walsh Road Tree Removal Project.

M/S Lively/Oster Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.

MOTION to approve the Heritage Tree Removal Permit to allow removal of thirteen heritage trees based on the following finding and subject to the conditions of the Heritage Tree Removal Permit with the following additional conditions.

M/S Dobbie/Lively Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The removal of thirteen trees would not be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 12. Variance – 2 Belbrook** – Variance request to allow an accessory structure (bridge) to be located in the front yard. Atherton Municipal Code section 17.56.050

The applicant requests the item be continued to the next Planning Commission meeting.

MOTION to continue the item to the August 22, 2007 meeting.

M/S Oster/Dobbie Ayes: 4 Noes:0 Excused: 1 (Waldron)

13. ADJOURN

The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Lisa Costa Sanders, Deputy Town Planner

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
CALLING A SPECIAL ELECTION TO FILL AN UNEXPIRED TERM
OF THE CITY COUNCIL TO BE HELD ON TUESDAY, JUNE 3, 2008**

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

WHEREAS, on December 10, 2007, Council Member Alan B. Carlson resigned from the City Council; and

WHEREAS, Council Member Carlson's term of office ends in November 2010; and

WHEREAS, the City Council of the Town of Atherton has need to conduct a Special Election on June 3, 2008, for the purpose of electing one member of the Atherton City Council to fill an unexpired term which will end during the month of November 2010; and that the polls for said election will be open from 7:00 a.m. to 8:00 p.m.; and

WHEREAS, due to the economics involved, the public interest would best be served by consolidating such Special Municipal Election with any other elections to be held on June 3, 2008, and by contracting with the County of San Mateo for election services.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said Special Election with any other election to be held on June 3, 2008, and

BE IT FURTHER RESOLVED that the City Manager be and is hereby authorized and directed to enter into a contract with the Chief Elections Official of the County of San Mateo for the purpose of providing election services in connection with said Special Election; and

BE IT FURTHER RESOLVED that the candidates for election may file nomination papers between 8:00 a.m. on February 11, 2008 through 5:00 p.m. on March 7, 2008.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of December, 2007, 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>

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
WENDÉ C. PROTZMAN, CITY MANAGER**

FROM: KATHI HAMILTON, ACTING CITY CLERK

DATE: FOR THE COUNCIL MEETING OF DECEMBER 19, 2007

**SUBJECT: DISCUSSION AND POSSIBLE DIRECTION TO STAFF
REGARDING THE PROCESS TO FILL A VACANCY ON THE
CITY COUNCIL**

RECOMMENDATION:

Staff recommends the Council discuss the available options, choose a method to fill the vacancy, and direct staff to begin the process to fill the vacancy for the chosen method.

BACKGROUND:

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 may appoint or call a special election to fill the vacancy for the remainder of the term. The action must be taken within 30 days of the effective date of the vacancy (by January 9, 2008) to appoint or call a special election or the matter automatically goes to a special election.

Government Code Section 36512 (c) provides for adoption of an ordinance that requires vacancies to be filled by special election and would apply to all future vacancies (although, Council has the authority to rescind the ordinance in the future). If Council adopts an ordinance (attached), this section also allows an appointment to be made to fill the vacancy for the interim period before a special election occurs.

ANALYSIS:

Appointment:

If Council chooses to fill the vacancy by appointment, two possible alternatives are:

1. Make an immediate appointment;
2. Make an appointment by January 9, 2008;
 - Announce vacancy and solicit applications (Publishing deadline for the *Almanac* is Thursdays at 5 p.m.)
 - Establish a filing deadline.
 - Conduct a public meeting to hold interviews and make selection; or appoint a committee of two Council Members to screen applications then
 - a) nominate an individual for Council ratification; or
 - b) invite a predetermined number of applicants to interview before the full council at a regular/special meeting.
 - Develop a calendar to meet the January 9, 2008, deadline.
 - The successful appointee would serve out the remainder of the term expiring in November 2010.

Special Election:

If action is taken to call a special election, there are two possible election dates not less than 114 days from the date of the call for a special election .

1. May 6, 2008 – The May 6 election would be conducted by all-mail ballots. Election Code Section 4004 allows small cities (population of 100,000 or less) to fill a vacancy in the legislative body wholly as an all-mail ballot election.
 - The Candidate nomination period is January 14, 2008 through February 8, 2008.
2. June 3, 2008 – The June 3 Primary Election would be a regular consolidated election with the normal polling places.
 - The Candidate nomination period is February 11, 2008 through March 7, 2008.

The successful candidate would serve out the remainder of the term expiring in November 2010.

FISCAL IMPACT:

David Tom, Chief Elections Officer, San Mateo County Registrar of Voters, estimates an all-mail ballot election held on May 6, 2008, would cost approximately \$3.30 per voter. As of November 27, 2007, the Town of Atherton has 5056 registered voters, for an estimated cost of \$16,685. For an election held in conjunction with the June Primary, Mr. Tom estimates the cost at \$1.90 per registered voter, for an estimated cost of \$9,606.

ALTERNATIVES:

1. Make an immediate appointment.
2. Make an appointment by January 9, 2008.
3. Adopt an Urgency Ordinance determining all vacancies to be filled by special election.
4. Call for a Special Election by all-mail ballot on May 6, 2008.
5. Call for a Special Election to be held with the June Primary on June 3, 2008.

Prepared by:

Approved by:

Kathi Hamilton
Acting City Clerk

Wendé C. Protzman
Interim City Manager

Attachment: Alan B. Carlson's Resignation Letter
Government Code Section 36512
Urgency Ordinance Declaring Vacancies will be filled by Special Election
Resolution Calling Election for May 6, 2008
Resolution Calling Election for June 3, 2008

Government Code Section 36512. (a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 30 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance which: (1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. (2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body which has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition. (3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision. (2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call. (3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON ADDING SECTION 2.32.030 TO THE ATHERTON MUNICIPAL CODE
ESTABLISHING A PROCEDURE FOR FILLING CITY COUNCIL VACANCIES**

The City Council of the Town of Atherton does hereby ordain as follows

SECTION 1: Amendment to Municipal Code.

The Atherton Municipal Code is hereby amended by adding to Chapter 2.32, the following new Section 2.32.030 to read as follows:

“2.32.030. As provided by California Government Code section 36512(c), if any vacancy on the City Council occurs other than by expiration of the term, the City Council shall proceed as follows:

1. A Special Election shall be called immediately to fill every City Council vacancy. This Special Election shall be held on the next regularly established election date not less than 114 days from the call of the Special Election.
2. A Special Election shall be held to fill a City Council vacancy when petitions are filed and received bearing verified signatures by not less than fifteen (15%) of the voters of the Town according to the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187 of the Elections Code effective at the time the petition is received. The Special Election shall be held on the next regularly established election date not less than 114 days from the filing of the petition.
3. Notwithstanding the foregoing provisions, the City Council may call a Special Election without waiting for the filing of a petition.
4. The City Council may appoint a person to fill a vacancy on the City Council pending the Special Election. The person so appointed holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The Special Election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the Town not less than 114 days from the call of the Special Election.

SECTION 2. Declaration of Urgency. The foregoing ordinance is enacted as an urgency measure. The City Council finds that the public health, safety, and general welfare require that immediate action be taken to provide for the filling of a vacancy on the City Council pending the call of a special election in order to ensure the continued efficient and orderly operation of the Town.

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 word, 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 immediately as an urgency measure.

Passed and adopted as an Urgency Ordinance of the Town of Atherton at a regular meeting thereof held on the 19th day of December, 2007, by the following vote:

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

MAYOR, Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
CALLING A SPECIAL ELECTION BY ALL-MAIL BALLOT TO FILL AN
UNEXPIRED TERM OF THE CITY COUNCIL TO BE HELD ON
TUESDAY, MAY 6, 2008**

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

WHEREAS, on December 10, 2007, Council Member Alan B. Carlson resigned from the City Council; and

WHEREAS, Council Member Carlson's term of office ends in November 2010; and

WHEREAS, the City Council of the Town of Atherton has need to conduct a Special Election for the purpose of electing one member of the Atherton City Council to fill an unexpired term which will end during the month of November 2010; and

WHEREAS, the City Council of the Town of Atherton has determined that it is in the best interests of the Town to conduct a Special Election by all-mail ballot on May 6, 2008, pursuant to Section 4004 of the Elections Code, and by contracting with the County of San Mateo for election services.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to conduct A Special Election by all-mail ballot on May 6, 2008, , and

BE IT FURTHER RESOLVED that the City Manager be and is hereby authorized and directed to enter into a contract with the Chief Elections Official of the County of San Mateo for the purpose of providing election services in connection with said Special Election including providing technical supervision, consultation, and supervision of the election wholly by mail, including receipt, safeguarding, accounting, and canvassing of ballots, and all other technical assistance and consulting with respect to the conduct of election by mail; and

BE IT FURTHER RESOLVED that the candidates for election may file nomination papers between 8:30 a.m. on February 11, 2008 through 5:00 p.m. on March 7, 2008.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of December, 2007, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

MAYOR
TOWN OF ATHERTON

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: Atherton Election Request

From: Noosheen Hashemi [mailto:noosheen@yahoo.com]
Sent: Tuesday, December 11, 2007 4:53 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Cc: lisa@lambpartners.com; Farzad Nazem
Subject: Atherton Election Request

Dear friends,

We understand that Atherton mayor, Alan Carlson, is no longer in his position. We would be grateful if there's another open election to find a replacement.

Thank you for your kind consideration.

Noosheen Hashemi of
18 Faxon Forest and 88 Faxon Road

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: Election Needed to fill Vacancy

-----Original Message-----

From: Jeffrey Wise [mailto:jeff@wises.net]
Sent: Tuesday, December 11, 2007 4:55 PM
To: Charles Marsala
Subject: Election Needed to fill Vacancy

Charles,

I am concerned about the procedure for filling the now vacant council seat. With the turmoil we have had in Town recently and with the length of time remaining on this seat, I think it is very important that we have an election to fill this seat.

I believe that there is a widespread concern among the residents of Atherton about what has been happening within the city government as a whole. There have been too many issues, too many controversies, too many accusations. It is vital that the City Council allow the citizens to make the selection of who should serve on the council.

It is worth the time and expense that this will require to restore a sense of citizen involvement and accountability.

Respectfully,

Jeffrey Wise
150 Linden Ave.
Atherton, CA

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: Mayoral Election

From: shariar m [mailto:shariar@shamscapital.com]
Sent: Tuesday, December 11, 2007 9:17 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Cc: Lisa Lamb
Subject: Mayoral Election

To Whom It May Concern

Dear Elected Representatives,

As a long term resident of the Town of Atherton I am writing this letter to express my concerns with the resignation of our Mayor.

Looking at the condition of the town presently I think it is of great urgency to elect the most competent person, a good manager, through a fair election process.

I strongly oppose for the next "interim" mayor to be nominated and put in place by any process other than the vote of the residents.

I can be made available for any further discussions in this regard.

Respectfully submitted,

Shariar Moghaddam

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:22 AM
To: Kathi Hamilton
Subject: FW: Atherton Town Council

From: Jeffrey Morris [mailto:jeff@jamorris.com]
Sent: Wednesday, December 12, 2007 8:50 AM
To: Jim Janz; Charles Marsala; Jerry Carlson; kmckeithen@ci.atherton.ca.us.
Cc: Carlson, Alan B.
Subject: Atherton Town Council

Dear Members of the Atherton Town Council,

I understand that Atherton's esteemed Mayor, Alan Carlson, is resigning after many years of service to the Town of Atherton. I am interested to learn about your plans to fill the vacant seat on the Town Council. It is important that all residents of the Town of Atherton receive communication from you about the special election to fill the vacant seat on the Town Council.

Rumors are swirling that there might not be an election for the vacant seat. I trust that this information is false and that you will let us all know when the special election will be held. Atherton residents should be able to decide who should serve the balance of Mayor Carlson's term.

Thanks for all of the work that you do for the Town of Atherton.

Sincerely,

Jeffrey A. Morris
55 Elena Avenue
Atherton, CA 94027

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:21 AM
To: Kathi Hamilton
Subject: FW: Council vacancy

-----Original Message-----

From: elewis@universitypropertieshomes.com [mailto:elewis@universitypropertieshomes.com]
Sent: Wednesday, December 12, 2007 3:01 PM
To: Charles Marsala
Subject: Council vacancy

Dear Councilmember Marsala,

I wish to voice my opinion that the Council hold a special election to fill the vacancy left by departing Councilmember Alan Carlson for the remaining 3-year term. It would be a dis-service to the citizens of Atherton for the Council to appoint someone for that length of term remaining.

Sincerely,
Elizabeth Lewis
99 Alejandra Avenue
Atherton, CA 94027
650-533-8830
Sent via BlackBerry by AT&T

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:20 AM
To: Kathi Hamilton
Subject: FW: Election

From: Tglikbarg@aol.com [mailto:Tglikbarg@aol.com]
Sent: Wednesday, December 12, 2007 3:26 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: Election

Council members:

This is the first time that I've ever felt the need to write to you. We have lived in Atherton for over 40 years, have taken part in some activities and been generally happy with the Town Council, the Police Department, the Building Department, The Planning Commission, etc.

I am well aware that having a special election of a new Council member instead of an appointment will be costly; however, it's time that we "pull" the Town together instead of the mess we're in right now. With what has gone on the past few years is very damaging to the Town and residents.

It's important that we get some "new" blood and a new face on the Council. Different ideas. Different thoughts, but most of all someone that help mend the fences. Not someone that is hand picked by the current Council.

I'm very distressed over everything that I hear and read.

Though I don't like rumors, and normally don't listen to them, this is what I hear from many people! " The Council will do what they want re a new member and to heck with the residents. Please prove that rumor wrong and give the residents back the Town that we have had in the past. Let us have an election.

With appreciation
Betsy and Tom Glikbarg
95 Clay Drive
Atherton

See AOL's top rated recipes (<http://food.aol.com/top-rated-recipes?NCID=aoltop00030000000004>)

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:20 AM
To: Kathi Hamilton
Subject: FW: Atherton Mayor

-----Original Message-----

From: Hil Hausman [mailto:hil.hausman@gmail.com]
Sent: Wednesday, December 12, 2007 3:48 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: Atherton Mayor

I am a long-time resident of Lindenwood. I would like to express to each of you my strong belief that it is critical that there be a democratic election for the next mayor of Atherton. I have recently been involved in the protracted, costly legal issue between Atherton and M-A over the PAC. I am dismayed that this has been continuing for such a long time and feel totally unrepresented by the current Atherton community leaders. Therefore, I feel that it is imperative that an election be held to ensure that the next mayor truly represents the whole community. This will not happen if the next mayor, who will serve almost an entire four-year term, is appointed. I am hoping that you will do the right thing and arrange for an election. Thank you for your time and consideration.

Best regards,
Hilary Hausman

--
Hilary Katz Hausman
95 Lilac Drive
Atherton, CA 94027
email: hil.hausman@gmail.com
FAX: 650-324-3939

Kathi Hamilton

From: Melanie Brabenec
Sent: Thursday, December 13, 2007 8:19 AM
To: Kathi Hamilton
Subject: FW: A remark about the mayor's resignation

-----Original Message-----

From: Dan & Margaret [mailto:dm@beltramos.com]
Sent: Wednesday, December 12, 2007 4:44 PM
To: Charles Marsala
Subject: A remark about the mayor's resignation

Hello Charles,

I hope all is well with you, and that you are enjoying the festivities of the Christmas season.

I am writing because I am concerned about the replacement process for the seat vacated by Mr. Alan Carlson's resignation from the Town Council, and I would appreciate it very much if you would kindly convey my sentiments to your colleagues on the Atherton Town Council.

I feel strongly that a town election versus a three year appointment to this vacant seat is the appropriate action in this case. In my opinion an appointment of this duration is much too long for this important position for a myriad of reasons. I also believe that the citizens of Atherton would welcome the opportunity to vote on who would be the best suited candidate to represent them for the next three years. I realize that there is a cost involved in putting on a special election however, in my mind, the benefits of a public vote are well worth it. I think that adhering to the democratic process of election by the people at this point is critical to building a stronger and more positive spirit in the town.

I thank you and your fellow Councilmen for your generous commitment of time and service to the town and for considering this request.

Best regards,
Margaret Beltramo

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:30 AM
To: Kathi Hamilton
Subject: FW:

From: Mohammad Mortazavi [mailto:mm@pinnaclehome.com]
Sent: Friday, December 14, 2007 8:29 AM
To: Charles Marsala; Jerry Carlson; Jim Janz; Kathy McKeithen
Subject:

In response to the "official" resignation yesterday of Atherton's Mayor, Alan Carlson, we need your public and vocal support for an election to replace Alan's seat.

As you know, Atherton's leaders have created quite a mess at city hall. Unfortunately, our town has become the poster child for what can go wrong in a town when the leadership is so inept. Unfortunately for all of us, we now have a move afoot by one council member to nominate one of her "friends" to the council rather than have a public election.

We need an election in Atherton for the following reasons:

- 1 Most of our council members have shown that they are not capable of making transparent decisions for the well being of our residents;
 - 2 Many of the decisions our council makes lead to expensive and time consuming lawsuits that would have been avoided had a transparent and lawful decision have been made by the council in the first place;
 - 3 Our fiscal situation in town is atrocious due to the poor decisions made by our council over the last two years;
 - 4 Democracy is based on making decisions by the people, for the people. If a council nominates its next member, this sends a clear message that the council does not trust the residents to choose the best candidate. It also does not open the process up to some of the competent people who should have the opportunity to serve;
 - 5 The mayor's term has almost 3 years remaining on it. This is far too long a period to trust to a nominee.
- If you believe that it is time to send a clear message to our "elected leaders" that we have had enough of their back room politics, then a public election is mandatory for our town. The costs to have an election are insignificant relative to the long term health and reputation of our town.

Please write letters and emails to the council members. You can copy this email if you feel that helps you in your message. Please make sure that you blind cc me on the emails so that I can print out the letters and hand them to the council the night of the meeting. The council member addresses are:

Jjanz@ci.atherton.ca.us;
cmarsala@ci.atherton.ca.us;
Jcarlson@ci.atherton.ca.us;
kmckeithen@ci.atherton.ca.us.

These emails and letters need to be sent by Thursday. The deadline for receipt by the town for printing is this Friday. Our town council meeting is next Wednesday night, December 19th. If you can also make it to the meeting in person to voice your election concern, that would be appreciated.

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:26 AM
To: Kathi Hamilton
Subject: FW: FW: Atherton Election Request - Once again Urgent responses needed

From: Alphalynch@aol.com [mailto:Alphalynch@aol.com]
Sent: Thursday, December 13, 2007 6:48 PM
To: Chaps94062@aol.com
Subject: Re: FW: Atherton Election Request - Once again Urgent responses needed

GOOD HEAVENS, NAN, WHAT HAPPENED TO "LET THE PEOPLE DECIDE"? HOW CAN SOMETHING LIKE AN APPOINTMENT BE ANYTHING BUT ILLEGAL AND DEMEANING TO THE PEOPLE IN ATHERTON. LETS SEE SOME COMPETITON AND BE GIVEN A CHANCE TO MAKE UP OUR OWN MINDS AFTER REVIEWING EACH CANDIDATES RESUME AND HIS OR HER PLANS TO RESCUE ATHERTON. LINDA LYNCH

See AOL's top rated recipes (<http://food.aol.com/top-rated-recipes?NCID=aoltop00030000000004>)

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: ATHERTON ELECTION REQUEST

From: helen elkus [mailto:helen@relkus.com]
Sent: Thursday, December 13, 2007 9:42 AM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: ATHERTON ELECTION REQUEST

DEAR COUNCIL MEMBER:

IT HAS COME TO MY ATTENTION THAT ALAN CARLSON, MAYOR OF ATHERTON, HAS OFFICIALLY RESIGNED.

WITH THREE YEARS REMAINING IN THIS MAYORAL TERM IT IS NECESSARY TO HOLD AN OPEN ELECTION TO FILL THE NOW VACANT COUNCIL SEAT.

THE CITIZENS OF ATHERTON MUST HAVE THE OPPORTUNITY TO ELECT A COUNCIL MEMBER OF THEIR CHOICE.

SINCERELY,
HELEN M. ELKUS
328 WALSH ROAD
ATHERTON

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: Vacant Seat on the Council

From: Lisa Lamb [mailto:lisa@lambpartners.com]
Sent: Thursday, December 13, 2007 9:54 AM
To: Jim Janz; Charles Marsala; Kathy McKeithen; Jerry Carlson
Cc: Carey-Lamb
Subject: Vacant Seat on the Council

Council Members,

I am writing you to encourage you to have a special election to fill the empty seat of Mayor Alan Carlson. I believe that the people of Atherton deserve to have a say in who sits on the council along side of you. We have already appointed one person in the last year and another appointment would not serve the people well, after all we are a democracy, right?

Sincerely,

Lisa Carey-Lamb
224 Park Lane
Atherton, CA

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:23 AM
To: Kathi Hamilton
Subject: FW: Atherton Needs An Election

From: william grindley [mailto:wgrindley@sbcglobal.net]
Sent: Thursday, December 13, 2007 10:25 AM
To: Jim Janz; Charles Marsala; Kathy McKeithen; Jerry Carlson; Alan B. Carlson Mayor Atherton
Subject: Atherton Needs An Election

Council Members - with the imminent resignation of Mayor Alan Carlson at a time when our Town faces several legal issues and profoundly divided opinions on its policies towards its historic heritage, the entire population needs to speak.

I refer to the flawed idea that a new Council Member should be appointed, and not elected. Now, perhaps like no time before, we need an election to guarantee that all of the Town's citizens have a chance to speak out.

The costs may or may not be significant, but given what is being spent on legal actions by and against the Town, not having voters replace one-fifth of the voices on the Council would make mockery of Town-wide representation by the Council.

Hold an election to replace Mayor Carlson.

William Grindley

151 Laurel Street
Atherton CA 94027
Home 650 324.1069

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:22 AM
To: Kathi Hamilton
Subject: FW: Petition for Public Election

From: davidm@denovovc.com [mailto:davidm@denovovc.com]
Sent: Thursday, December 13, 2007 12:16 PM
To: Charles Marsala
Cc: kimmermauney@mac.com
Subject: Petition for Public Election

To whom it may concern:

I live at 54 Serrano Drive, and I am deeply concerned by the current status of the Atherton "government" system. I am very disappointed in what appears to be a big mess in city hall, and the public perception of our town is simply unacceptable. We can and will do better. Given Alan Carlson's resignation, we are in prime position to let the town speak for itself, rather than to let the council speak, yet again, on our behalf. Therefore, I feel compelled to write, and voice my opinion that the ONLY proper recourse is to schedule a public election to fill the Mayor's seat. The costs to have an election are insignificant relative to the long term health and reputation of our town.

Thank you in advance for considering this petition.

Best regards,

David

David M. Mauney, MD
Managing Director, De Novo Ventures
400 Hamilton Ave, Suite 300
Palo Alto, CA 94301
P: 650-329-1999 F: 650-329-1315
www.denovovc.com

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:22 AM
To: Kathi Hamilton
Subject: FW: Atherton Election

From: Randy Lamb [mailto:Randy@lambpartners.com]
Sent: Thursday, December 13, 2007 4:05 PM
To: Jerry Carlson; Jim Janz; Kathy McKeithen; Charles Marsala
Subject: Atherton Election

Council Members:

In anticipating some decision making on your part at the council meeting next week, I would like to add my voice to this issue. Atherton needs to have an election to fill Alan Carlson's seat on the council. I view this as a crucial test of you as council members to assess the divisive issues we have faced in town, and to conclude that this is the best way to ensure a democratic process for Alan's replacement.

There are likely a handful of candidates in town who would consider running for this seat. As with any democracy, the candidate with the best message and the one who appeals the most to the voters will be the one that is likely to win. Given that there are almost 3 years remaining on Alan's term, the town residents deserve to be the decision makers on this issue.

If you are considering the cost of having an election as a reason to oppose this, let's compare this to the amounts the town has spent on legal fees over the last 12 months. I think you will agree, the cost of an election is so minimal, and frankly a minute percentage when compared to your legal costs, that an election is a much better use of public funds than most of the legal you have agreed to spend.

I look forward to your support of this election on Wednesday night at your council meeting.

Sincerely,

Randy Lamb

12/14/2007

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:21 AM
To: Kathi Hamilton
Subject: FW: Atherton Election Request

From: Eliot Terborgh [mailto:eliot@terborgh.net]
Sent: Thursday, December 13, 2007 4:08 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: Fw: Atherton Election Request

Dear Atherton City Council Members:

As longtime residents of Atherton (30+ years), my wife and I fully support the sentiments expressed below in calling for a new election to replace Alan Carlson. Considering all the embarrassing turmoil in town government, we do not feel it is in the best interests of the town to bypass a fair and open election process at this time.

With Best Regards,

Cris and Eliot Terborgh
57 Parkwood Drive
Atherton, CA 94027
Phone/Fax: (650) 327-8885
Email: eliot@terborgh.net

All:

In response to the "official" resignation yesterday of Atherton's Mayor, Alan Carlson, we need your public and vocal support for an election to replace Alan's seat.

As you know, Atherton's leaders have created quite a mess at city hall. Unfortunately, our town has become the poster child for what can go wrong in a town when the leadership is so inept. Unfortunately for all of us, we now have a move afoot by one council member to nominate one of her "friends" to the council rather than have a public election.

We need an election in Atherton for the following reasons:

1. Most of our council members have shown that they are not capable of making transparent decisions for the well being of our residents;
 2. Many of the decisions our council makes lead to expensive and time consuming lawsuits that would have been avoided had a transparent and lawful decision have been made by the council in the first place;
 3. Our fiscal situation in town is atrocious due to the poor decisions made by our council over the last two years;
 4. Democracy is based on making decisions by the people, for the people. If a council nominates its next member, this sends a clear message that the council does not trust the residents to choose the best candidate. It also does not open the process up to some of the competent people who should have the opportunity to serve;
 5. The mayor's term has almost 3 years remaining on it. This is far too long a period to trust to a nominee.
- If you believe that it is time to send a clear message to our "elected leaders" that we have had enough of their back room politics, then a public election is mandatory for our town. The costs to have an election are

12/14/2007

insignificant relative to the long term health and reputation of our town.

Please write letters and emails to the council members. You can copy this email if you feel that helps you in your message. Please make sure that you blind cc me on the emails so that I can print out the letters and hand them to the council the night of the meeting. The council member addresses are:

Jjanz@ci.atherton.ca.us;

cmarsala@ci.atherton.ca.us;

Jcarlson@ci.atherton.ca.us;

kmckeithen@ci.atherton.ca.us.

These emails and letters need to be sent by **Thursday**. The deadline for receipt by the town for printing is this Friday . Our town council meeting is next Wednesday night, December 19th. If you can also make it to the meeting in person to voice your election concern, that would be appreciated.

Thanks. Please forward this on to your Atherton friends who may also wish to be included.

Lisa Carey-Lamb

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:21 AM
To: Kathi Hamilton
Subject: FW: Mayoral Election

From: DOUGLASSCOMPANY@aol.com [mailto:DOUGLASSCOMPANY@aol.com]
Sent: Thursday, December 13, 2007 5:17 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: Mayoral Election

Dear Atherton City Council Members:

We feel strongly that there should be an election in Atherton in order to select the next council member. There have been enough problems in city hall and we need to allow the people of the Town to choose their leaders. The citizens of Atherton have put up with enough disruption over the past two years and deserve to have a voice in their government whenever possible.

Regards,
Karen and Alan Douglass
11 Sargent Lane

See AOL's [top rated recipes](#) and [easy ways to stay in shape](#) for winter.

12/14/2007

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:18 AM
To: Kathi Hamilton
Subject: FW: Election

From: ROBFAISANT@aol.com [mailto:ROBFAISANT@aol.com]
Sent: Thursday, December 13, 2007 6:08 PM
To: Jim Janz; Charles Marsala
Subject: Election

Dear Jim and Charles- I think an election should be called to fill Alan's seat. I believe that would be the most likely way to get you some help in cleaning up the ongoing mess that is Atherton. Respectfully, Rob

See AOL's [top rated recipes](#) and [easy ways to stay in shape](#) for winter.

12/14/2007

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:17 AM
To: Kathi Hamilton
Subject: FW: Alan Carlson replacement Process

From: Allen Krizelman [mailto:al@nebraskaoriginal.com]
Sent: Thursday, December 13, 2007 7:05 PM
To: Charles Marsala; Jerry Carlson; Jim Janz; Kathy McKeithen
Subject: Alan Carlson replacement Process

All:

This is an excellent opportunity to implement a well established selection process to replace Alan. It seems to work in our democracy with several hundred years of precedent. Let this communiqué serve to communicate my strong desire that Alan's replacement be selected be all the residents of Atherton in a formal election. This is about process integrity, independent of cost.

Al and Sue krizelman

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:17 AM
To: Kathi Hamilton
Subject: FW: Election

-----Original Message-----

From: sheila botein [mailto:sbotein@sbcglobal.net]
Sent: Thursday, December 13, 2007 9:32 PM
To: Charles Marsala
Cc: David Oakes
Subject: Election

We favor an election to replace Alan Carlson. Sheila Botein and David Oakes, 149 Greenoaks Dr.

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:17 AM
To: Kathi Hamilton
Subject: FW: Atherton Election

From: Nancy Sterling [mailto:n.sterling@comcast.net]
Sent: Thursday, December 13, 2007 10:19 PM
To: Jim Janz; Kathy McKeithen; Jerry Carlson; Charles Marsala
Subject: Atherton Election

Dear Atherton Council Members,

As citizens of Atherton for the past 12 years, we would like to implore you to hold a public election to replace Alan Carlson. Replacing him with a candidate nominated by the council would be wrong. Since there is three years remaining in the term, it should be held open to all interested residents.

Please do the right thing and give the town the chance to fill this important vacancy.

Sincerely,
Nancy and Greg Sterling
83 Lupin Lane

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 8:16 AM
To: Kathi Hamilton
Subject: FW: Atherton Election Request

From: Avery6666@aol.com [mailto:Avery6666@aol.com]
Sent: Friday, December 14, 2007 12:01 AM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Cc: Avery6666@aol.com
Subject: Atherton Election Request

I strongly feel that the town of Atherton needs to have a democratic election to fill the open spot on the council.

Sincerely,
Tracey Avery
Atherton Resident

See AOL's [top rated recipes](#) and [easy ways to stay in shape](#) for winter.

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 2:25 PM
To: Kathi Hamilton
Subject: FW: Selection of Mr. Carlson's Replacement

-----Original Message-----

From: Rick Long [mailto:ricklong1@gmail.com]
Sent: Friday, December 14, 2007 11:32 AM
To: Jim Janz
Subject: Selection of Mr. Carlson's Replacement

Dear Vice Mayor James R. Janz:

We own two houses in Atherton.

I understand that Mr. Carlson has resigned and there are two options as to how to select his replacement, which are as follows:

1. the Council may elect a replacement
2. the people of Atherton may elect a replacement.

The purpose of this email is to let you know we would ask you select option 2 and let the people of Atherton elect Mr. Carlson's replacement.

If for some reason my information is incorrect or you feel it is not appropriate that the people of Atherton be allowed to elect Mr. Carlson's replacement, I would appreciate knowing your thoughts on that.

Thank you for your consideration.

Nancy and Rick Long

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 2:25 PM
To: Kathi Hamilton
Subject: FW: singleton

From: Dscfo@aol.com [mailto:Dscfo@aol.com]
Sent: Friday, December 14, 2007 8:57 AM
To: Charles Marsala
Subject: singleton

I am writing in support of having an election in Atherton to replace the one seat on the city council. Charlot Singleton

See AOL's [top rated recipes](#) and [easy ways to stay in shape](#) for winter.

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 2:24 PM
To: Kathi Hamilton
Subject: FW: Atherton Election Request

From: Peter Grassi [mailto:pgrassi@pacbell.net]
Sent: Friday, December 14, 2007 9:23 AM
To: Charles Marsala
Subject: Atherton Election Request

This is to advise you that we strongly request a special election for the vacated seat of Alan Carlson.

Thank You,

Peter and Carol Grassi
12 Tuscaloosa Ave.
Atherton. Cal.

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 2:24 PM
To: Kathi Hamilton
Subject: FW: Vacant Council Seat

From: Charlie King [mailto:ckingiii@ckam.com]
Sent: Friday, December 14, 2007 10:25 AM
To: Jim Janz; Charles Marsala; Jerry Carlson; "kmckeithen@ci.atherton.ca.us."
Cc: Leslie King
Subject: Vacant Council Seat

Council members:

With Mayor Carlson vacating a seat on the Council, we would like you to carefully consider the process for finding his replacement. With three years remaining for this position, it is critical that we fill this position with an individual that is voted for by the residents of this Town. We see this as a real opportunity for each of you to make a step toward doing what is fair for all interested candidates and what is right for the residents. We know this has been a difficult couple of years for the Town so choosing to hold a public election versus simply assigning someone to the position could go a long way toward demonstrating that your primary goal is protecting the interests of the Town residents.

Leslie and Charlie King
94 Tallwood Court

Kathi Hamilton

From: Melanie Brabenec
Sent: Friday, December 14, 2007 2:24 PM
To: Kathi Hamilton
Subject: FW: Council Seat

-----Original Message-----

From: Helena Babb [mailto:babbh@sbcglobal.net]
Sent: Friday, December 14, 2007 11:03 AM
To: Charles Marsala; Jim Janz; Jerry Carlson
Subject: Council Seat

As a 40+ year Atherton resident I feel it is MORE than necessary to have an election to fill Alan Carlson's seat. Is it even legal to think about self perpetuating council appointments?????

Helena Babb
43 Selby Lane

Kathi Hamilton

From: Melanie Brabenech
Sent: Friday, December 14, 2007 2:23 PM
To: Kathi Hamilton
Subject: FW: Alan Carlson's Replacement

From: Jan Rasmussen [mailto:nrantiques@yahoo.com]
Sent: Friday, December 14, 2007 1:40 PM
To: Jim Janz; Charles Marsala; Jerry Carlson; Kathy McKeithen
Subject: Re: Alan Carlson's Replacement

Atherton Town Council Members:

We would appreciate your immediate consideration regarding the replacement of a new council member to complete Alan Carlson's term of nearly three years. Since this is a very important position that effects all residents of the Town of Atherton, we ask that an election take place rather than simply an appointment by the remaining members of the council.

An election would insure that the new member's views were that of the majority of the town, not simply that of the council. This would be the most efficient and democratic way to solve some of the current issues in Atherton.

Realizing that there are costs involved with an election, we would be happy to volunteer services needed to facilitate this election. We feel that the cost, however, will outweigh the future costs of more law suites, etc. that have recently effected all the residents of our town.

Thank you very much for your consideration.

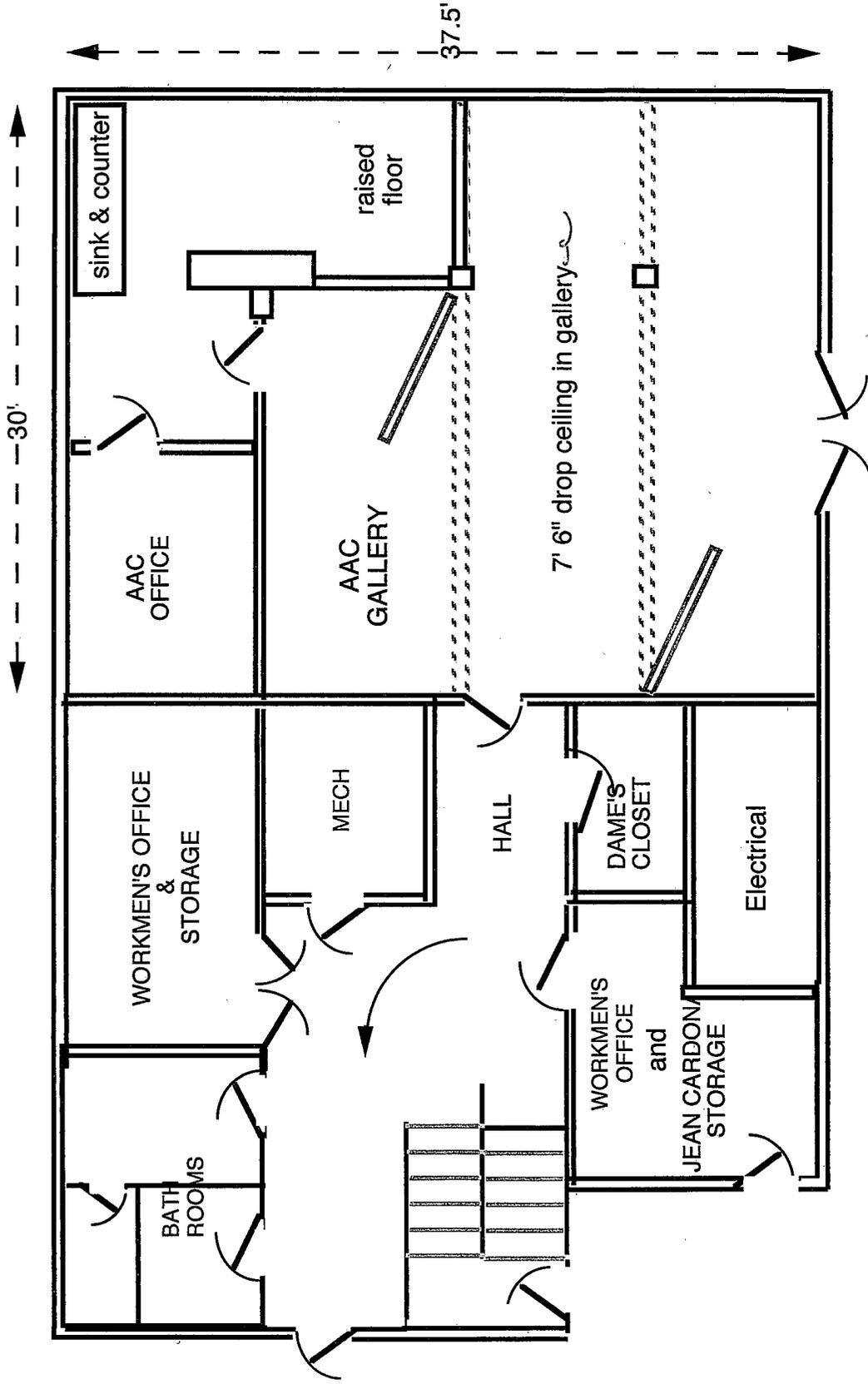
Neil and Jan Rasmussen



MISSION STATEMENT

The Atherton Arts Committee was founded in 1996 to promote the arts for the benefit of the community. It is a non-profit organization which engages in distinctive programming, promotes art awareness, facilitates communication, enhances life-long learning and recognizes cultural diversity.

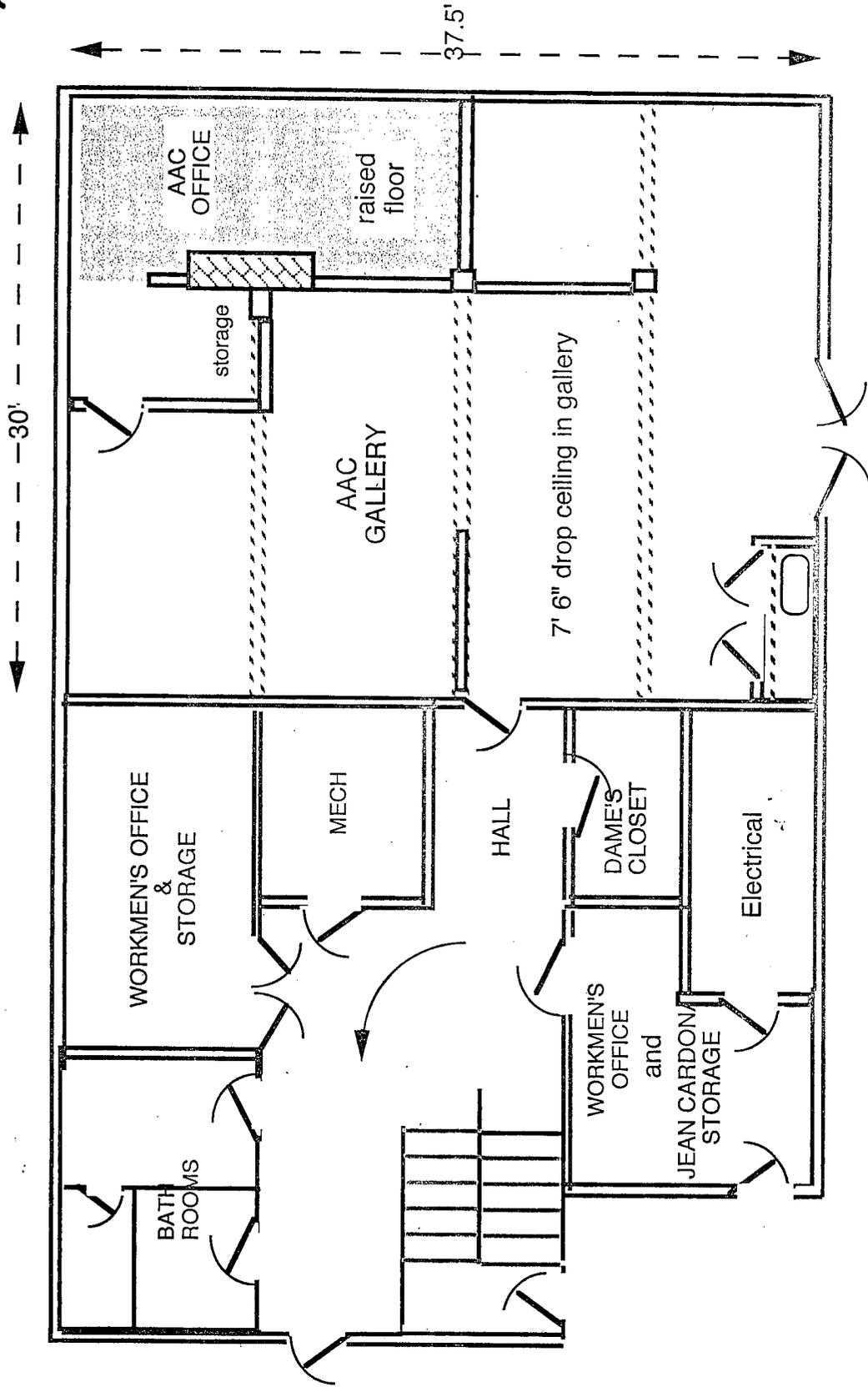
SKETCH #6



MAIN HOUSE BASEMENT only AAC area to scale

AAC
Revised 4/23/2007

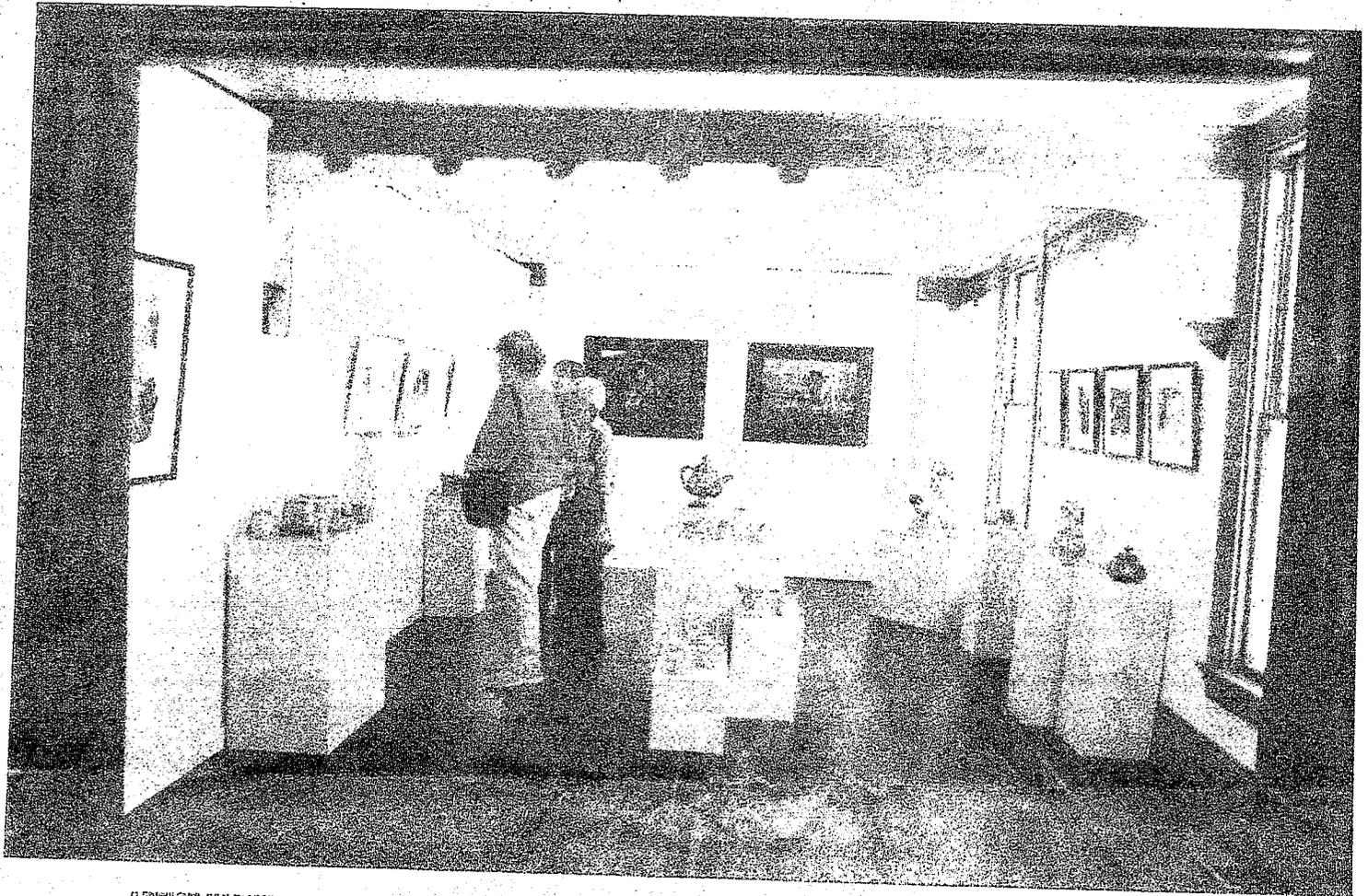
SKETCH # 7



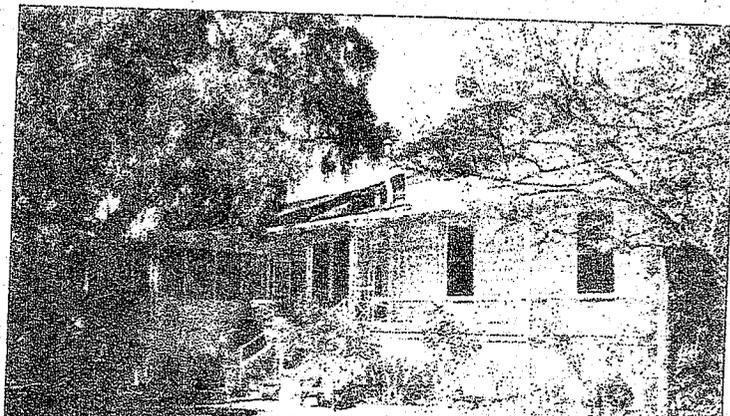
MAIN HOUSE
BASEMENT
only AAC area to scale

AAC 107
Revised 4/27/2007

Volunteer gallery welcomes all art



ARTIST KAREN THUESDELL, in red, serves as tour guide (above) Thursday to Mary Kate Spencer and her daughter Sarah Forsblad at the Main Gallery, housed in Redwood City's Victorian-era John Offerman house (below). The art cooperative features diverse work, such as the mixed-media piece "Illumination" (top). MATHEW SORRINIS — Staff photos



Redwood City co-op thrives on camaraderie

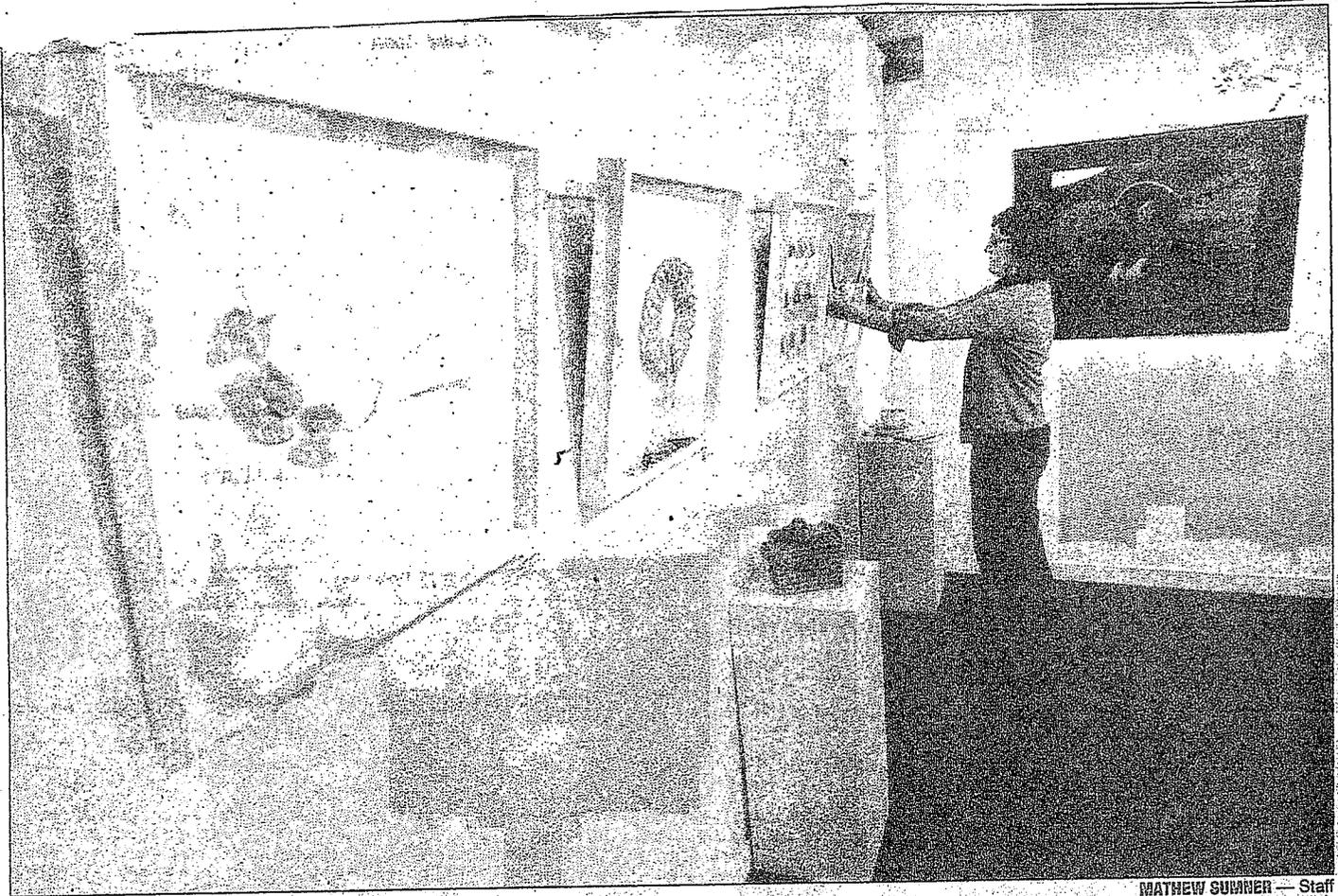
By Nell Gonzales
STAFF WRITER

REDWOOD CITY

SARAH Forsblad of Menlo Park and her mother walked

and the layout. It's homey and intimate."

She also enjoyed the paintings and other artwork in this house. And there's plenty of art here, from oil paintings



MATHEW SUMNER — Staff

ARTIST SUSANNE SMITH straightens out a display at the Main Gallery, an art cooperative in downtown Redwood City.

Art, history, camaraderie bind gallery

▶ ART, from News 1

art cooperative that has run on volunteer work the past seven years in a historical landmark building celebrating 150 years.

The gallery is among a handful of art co-ops on the Peninsula that allow local artists to experiment on different projects, interact with customers directly and build a family-type atmosphere.

And being in one of the oldest buildings in Redwood City, the Main Gallery evokes a strong sense of history that goes well with the art experience.

"The space itself is really wonderful," said Barbara Kirst, a Menlo Park artist and co-op member. "It feels good to be here. The space sort of enhances the experience of looking at the art."

The building at 1018 Main St. was constructed in 1857. It's part of a quaint pocket in downtown, sharing a red-brick courtyard with Alana's Cafe — which is housed in a structure built in 1874.

"This is a little preserve of some other space and time," Kirst said.

Gallery visitors can also get the same

sensation from viewing the diverse forms of art in the house — including Redwood City artist Jeff Carlick's raku-inspired clay art portraying the bass guitar played by Beatles legend Paul McCartney and Jeannine Redon's abstract colored-pencil piece of someone briskly walking across a French vineyard, to name two.

"It's very interesting the wide variety of approaches to art," said Mary Kate Spencer of Menlo Park, Forsblad's mother.

Besides the artistic diversity, Karen Truesdell, another Menlo Park artist and co-op member, said the gallery allows artists more freedom compared to commercial galleries.

"This allows artists to try new things and deal directly with customers," Truesdell said. She said commercial galleries generally pick which artists and what art to show.

She said the Main Gallery has about 25 dues-paying members who volunteer for duties from staffing to bookkeeping to helping to run the operation in the building which is leased.

Some Main Gallery members originally

came from the Gallery House in Palo Alto after that co-op had to find another place because of increased rent, she said.

"I think the biggest challenge facing co-ops is finding space on the Peninsula with a reasonable rent that can be covered by the income and still make money for the artists to take home," said Trevlyn Williams, an artist and member of the Gallery House. "The gallery has to be in an economically viable location. This kind of space is in short supply in our real-estate market."

Other art co-ops on the Peninsula include one in Los Altos and the Coastal Arts League and Museum in Half Moon Bay.

"One of the benefits of a co-op . . . is it really fosters community among the artists," said Kirst at the Main Gallery. "There's a lot of collaboration."

For more information about the Main Gallery, visit www.themaingallery.org.

Staff writer Neil Gonzales covers Redwood City, Menlo Park, Atherton and East Palo Alto. He can be reached at (650) 306-2427 or by e-mail at ngonzales@sanmateocountytimes.com.

GUALALA ARTS CENTER
 46501 Gualala Road
 Gualala, CA 95445

(707) 884-1135 www.gualalaarts.org

PRESSING ISSUES
 Monotypes, Monoprints and Hybrid Prints

Presented by the Gualala Arts Center
 in collaboration with the
California Society of Printmakers
 Juried by Lisah Horner

JULY 14 - AUGUST 5, 2007
 Burnett Gallery & Jacob Foyer
GUALALA ARTS CENTER
 OPENING RECEPTION - Saturday, July 14 - 5 to 7 pm

Participating Members from the California Society of Printmakers
 Sandra Beard, Robert Broki, Colette Dudley, Jessica Dunno, Daisy Engle, Linda
 Fisher, Kim Fink, Barbara Foster, Yui Firsirotu, Lars Johnson, Mike Kirball,
 Sydel Lewis, Robert Leach, Janet Mackay, Peter Leone McCormick, Barbara
 Nilman, Barbara Nilsson, Donna Orme, Bonnie Randall Boier, Deborah Solomon,
 Stary Smith-Bell, Elizabeth Tona, Jerry Theobald, Patricia Theobald-Payne, Kaylee
 Vranontes, Lita Wahrmann, Barbara Wiener and Linda Yochizawa.
 Postcard Design - Joe Ramos ramose@gualalaarts.net

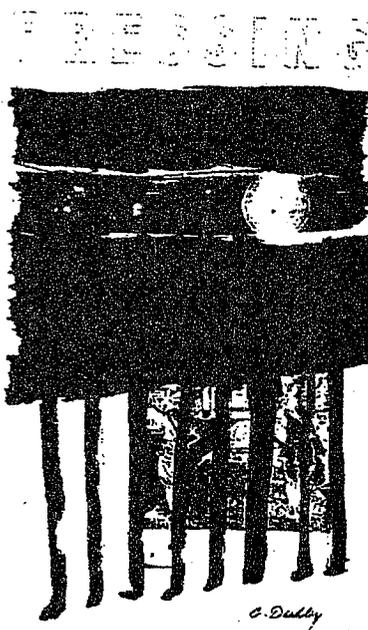
for Betty Ullman

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 95445

from Colette

FRONT: Left, March for Empire-City History; Right, Twisting by Deborah Solomon

*Betty - I'm
 in this show in the
 Gualala Arts Center - a
 beautiful center way up on
 the North Calif. Coast! I
 certainly wish Albatross had
 such a center for exhibitions,
 concerts, + other events! If
 little Gualala can do
 it, why can't
 we?*



C. Dudley

Monotypes Monoprints
 Hybrid Prints

Burnett Gallery
 and Jacob Foyer
 46501 Gualala Road
 Gualala, CA 95445

JULY 14 - AUGUST 5, 2007

PRESENTED BY
 California Society
 of Printmakers



FROM COSETTE DUDLEY

**REPORT(short history) TO THE PARK AND RECREATION COMMISSION
FROM THE ATHERTON ARTS COMMITTEE.**

*The Atherton Arts Committee (AAC) is presently composed of three people: Samira Plesman, Jean Schaaf and Betty Ullman.

*Rita-Corbett-Evans died in 1976 leaving her house and part of her residue to the town of Atherton for the sole purpose of developing a Creative Design Center.

*The Town Council decided to sell the house and build an art center. The Town later rented this building to a Playskool and returned funds used to build the art center to the Evans Trust.

*In 1996, the Town Council adopted a resolution establishing an Arts Committee, and approved their bylaws. According to the bylaws, funds are to be used for distinctive programming, promoting art awareness, enhancing life-long learning, and recognizing cultural diversity within the community.

*The Town Council has repeatedly recommended building a structure for a Creative design Center and has supported the concept of continuing the Evans' art program in Atherton.

*On 1/20 /99, the Town Council Minutes state that the AAC will be using their new space in the Garden Room (basement/garage) of the Main House at HHP, as soon as a new sink is in place.

* The AAC has requested permission to remodel the Garden Room into an art gallery where artists can exhibit their work and short workshops could be held. This space is being used for storage, and the AAC is unable to move forward with this project.

*The AAC has drawn tentative remodeling plans for this garage/basement/garden room and now needs to obtain estimates to carry out the remodel. In order to proceed, sufficient space must be made available to examine the structure and operate the Gallery safely with protective storage. We feel that this proposed Gallery would be in compliance with the Rita Corbett-Evans Trust and a definite asset for the Park and Town. For this purpose equipment currently stored in the Garden Room must be removed.

*At this time, we are requesting that supplies and equipment currently stored in the Garden Room be moved so that we can proceed with the Town's Art Gallery.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF DECEMBER 19, 2007

SUBJECT: RESOLUTION GOVERNING COMMITTEES/COMMISSION

RECOMMENDATION.

Review resolution which is designed to govern all Town committees with the exception of the Planning Commission.

BACKGROUND.

Thirteen committees are described in this resolution and are intended to assist the City Council in connection with matters affecting the Town. The committees are described alphabetically in the attached resolution.

With the exception of the Arts Committee, the Crime Prevention Committee, the Park and Recreation Commission, and the General Plan Committee, all other committees are presently described in the City Council Rules of Procedure.

The Arts Committee was created by Resolution No. 98-06. The General Plan Committee and Parks and Recreation Commission were created by ordinances codified in the Atherton Municipal Code Chapters 2.37 and 2.40, respectively. The Planning Commission is established and described in Chapter 2.36 of the Atherton Municipal Code. Under State Planning Law, Government Code section 65100 and following, the Planning Commission must be established by ordinance. There is no similar requirement for establishment of the Park and Recreation Commission or the General Plan Committee. Accordingly, these two may be removed from the Atherton Municipal Code and placed in the resolution. Chapters 2.37 (General Plan Committee) and 2.40 (Park and Recreation Commission) will be rescinded as these entities will now be governed by the resolution.

If the City Council approves the resolution, then paragraph 9 of the City Council Rules of Procedure will be amended to provide that Town committees are described as governed by this master resolution. Resolution No. 98-06 regarding the Arts Committee will be rescinded, and the Atherton Municipal Code will be amended to delete Chapters 2.37 and 2.40.
Resolution Governing Committees

Following the most recent consideration of these matters by the City Council, I have made revisions to the resolution and related documents. In order to assist review, the most recent deletions and/or changes are shown in **bold** for additions and ~~strikeout~~ for deletions.

The Council may wish to consider whether to have all committees set out and described in the resolution, particularly the Crime Prevention Committee and the Tree Committee.

In the event the resolution is not adopted at the December meeting, it is suggested that the Council confirm that the re-appointments to the Town's committees which would otherwise be scheduled in January 2008 be continued pending further action on this resolution. This will assist in work-flow for the City Clerk, who, presently, is having to deal with re-appointments in January and then again in April.

FISCAL IMPACT:

None.

Prepared By:

Approved By:

/s/ Marc Hynes
Marc Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

Attachments

RESOLUTION NO. 07-___

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
~~ESTABLISHING~~ GOVERNING TOWN COMMITTEES AND COMMISSIONS**

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

Section 1. Establishment of Committees.

The following committees are established for the Town of Atherton:

1. Arts Committee
2. Atherton Channel Drainage District Committee.
3. Atherton Rail Committee
4. Audit Committee
5. Budget and Finance Committee
~~Buildings and Facilities Committee~~
6. **Crime Prevention Committee**
7. Emergency Preparedness Committee
8. Environmental Programs Committee
9. General Plan Committee
10. Park and Recreation Commission
11. Screening Committee
12. Transportation Committee
13. **Tree Committee**

Section 2. Rules of Procedure. All committees of the Town shall follow the Rules of Procedure as adopted by and as amended by the City Council.

Section 3: Appointment of Voting Members to Committees – Powers and Duties.

Members other than City Council Members shall be appointed following recommendation of the City Council Screening Committee and approval by the City Council. **The Screening Committee will not make appointments to the following committees: Atherton Channel Drainage District Committee, Atherton Rail Committee, Crime Prevention Committee, Environmental Programs Committee, Transportation Committee, and Tree Committee. Appointments to these committees will be made by the City Council Member serving on the committee.** All appointed members shall be registered voters in the Town. Members shall serve at the pleasure of the City Council, or until the terms as set out in the respective committees described below. **With the exception of Atherton Channel Drainage District Committee, Atherton Rail Committee, Crime Prevention Committee, Environmental Programs Committee, Transportation Committee, and Tree Committee, vacancies in any committee arising from any reason, including expiration of term, shall be filled by appointment of the City Council based upon recommendations of the City Council Screening Committee. Vacancies in the Atherton Channel Drainage District Committee, Atherton Rail Committee, Crime Prevention Committee, Environmental Programs**

Resolution No. 07-___

Page

Adopted _____ 2007

Committee, Transportation Committee, and Tree Committee shall be filled by appointment of the City Council Member appointed to the committee.

Section 4. Composition – Terms - Powers and Duties.

The composition, terms, and powers and duties of the Town's committees shall be as described below: **There shall be no limit to the number of terms which may be served on any of the Town's committees. In the event funding is required, the committee shall prepare a budget and present it to the City Council for review and approval. For every committee on which no City Council Member is appointed shall provide reports on its activities upon request by the City Council.**

1. Arts Committee.

Consists of up to ten (10) members appointed by the City Council. The term of office shall be as follows: Five (5) of the members shall be appointed to a four (4) year term commencing 2007 and ending on April 30, 2011. The remaining members' terms shall be three (3) years commencing 2007 and ending on April 30, 2010. Thereafter, each term of office shall be for four (4) years. The Arts Committee meets on the 4th Tuesday of each month at 1:00 p.m. in the Holbrook-Palmer Park Garden Room. The Arts Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in matters regarding art awareness including, without limitation, the following goals and objectives:
 - i. Fulfill the requirements of the Rita Corbett-Evans estate;
 - ii. Develop a unique arts program specific to the needs of Atherton and the surrounding community;
 - iii. Provide a base and focal point for arts programs in Atherton;
 - iv. Include a multi-disciplinary range of artistic endeavors including fine, performing, and literary arts as well as crafts;
 - ~~v. Attract and welcome all members of the community.~~

2. Atherton Channel Drainage District Committee.

Consists of three (3) members including two (2) Council Members, and one (1) resident of the Town. The committee meets on an as needed basis in the City Council Chambers. The term of office for Town resident members shall be a four (4) year term commencing 2007 and ending on April 30, 2011. Council representatives are selected by the City Council to serve a one (1) year term. The Atherton Channel Drainage District Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to the Atherton Channel Drainage District.

3. Atherton Rail Committee.

Consists of up to thirteen (13) members including two (2) Council Members and up to eleven (11) residents of the Town. The committee meets on the first Tuesday of each month at

6:00 p.m. in the City Council Chambers. The term of office for Town resident members shall be a four (4) year term commencing 2007 and ending on April 30, 2011. Council representatives are selected by the City Council to serve a one (1) year term. The Atherton Rail Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council **upon request** in all matters pertaining to rail service in and through the Town. The Atherton Rail Committee will research and address the specific impact of high-speed rail and other rail improvements may have on the Town.

4. Audit Committee.

Consists of seven members, including two Council Members of the Budget and Finance Committee, and five residents of the Town. The committee meets monthly or as needed in the Conference Room of the Town Administrative Offices. The term of office for three (3) Town resident members appointed in 2005 shall be for three years ending on April 20, 2008. The terms of two of the remaining two Town resident members shall be for four (4) years ending on April 30, 2009. Thereafter, the term of office shall be for four (4) years. Council representatives are selected by the City Council to serve a one (1) year term. The Audit Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to Town finances.
- b. Provide oversight of the annual audit.
- c. **Make recommendations to the City Council on internal controls.**

5. Budget and Finance Committee.

Consists of two (2) 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. The term of office is one (1) year. The Budget and Finance Committee shall have the following powers and duties:

- a. Act in an advisory capacity and make recommendations to the City Council **upon request** in all matters pertaining to Town finances.
- b. **Act in an advisory capacity and make recommendations to the City Council upon request in all matters pertaining to Town buildings and facilities.**

~~6. Buildings and Facilities Committee.~~

~~Consists of two (2) Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Buildings and Facilities Committee shall have the following powers and duties:~~

6. Crime Prevention Committee.

Consists of three (3) members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office shall be a four (4) year term commencing 2007 and ending April 30, 2011. The committee shall have the following powers and duties:

- a. **Act in an advisory capacity and make recommendations to the City Council upon request in all matters pertaining to crime prevention in the Town.**

7. Emergency Preparedness Committee.

Consists of two (2) Council Members. The committee meets on an as-needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Emergency Preparedness Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to emergency preparedness in the Town.
- b. **Work with the Menlo Park Fire Protection District in connection with all Citizen Emergency Response Team (CERT) program.**

8. Environmental Programs Committee.

Consists of up to twelve (12) members including two (2) Council Members and ten (10) residents of the Town. 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. The term of office shall be as follows: Five (5) of the Town resident members shall be appointed to a **two**-year term commencing 2007 and ending April 30, **2009**. The remaining five (5) Town resident members' terms shall be four (4) years commencing 2007 and ending April 30, 2011. Thereafter, each term of office shall be for four (4) years. Council representatives are selected by the City Council to serve a one (1) year term. The Environmental Programs Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to environmental issues, including:
 - i. Global warming and CO2 emissions
 - ii. Green Building
 - iii. Earth Day events
 - iv. ABAG/PG&E Energy Watch Partnership
 - v. E-Waste Collection Day
 - vi. Mayors Agreement on Climatic Change
 - vii. Energy Awards for Homeowners
 - viii. Energy Consumption Reduction in Town and School Buildings.

9. General Plan Committee.

Consists of two (2) Council Members, two (2) Planning Commissioners and up to five (5) residents of the Town. The committee meets quarterly **or more frequently if required** on the first Wednesday of the month at 6:00 p.m. in the Town Council Chambers. The term of office for Town resident members appointed by the City Council shall be one four (4) year term. Council and Planning Commission representatives are selected by their respective bodies for a term of one (1) year. The General Plan Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to planning.
- b. Review the General Plan and make recommendations to the City Council, Planning Commission and Town Staff regarding the operation of the ordinances and policies in the community on the subject of planning.

10. Park and Recreation Commission.

Consists of seven (7) members. One shall be a representative of the Holbrook-Palmer Park Foundation. One member shall be a representative of the Atherton Dames. Each of the foregoing representatives shall serve a term of two (2) years. ~~and no more than two consecutive terms.~~ The term of office for the two (2) members ending April 30, 2008 shall continue for one additional four (4) year term ~~ending April 30, 2012.~~ The terms of office for the remaining ~~three (3)~~ members shall be four (4) years. ~~for members appointed in 2007 with terms ending April 30, 2011, and five (5) years if the member was appointed in 2008 with terms ending April 30, 2013,~~ and thereafter for a period of four (4) years. Thereafter, each term of office shall be for four (4) years. ~~No member shall serve for more than two (2) full consecutive terms.~~ The Park and Recreation Commission meets on the first Wednesday of each month at 6:30 p.m. in Holbrook-Palmer Park, 150 Watkins Avenue, Atherton, California. The Parks and Recreation Commission shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to parks and public recreation and to cooperate with other governmental agencies and civic groups in the advancement of the park and recreation planning and programming;
- b. Develop and maintain a master plan for park development for each park facility within the town and annually, in the month of April, present a report to the City Council detailing the changes to the plan enacted by the Council during the previous year and proposed study or change of the future year;
- c. ~~Consider~~ **Review** the annual budget for parks and recreation during the process of its preparation and make recommendations with respect thereto to the City Council. **This includes recommendations regarding the setting of fees.** The budget should contain estimates and recommendations for such long-term capital outlay projects as may be necessary to provide for an orderly development of park and recreation areas and facilities;
- d. Study and make recommendations on the acquisition and development of recreation areas, activities and facilities such as playgrounds, parks, open space and other centers of recreation; and
- e. Assist in the planning of recreation programs for the community, promote and stimulate public interest therein, and to that end, solicit public and private agencies, interested therein.

11. Screening Committee.

Consists of two (2) Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Screening Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to the interview of all applicants for Town committees and the Planning Commission, and to make recommendations for appointment to the City Council.

12. Transportation Committee.

Consists of five (5) members including two (2) 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. The term of office for Town resident members shall be four (4) years. Council representatives are selected by the City Council to serve a one (1) year term. The Transportation Committee shall have the following powers and duties:

- a. Act in an advisory capacity **and make recommendations** to the City Council **upon request** in all matters pertaining to transportation.

13. Tree Committee.

Consists of up to twelve (12) members. The committee meets on the third Thursday of each month at 4 p.m. in the Conference Room of the Town Administrative Offices. The term of office for Town resident members shall be four (4) years. The Tree Committee shall have the following powers and duties:

- a. **Act in an advisory capacity and make recommendations to the City Council upon request in all matters pertaining to the Town's heritage trees.**

This Resolution shall be effective immediately upon adoption. The operative date of this resolution for the General Plan Committee and the Park and Recreation Commission shall be thirty (30) days from and after the date of adoption of the Ordinance rescinding Chapters 2.37 and 2.40 of the Atherton Municipal Code. Resolution 98-06 is hereby rescinded.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of _____, 2007, by the following vote.

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

Mayor, Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

ORDINANCE NO. _____

**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 PARKS AND
RECREATION COMMISSION**

WHEREAS, the City Council has provided for the creation, maintenance and operation 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. _____ governing Town committees and commissions adopted by the City Council on December 19, 2007, 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 _____ day of _____, 2007.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the _____ day of _____, 2007, by the following vote:

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

MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RESCINDING
RESOLUTION NO. 98-06 PERTAINING TO THE ATHERTON ARTS COMMITTEE

WHEREAS, the City Council has adopted Resolution No. _____ pertaining to all of the
Town's committees and commissions; and

WHEREAS, the foregoing action supersedes the provisions of Resolution No. 98-06
pertaining to the Atherton Arts Committee;

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

Section 1. Resolution No. 98-06 pertaining to the Atherton Arts Committee is hereby
superseded and rescinded.

This Resolution shall be effective immediately upon adoption.

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted
by the City Council of the Town of Atherton at a regular meeting thereof held on the
_____ day of November 2007, 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>

Alan B. Carlson, 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
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: ATHERTON ARTS COMMITTEE (AAC)

DATE: FOR THE MEETING OF DECEMBER 19, 2007

SUBJECT: GARDEN ROOM REMODEL AND ADDITIONAL STORAGE

RECOMMENDATION:

The Atherton Arts Committee recommends that the City Council 1) Reaffirm that the Garden Room of the main house at Holbrook-Palmer Park is the AAC's designated space; 2) Approve remodeling Garden Room into an Art Gallery; and 3) Move storage of "dog people" and Jean Cardona's furniture and supplies from the Garden Room.

INTRODUCTION: by Malcolm Dudley

- * Rita-Corbett-Evans died in 1976 leaving her house and part of her residue to the Town of Atherton for the sole purpose of developing a Creative Design Program.
- * The Town Council decided to sell the house and build an Art Center. The Town later opted to rent this building to a playschool.
- * In 1996, the Town Council adopted a resolution establishing an Arts Committee and approved its bylaws. According to the bylaws, funds are to be used for distinctive programming, promoting art awareness, enhancing lifelong learning, and recognizing cultural diversity within the community.
- * The Town Council has repeatedly discussed and supported building a structure for an Art Center and has supported the concept of continuing the Evans Art Program in Atherton.
- * In 1999, the Town Council gave the Garden Room, part of the basement of the main house, to the AAC for its use.
- * In January 2007, the Park & Recreation Commission requested that the Arts Committee come up with a plan to fully utilize the AAC designated space. The AAC proposed that the Garden Room be converted into an Art Gallery. Many sketches were drawn up, including architectural drawings (see attachments).
- * In November 2007, members of the Park & Recreation Commission unanimously approved AAC's proposal to remodel the Garden Room. In addition, they requested that the Town

Council direct staff to find funds and appropriate space for storage presently occupying the Garden Room.

ANALYSIS:

1. Mike Wasmann, Building Official, studied the AAC's plans and visited the Garden Room. He felt this space could be remodeled in such a way that there would be no code problems.
2. Atherton artists are in favor of and would support an art gallery in the Town and would be pleased to show their work. The artists would give lectures, conduct open studios, and provide programs for the community. The gallery would also be used for short art classes with emphasis on outreach programs.

FISCAL IMPACT:

1. The AAC plans to use funds from the Rita- Corbett-Evans Trust for the remodeling project. In order for the Evans Trust to function in perpetually, the AAC will generate income through fund raising and rentals.
2. In order for the Art Gallery to fully function, the AAC respectfully requests that items recently stored in the Garden Room by others be removed. Duncan Jones has researched this project and estimates the cost to be between \$6,000 - \$12,000.

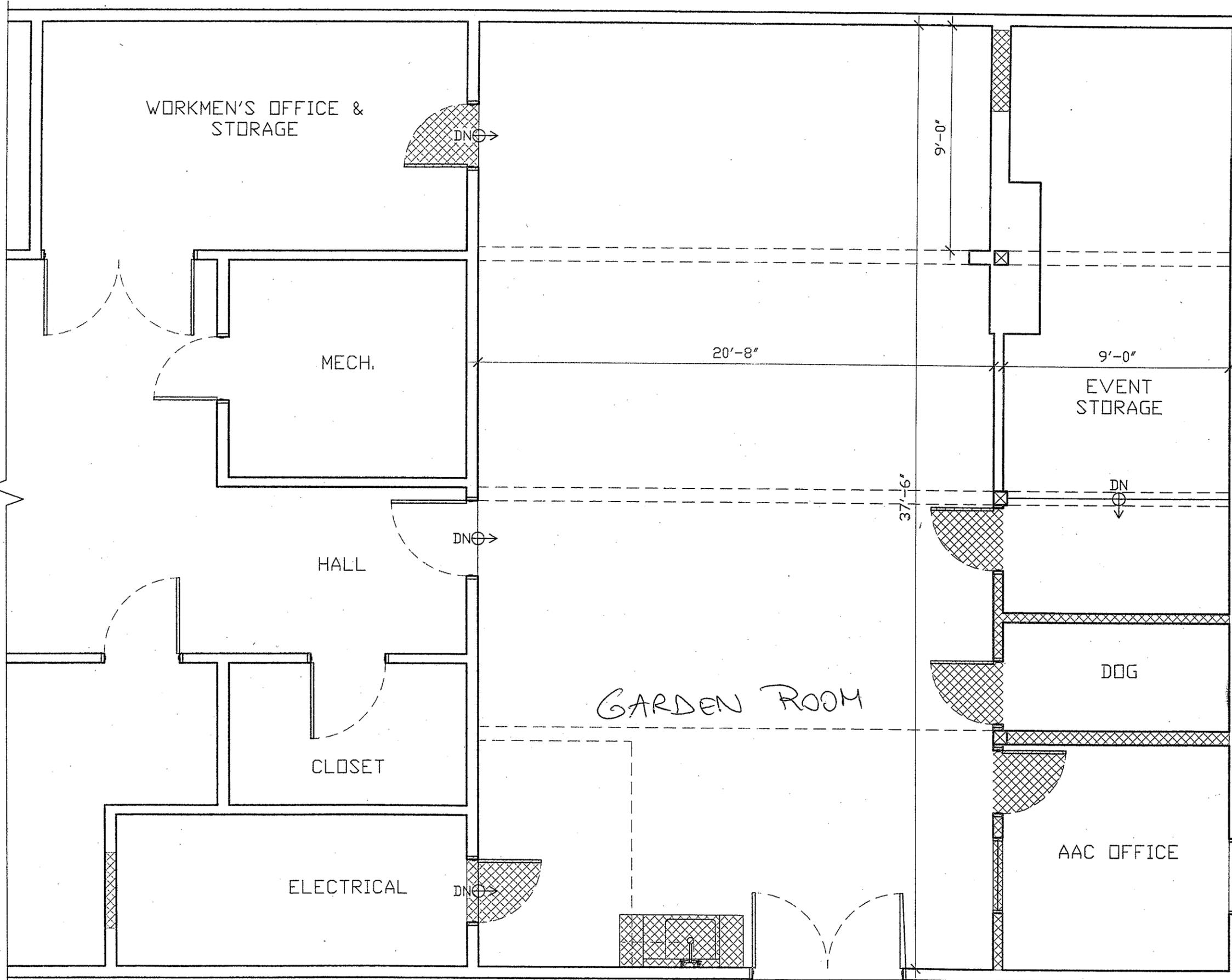
Prepared By:

Approved by:

Atherton Arts Committee

Wendé C. Protzman
Interim City Manager

Attachments: 8



TO BE REMOVED 

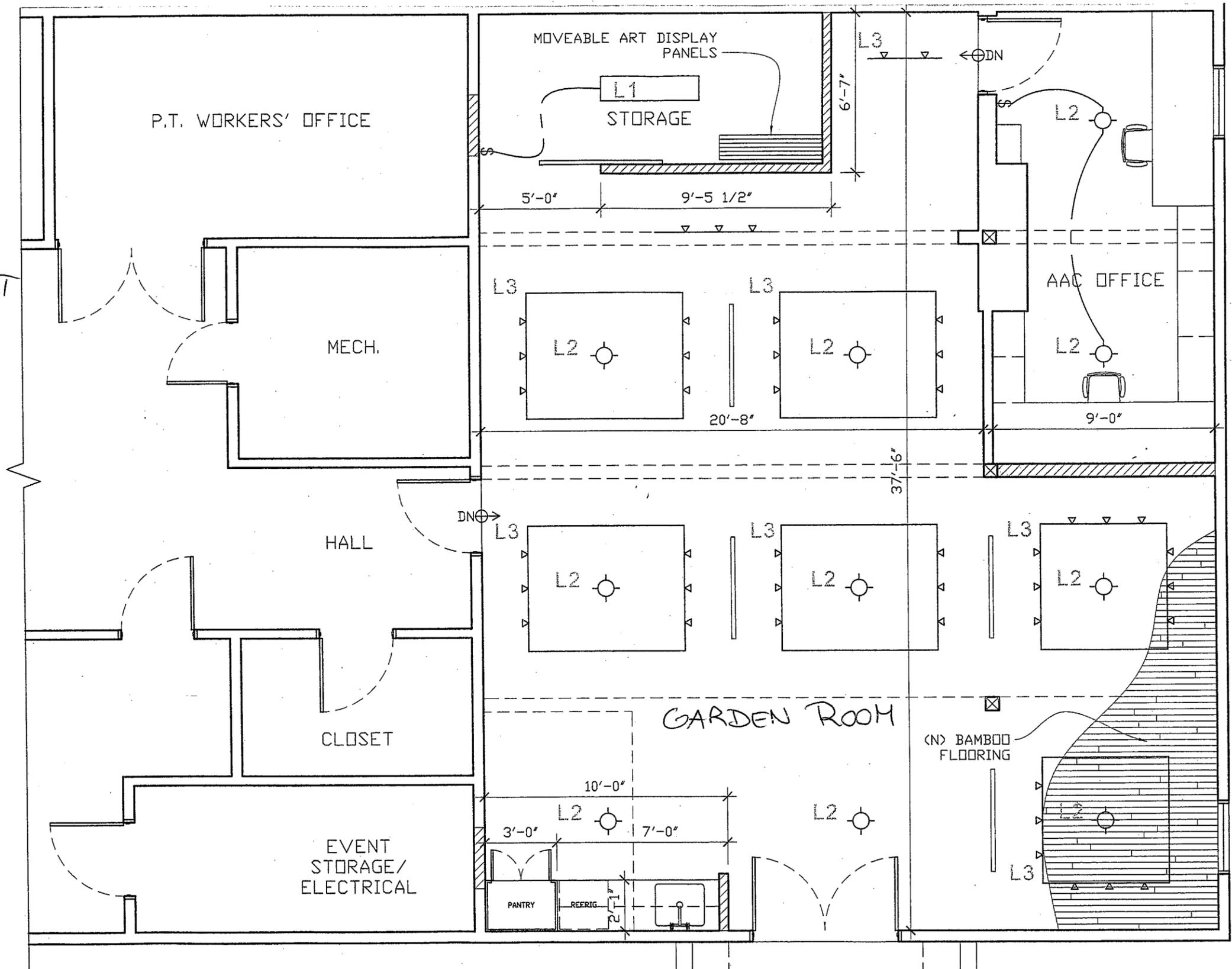
Existing Plan
 Scale = 1/4" = 1'-0"

PROPOSED IMPROVEMENT

AAC

Conversion to Art Gallery Space

ANA WILLIAMSON ARCHITECT



- SWITCH \$
- 1 4FT. FLUORESCENT 
 - 2 CEILING MOUNTED FIXTURE 
 - 3 TRACK LIGHTING 
 - NEW WALL 

Proposed Plan
 Scale:
 1/4" = 1'-0"