



## Item No. 11 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**THROUGH: GEORGE RODERICKS, CITY MANAGER**

**FROM: JUDI HERREN, ACTING CITY CLERK**

**DATE: SEPTEMBER 20, 2017**

**SUBJECT: RESOLUTION TO REJECT CLAIM OF CYRUS S. SAFAI**

#### **RECOMMENDATION**

Adopt Resolution 17-xx denying the claim filed by Cyrus S. Safai.

#### **BACKGROUND**

Mr. Safai submitted a claim May 9, 2017 alleging that the Town wrongfully withheld permit fees. The Town's insurance claims administrator, ABAG received and reviewed information from the claimant noting damages in a range of \$484.36. Mr. Safai submitted background information in his claim.

The review demonstrated that the applicant only paid the Plan Check Fees in the amount of \$440.27 on October 31, 2016. Planning performed two plan checks, Building performed an Architectural and Structural plan checks and sent out correction letters for both, and the Arborist performed one plan check and had corrections that needed to be addressed. The correction letters sent out in November 2016 received no response from the applicant. The Permit Cancellation and Request for Refund form, signed by Mr. Safai, states under Fee Refunds #2 "The building official may authorize refunding of 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done"; plan reviewing was done for this permit.

Based on the review, ABAG recommends that a Notice of Rejection be sent to the claimant.

#### **ATTACHMENT**

- Claimant Cyrus Safai Documentation
- Towns Documentation
- Resolution

**Petitioner:** Cyrus S. Safai,  
37 Irving Ave. Atherton, CA 94027  
Tel. 650-324-2499  
Email: csafai@hotmail.com.

**HEARING BEFORE:  
ATHERTON CITY COUNCIL  
Hon. Mayor: Michael Lempres.**

**AND:**

**Hon. Cary Wiest; Vice Chair  
Hon. Rick DeGolia; City Council Member  
Hon. Bill Widmer; City Council Member  
Hon. Elizabeth Lewis; City Council Member**

**Subject: Hearing Brief:  
Re: Refund of Building Permit Fee BP-16-00835**

**Date: September 20, 2017**

**Location: City Council Chamber**

**Petitioner:** Cyrus S. Safai,  
37 Irving Ave. Atherton, CA 94027  
Tel. 650-324-2499  
Email: csafai@hotmail.com.

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**EXHIBITS:**

**Exhibit A: Atherton Cash Register Receipt.**

**Exhibit B: Atherton Planning Dept. Conditional Approval Letter.**

**Exhibit C: Permit Cancellation and Request for Refund.**

**Exhibit D: Rejection of Refund recorded in official records.**

**Exhibit E: Town of Atherton Planning fee Schedule. Re: Fence.**

**Exhibit F: Town of Atherton Claim Form filed by Petitioner.**

**Exhibit G: Copy of Grand Jury conclusions. Re: Atherton Building Department. ( June 26, 2006).**

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**A. INTRODUCTION:**

On July 19, 2017, in the Town of Atherton City Council regular meeting; the matter of Atherton's resident Cyrus S. Safai's ("Petitioner") application for the refund of his paid Permit Fee No. BP-16-00835 was placed as item 16 on Council's Consent Calendar. Town City Manager has sought the Council to deny Safai's Petition. Petitioner appeared before the Council and prayed for continuance until the next regularly scheduled Council Meeting when he has had the opportunity to provide the Council with a written petition. City Council unanimously granted Petitioner's request for continuance.

Now, Petitioner submits the following brief and prays that the Atherton Town Council to grant Petitioner the refund of:

a) \$440.27 on the grounds that Atherton Building Department unreasonably charged Petitioner for services not rendered AND:

b) \$128.00 on the grounds that Atherton Building Department sought and Petitioner paid the Planning Fee of \$160.00. Under Town of Atherton policies, Building Department must refund 80% of said fee because Petitioner withdrew his application before any work was done and he applied for refund within the required 180 days after the original permit application was filed.

Petitioner's total claim is for \$568.27

**B. FACTUAL BACKGROUND:**

1. On October 31, 2016, Petitioner applied for a permit to replace the existing eight (8) ft. concrete fence along the Marsh Road located at 37 Irving Ave, Atherton CA. Atherton Building Department sought and Petitioner paid an application fee for a total of \$605.45. (See Exhibit A).

2. On November 17, 1995, Town of Atherton had issued the original permit #21299 and said fence was built along and contiguous with neighbors' similar fences, and within the Petitioner's

property border. Said new application was only for replacement.

3. On November 7, 2016: Ms. Dori Ganetsos (Atherton Assistant Planner) first objected on the ground that that the fence must be 6 feet in height but then agreed with Petitioner that under Atherton Ordinance 46.030-1 said fence is along Marsh Road and can be 8 feet in height. She gave her approval pending reviews from other officials. (See Exhibit B)

4. The California rain season that began in early November 2016 and continued until late March 2017 did not permit Petitioner to proceed with the project. Therefore, Petitioner neither communicated nor provided any additional documentations and he did not seek any further procedural review. Needless to say that no work on the project ever commenced.

5. On April 14, 2017; Petitioner applied for the “Permit Cancellation” in accord with Atherton rules and regulation. Said rules authorized building official refunding of 80 percent of the permit fee paid when no work has been done under a permit issued. (See Exhibit C)

6. On April 18, 2017 at 8:56 AM, Atherton Building Department approved Claimant’s application for permit cancellation, but declined the refund on the ground that “... *the only fees paid were Plan Check Fees which are not refundable.*” (See Exhibit D)

7. On May 9, 2017, Petitioner filed a Claim with the Town of Atherton for refund of his paid fees. City Manager referred the matter to an outside private party for investigation and finally on July 18, 2017, City Clerk informed Petitioner that the matter has been placed on City Council Consent Calendar for denial.

8. Petitioner appeared at the hearing held on July 19, 2017 and sought the matter to be continued until the next general City Council Meeting. City Council unanimously granted Petitioner request. Now the matter comes back before this administrative body for decision.

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**C. ARGUMENTS:**

**I. Atherton Building Department miscalculated Petitioner's Application Fees and charged Petitioner for services not rendered:**

9. Town of Atherton Planning Fees are predetermined by City Council and advertised to public on Town's exclusive web-page. The 2016 /2017 Application Fee for initial 2 reviews of an application for erecting a fence is listed as \$160.00 (See Exhibit E);

10. In this case Planning Department in addition to \$160.00 also charged Petitioner another \$440.27 and named it as "Building Plan Check Fee". Petitioner neither sought nor authorized any Plan Check because he did not submit any valid contract pertaining to the cost of replacing the existence fence. Since then, the Planning Department has declined to state the basis for charging the Petitioner \$440.27 or to provide any documentation as to the nature of services that performed or justify the reasonableness of seeking \$440.27. Further:

11. Planning Department does not cite any ordinance, rules or regulation that City Council made refund of said fee not permissible. (See Exhibit A and D). Planning Department claims all \$605.45 that Petitioner paid were for "Plan Check". (See Exhibit D). A claim that is false because \$160.00 was for "Initial Review" ( See Exhibit A) and It is the stated and advertised policy of City Council that "*The building official may authorize the refunding of any fee paid hereafter which was erroneously paid or collected*" ( See Exhibit C Fee Refunds (1)).

12. From forgoing, Petitioner alleges that Building Department miscalculated Petitioner's Application fee, unreasonably charged him for services not rendered.

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## **II. Planning Department must refund 80% of Petitioner's**

### **Initial Review Permit Fee:**

13. Planning Department charged Petitioner \$160.00 for "initial review". There was no evidence that Petitioner conducted, contracted any contractor or did any work based on Planning Department initial review. Under publicly advertised City Council policy as stated on Town of Atherton Planning fee schedule: This petitioner entitled to 80% of \$160.00 that Planning Department collected. (See Exhibit C, Fee Refunds (3)).

## **III. Denial of refunding Petitioner's Permit Fee is unlawful:**

14. Petitioner alleges that he is a resident of The State of California and Town of Atherton is a California municipal corporation and both subject to California laws.

15. Under California CONSUMERS LEGAL REMEDIES ACT of 1970 (§§ 1750- 1784) in general and specifically:

(i) Under Civil Code §§ 1770 (2) titled: "*Misrepresenting the source, sponsorship, approval, or certification of goods or services*"; Building Department violated the law by misrepresenting and charging Petitioner for services not rendered namely to complete the process of either permitting or denying Petitioner's application. There is no evidence that Building Department took any action further then its initial review. And:

(ii) Under Civil Code §1770(9) titled: "*Advertising goods or services with intent not to sell them as advertised*": Officials of Building Department knew or must have known that Town of Atherton advertised Permit Fee for two initial review was \$160.00. And:

(iii) Under Civil Code § 1770(17) titled: "*Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction*"; Building Department officials knew or must have known that if no work done on the project then Petitioner was entitled to 80% refund on said advertised fee.

(iv) California Supreme Court in *Kagan v. Gibraltar Savings and Loan Assoc.* (1984) 35 Cal.3d 582, 593 states that the infringement of a legal right provided by Civil Code section 1770 that results from the violation of Civil Code section 1770 is damage enough to provide standing. In other words, this Petitioner has the standing to come before this administrative body (City Council) and allege violation of his Civil Code 1770 and to seek a remedy. Further:

(v) Under California Government Code § 66014, The City Council must not allow its Building Department to charge petitioner more than “... *the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.*”. In this case, Building Department never visited the project site and never approved the project but unreasonably collected fees for services not rendered (See supra).

**CONCLUSION:**

“*That is not lawful which is: Contrary to an express provision of law*” (See California Civil Code § 1667(1)). Atherton Building Department violated the California CLRA (Cal. Legal Remedy Act (See Supra). For the arguments made, Petitioner finds and thereon alleges that Atherton Building Department unlawfully has caused damages to Petitioner and City Council has the power to remedy by ordering the Building Department officials to refund Petitioner \$568.27 and any other fair and just adjustments.

Respectfully submitted,



Cyrus S. Safai

Dated: September 5, 2017.



**Cash Register Receipt**  
Town of Atherton

**Receipt Number**  
**MR1252**

DESCRIPTION	ACCOUNT	QTY	PAID
<b>PermitTRAK</b>			<b>\$440.27</b>
BP16-00835 Address: 37 IRVING AVE Aprn: 061131010			\$440.27
BUILDING PLAN CHECK FEE			\$440.27
PLAN CHECK	101-00-47021-025	0	\$440.27
<b>ProjectTRAK</b>			<b>\$165.18</b>
IRB16-00335 Address: 37 IRVING AVE Aprn: 061131010			\$165.18
INITIAL REVIEW			\$160.00
FENCE FEE	101-00-47019-020	0	\$160.00
TECHNOLOGY SURCHARGE			\$5.18
TECHNOLOGY SURCHARGE	101-00-22007-020	0	\$5.18
<b>TOTAL FEES PAID BY RECEIPT: MR1252</b>			<b>\$605.45</b>

Date Paid: Monday, October 31, 2016

Paid By: SAFAI CYRUS S & FATIMA T

Cashier: TM

Pay Method: CHECK 1120

**EX - A**



**Town of Atherton**  
Planning Department  
91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0544  
Fax: (650) 614-1224

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November 7, 2016

PROJECT: 37 Irving Ave  
New Wall (BP16-00835)  
Planning Department Conditional Approval Letter

The Planning Department has reviewed and conditionally approved the above based on the following conditions:

1. The Building Department and our Town Arborist still need to approve these plans before you can pull the permit.
2. It is unlawful for any person to damage or harm a HERITAGE TREE by any means whatsoever, including, and without limitation, vehicles, machinery, or building supplies or material (including fluids) during any construction or renovation of structures on the parcel.
3. All fences and walls shall be constructed in compliance with Chapter 17.46 of the Town's Zoning Ordinance
4. Any trees shown to remain are required to meet the tree preservation guidelines and standards and specifications as may be required by the Town Arborist.

**Please notify the Planning Department of any modifications to this project and note that any unapproved changes may delay the issuance of a building permit. Please note that the deadline for permit issuance is 180 days from the date of this correspondence.**

Please do not hesitate to contact me with any questions. Thank you.  
Respectfully,

*/s/ Dori Ganetsos*

Dori Ganetsos  
Assistant Planner  
650-752-0544  
[dganetsos@ci.atherton.ca.us](mailto:dganetsos@ci.atherton.ca.us)

EX\_B



**PERMIT CANCELLATION  
AND REQUEST FOR REFUND**

**Town of Atherton**  
Permit Center  
93 Station Lane  
Atherton, CA 94027  
650-752-0560

**Fee Refunds:**

1. The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.
2. The building official may authorize refunding of 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.
3. The building official may authorize refunding of 80 percent of the permit fee paid when no work has been done under a permit issued.
4. The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

**All fields Required:**

This is to certify that I, Cyrus S. Safai, owner/contractor hereby authorize the cancellation of the building permit or application for the following project. I am also requesting a refund of fees as allowed by the California Building Code and the Town of Atherton.

Project Address: 37 Irving Ave  
Atherton, CA 94027

Building Permit Number(s) BP-16-00835

The check will be payable to the applicant listed on the permit who paid the fees. If the check should be made payable to another party, a letter from the applicant approving this action must accompany your request.

Reason for Cancellation: No Work has been done.  
(Permit fee of \$605.45 was paid on October 31, 2016)

**Contact Information:**

Name: Cyrus Safai Phone: 650-324-2499

Address: 37 Irving Ave  
Atherton, CA 94027

Signature: *Cyrus Safai* Date: 4-14-2017

Office use Only:

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**EX-C.**

**Permits**

Search

**Projects**

Search Projects

**Contractor**

Search Contractors

**Properties**

Search Property

**Permit Search**

Search By: Address ▾ Begins With ▾ 37 Irving

SEARCH

**Search Results**

- 6360
- 11483\_2
- 15046
- 21273
- 21299
- 21809
- 25148
- 25177
- 39178
- 39180
- TR14-00152
- TR15-00298

**Permit #BP16-00835**

Permit Info      Site Info

Type: NEW ACC STR

Subtype: RETAINING WALL

Short Description: Concrete Fence

Status: WITHDRAWN

Applied Date: 10/31/2016

Approved Date:

Issued Date:

Final Date:

Expiration Date:

Notes: 4/18/2017 8:56:17 AM Received request from Cyrus S. Safai to cancel/withdraw permit on April 14, 2017. Permit was not issued and the only fees paid were Plan Check Fees which are non-refundable.

EX-D

**Town of Atherton  
Town of Atherton Planning Fees**

Unit Cost Summary

Fee Name	Unit	Fee
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**PLANNING FEES**

Conditional Use Permit/Special Structure Permit		\$ 2,600
Variance		\$ 2,600
Heritage Tree Removal Permit		\$ 2,000
Exception Review		\$
Excessive Height		\$
Lot Line Redesignation		\$ 2,600
Lot Line Adjustment		\$ 1,500
Tentative Parcel Map		\$ 2,600
Final Parcel Map		\$ 2,600
Appeal		\$ 750
School Master Plan		\$ 750
Initial Review/Negative Declaration		\$ 2,000
Zoning Ordinance Amendment		\$ 5,000
General Plan Amendment		\$ 5,000
Zoning Review for Home Occupation Business		\$ 95
Pre-Application Review		\$ 45
Street Easement Vacation		\$
Code Enforcement - Administrative (Penalty)		\$ 949
Initial Review (2 reviews for fee amount; additional reviews billed hourly):		\$
a. Fence	Per app	\$ 160
b. Accessory Structures (includes pools)	Per app	\$ 450
c. Accessory Buildings	Per app	\$ 950
d. Additions	Per app	\$ 975
e. New Construction	Per app	\$ 1,400
Revisions to Previously Approved Plans		
Technology Surcharge (upgrade and maintain development technology) (3.24% of fee)		3.24%

**POSITION HOURLY RATES**

Town Planner:	Hourly	\$ 225
Deputy Town Planner:	Hourly	\$ 177
Senior Planner:	Hourly	\$ 168
Associate Planner:	Hourly	\$ 135
Administrative Staff:	Hourly	\$ 119
Composite Rate for Fee Setting:	Hourly	\$ 161

EX-1



**Town of Atherton  
Claim Form**

*Return to City Clerk*  
Town of Atherton, 91 Ashfield Road,  
Atherton, CA 94027  
650/752-0500 Fax 650/688-6528

Complete the following, adding additional sheets as necessary.

- 1. CLAIMANTS NAME (print): Cyrus S. Safai
- 2. CLAIMANTS ADDRESS: 37 Irving Ave, Atherton CA 94027  
(Street or P.O. Box Number) (City - State - Zip Code)
- 3. AMOUNT OF CLAIM: \$ 484.36 HOME PHONE: 650-324-2499  
(Attach copies of bills/estimates) WORK PHONE: \_\_\_\_\_

If amount claim is more than \$10,000 indicate where jurisdiction rests:

Limited Civil Case: \_\_\_\_\_  
Unlimited Civil Case: \_\_\_\_\_

- 4. ADDRESS TO WHICH NOTICES ARE SENT, IF DIFFERENT FROM LINES 1 AND 2:  
(Name) (Street or P.O. Box Number) (City - State - Zip Code)
- 5. 4/18/2017 Atherton Permit Dept.  
(DATE OF INCIDENT) (TIME OF INCIDENT) (LOCATION OF INCIDENT)

6. DESCRIBE THE INCIDENT OR ACCIDENT INCLUDING YOUR REASON FOR BELIEVING THAT THE CITY IS LIABLE FOR YOUT DAMAGES:

Please see Attachment.

7. DESCRIBE ALL DAMAGES WHICH YOU BELIEVE YOU HAVE INCURRED AS A RESULT OF THE INCIDENT:

Please see Attachment.

8. NAME (S) OF PUBLIC EMPLOYEE(S) CAUSING THE DAMAGES YOU ARE CLAIMING

- 1) Does 1-10 2) \_\_\_\_\_ 3) \_\_\_\_\_

SIGNATURE OF CLAIMANT: Cyrus S. Safai DATE: May 9 2017

*Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.*

**Note: You must file a claim in compliance with Government Code Section 911.2:**

911.2. (a) A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action. (b) For purposes of determining whether a claim was commenced within the period provided by law, the date the claim was presented to the California Victim Compensation and Government Claims Board is one of the following:  
(1) The date the claim is submitted with a twenty-five dollar (\$25) filing fee.  
(2) If a fee waiver is granted, the date the claim was submitted with the affidavit requesting the fee waiver.  
(3) If a fee waiver is denied, the date the claim was submitted with the affidavit requesting the fee waiver, provided the filing fee is paid to the board within 10 calendar days of the mailing of the notice of the denial of the fee waiver.

**EX-F**

# EXHIBIT G



[Issue](#) | [Background](#) | [Findings](#) | [Conclusions](#) | [Recommendations](#) | [Responses](#) | [Attachments](#)

## Summary of Reforms in Atherton Building Department

### Putting the Building Department Back on the Tracks

#### Issue

Determine and evaluate the steps that the Town of Atherton has taken to deal with the deficiencies found in the residential construction permit approval process.

#### Summary

In February 2007 the San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report on some of the deficiencies of the Town of Atherton (Atherton or Town) Building Department building permit review and approval process. While Atherton's 41-page response to the three-page Interim Report was defiant, the Grand Jury observes that the Town is nonetheless working with the Menlo Park Fire Protection District (MPFPD), as recommended in the Interim Report, to define the role of each party and implement procedures to include MPFPD in the building permit review and approval process.

The Grand Jury has continued to monitor events in Atherton, and is pleased to report that substantial progress has been made to correct the deficiencies in the Building Department. The Town has remedied, or is in the process of remedying, many of the deficiencies identified in the several investigations of the Building Department, including: hiring new staff, purchasing a modern computerized permit tracking system, assigning responsibility for reviewing excavation and grading to the Public Works Department, preparing and implementing a Building Department Policy and Procedure Manual and hiring an outside firm to rewrite the zoning ordinance.

Regrettably, the Grand Jury has learned of management communication shortcomings in Atherton not previously reported. The Town Manager and the former Building Official were aware of serious employee misconduct in the Building Department. While the offender was eventually disciplined, some of the incidents might not have occurred had the responsible managers intervened in a timely manner. In addition, the Grand Jury has evidence that the Town Manager (and another senior Town official) failed to inform the council members of facts pertinent to business before the Town Council.

**Many of the problems currently facing the Town of Atherton are a result of ambiguities in the poorly-written zoning ordinance, questionable interpretations of that ordinance by the former Building Official and a lack of supervision of the Building Department by the Town Manager.**

**The full impact of questionable practices in the Building Department may not be known for years, but the effects are beginning to surface. In the current year the Council has been asked to hear six appeals of Building Department decisions related to zoning ordinance violations. One of those appeals has since morphed into a lawsuit against the Town.**

**The Grand Jury recommends that the Atherton Town Council require that the Town Manager keep the Council fully informed about significant matters related to the administration and operation of the Town and also re-examine the Town's narrow policy of notifying neighbors of proposed construction only when the project requires a zoning variance. The Grand Jury further recommends that the Atherton Town Council direct the Town Manager to implement a written procedure for documenting and resolving citizen complaints and also to inform the community of measures taken to remediate the problems in the Building Department.**



## **Reforms in Atherton Building Department**

### **Putting the Building Department Back on the Tracks**

#### **Issue**

Determine and evaluate the steps that the Town of Atherton has taken to deal with the deficiencies found in the residential construction permit approval process.

#### **Background**

The Town of Atherton (Atherton or Town) comprises approximately 2,500 households and 7,200 residents. Construction activity in Atherton has increased in recent years to a current level of approximately 40 new homes per year. In the years 2000 through 2005 the Atherton Building Department (Building Department) issued a total of 3,392 building permits. The value for permitting purposes of these projects amounted to approximately \$686 million.<sup>1</sup>

The Building Department issues building permits for and inspects large projects such as new residences, new ancillary buildings, and alterations to existing buildings. The Building Department also issues a large number of building permits for smaller projects such as the replacement of furnaces, water heaters, windows and roofs. California building departments must be managed by a certified Building Official with the authority to issue building permits and approve all aspects of construction projects. Building Department employees involved in the building permit application review and approval process and in field inspection of construction projects are also certified to perform those duties.

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<sup>1</sup> "Building Permit and Process Audit – Phase I Report", Town of Atherton Finance Department, 2006.

## **Interim Grand Jury Report**

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report<sup>2</sup> in February 2007 describing some of the deficiencies of the Atherton Building Department building permit review and approval process. The Interim Report noted that Atherton's process did not ensure that the Menlo Park Fire Protection District (MPFPD) was included in the review and approval of all projects for which such approval was prudent or appropriate.

One of the goals of the Interim Report was to motivate the Town and MPFPD to work together to implement changes in the building permit review and approval process to ensure that the fire district is included in that process. Unfortunately, the report was followed by a recriminatory exchange between the Town and MPFPD which was reported in local newspapers. Atherton's response to the Interim Report reflected this antagonism; however, tempers have now cooled and the parties are cooperating to better define the role of MPFPD in the Atherton building permit review and approval process.

The Grand Jury has continued to monitor events in Atherton, and is pleased to report that substantial progress has been made to correct the deficiencies in the Building Department. The Grand Jury commends Atherton for its vigorous efforts to implement improvements in the Building Department, but as reported in the Findings, improvement is needed in Atherton's management communications.

## **Atherton Investigates its Building Department**

A March 2006 letter from the Town's independent accountants noted that the Building Department did not have written policies and procedures governing the permit application, review and approval process or for the calculation of related fees. Based on this letter, the Town initiated a series of six investigations and studies.

The first investigation dealt with Building Department employee conduct and resulted in belated disciplinary measures against two employees. The Grand Jury did not further investigate these personnel matters.

The Atherton Finance Department then initiated a three-phase<sup>3</sup> audit of the Building Department. These audits described deficiencies in the building permit review and approval process, data entry and recordkeeping and the calculation and collection of permit fees. The audits also found that permits had been approved for projects that violated the Town zoning ordinance and that Town employees made errors in assessing fees for excavation permits and gave preferential treatment to some applicants. The matter of incorrect excavation permit fees became moot when the Town rescinded the excavation permit fee and refunded the fees that had been collected.

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<sup>2</sup> [http://www.sanmateocourt.org/grandjury/2006/reports/Atherton\\_Building\\_Dep.pdf](http://www.sanmateocourt.org/grandjury/2006/reports/Atherton_Building_Dep.pdf)

<sup>3</sup> Town of Atherton, Building Permit and Process Audit, Phases I, II, & III, dated June 26, July 26, and October 18, 2006, respectively.

Another study<sup>4</sup>, by a consultant, determined the zoning ordinance enforcement needs for the Town, reviewed the status of existing Building Department programs and discussed staffing. The consultant found deficiencies in existing zoning ordinance enforcement efforts. Finally, a report<sup>5</sup> by the then interim Planning and Building Administrator<sup>6</sup> evaluated Building Department operations and included an extensive set of recommendations for improving the Department.

Each of the problems listed below were identified in two or more of the above reports:

- Permits were issued for construction projects that violated the zoning ordinance
- Building permit fees were assessed incorrectly
- Building Department recordkeeping was inaccurate and incomplete
- There was no requirement that a qualified planning professional certify that a proposed project conformed to the zoning ordinance
- There was no formal review of grading, drainage, and other site development issues
- Zoning ordinance enforcement was handled only on a reactive basis, in response to complaints

## **Investigation**

The Grand Jury interviewed Atherton officials and employees, surveyed six other San Mateo County cities, interviewed the Building Official of a comparable town, and reviewed many relevant documents, including:

- The six reports commissioned by the Town and described above
- Town of Atherton Administrative Procedures, Zoning Ordinance, employee Code of Conduct, Atherton Building Department procedures, organization charts, etc.
- Confidential reports on personnel matters

## **Findings**

### **Related to the Building Department**

The Town has remedied, or is in the process of remedying, many of the deficiencies identified in the studies cited above. More specifically:

- A new Building Official has been appointed.
- The Town is in the process of hiring a Senior Building Inspector and has started the process of hiring a Permit Technician to process routine building permit applications.
- The Town is in the final stages of purchasing a new, computerized permit tracking system that also is capable of tracking citizen complaints.
- Responsibility for reviewing and approving excavation, grading, drainage and other civil engineering issues has been transferred from the Building Department to the

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<sup>4</sup> "Code Enforcement Assessment Report," CSG Consultants, Inc., October 18, 2006.

<sup>5</sup> "Assessment of Town of Atherton Planning and Building Department," Gary Binger, October 12, 2006.

<sup>6</sup> The title of the combined positions of Building Official and Planning Official, no longer used.

**Public Works Department.** The Town has contracted with an outside firm to provide the required professional services under the supervision of the Public Works Director.

- The Town has contracted with a second outside firm to rewrite the zoning ordinance to improve clarity, eliminate ambiguities, improve readability and ensure consistency with the Town General Plan.
- The Town has created a new Building Department Policy, Procedure and Interpretation Manual and is working to improve the business practices in the Department.

As noted above, the Grand Jury conducted a survey of six other cities in the County to determine the practices and procedures used in their building departments and also visited the building department in a town that is comparable in size and demographics to Atherton. Atherton was the only community surveyed in which the positions of Building Official and Planning Administrator were combined and duties of both positions assigned to one person. The Town has recently rewritten the Building Official's job description and appointed a new Building Official. Town planners do not report to and are not supervised by the Building Official. The Town Council has also approved a plan to hire a contract planner to assist the Building Department staff in reviewing building permit applications for conformance with the zoning ordinance.

Five of the six cities surveyed notify residents when substantial construction projects are proposed in their neighborhood. In Atherton, for all practical purposes, residents are notified of new construction only when such construction requires a conditional use permit or a zoning ordinance variance.

Five of the six cities surveyed have formal, written procedures for handling citizen complaints. Atherton has prepared such procedures but has not yet permanently adopted them.

The Building Department has updated information sheets for applicants to reflect newly-adopted Town ordinances.

As recommended in the Interim Report, the Town is currently working with the MPFPD to define the role of each party and implement procedures to include MPFPD in the building permit review and approval process. Council members also recently stated their willingness to consider revision of the Town sprinkler ordinance to require sprinklers in all future basements.

### **Other Important Issues in Atherton**

In recent years Atherton experienced several incidents of misconduct by an employee, and multiple witnesses told the Grand Jury that senior Town officials were aware of these incidents. The nature of this misconduct was such that an impartial observer could reasonably conclude that disciplinary measures were justified and appropriate. These acts of misconduct persisted in Atherton because of inattention or inaction by senior Town officials. While an investigation was eventually undertaken and the offender was disciplined, some of

the incidents might not have occurred had the responsible senior Town officials intervened in a timely manner.

The International City/County Management Association (ICMA) is the professional association for city and town managers. The ICMA Code of Ethics, developed in 1924 and last revised in 2004, includes the following guideline on information sharing:

“The member [*e.g., the Town Manager, ed.*] should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.”

The Grand Jury has observed that the ICMA guideline on information sharing is not always followed in Atherton. The Grand Jury has heard some council members make statements in Town Council meetings that indicate that the Town Manager has failed to inform the council members of facts pertinent to Building Department issues before the Council. One example of this occurred during the March 21, 2007 meeting, at which a council member stated that the fire district had never asked to participate in the building permit review and approval process.

The Grand Jury received testimony that directly contradicts this statement. The Grand Jury was told that in 2001, MPFPD requested a meeting with Town officials to discuss MPFPD participation in the building permit review process. The Grand Jury was told that the Town Manager, the former Building Official and the Town Attorney attended this meeting, and that the meeting ended acrimoniously when the Town officials rejected the MPFPD request. If the Town Manager had not previously informed the council members of this meeting, he could have done so after the erroneous statement by a council member was made. The Grand Jury has confirmed in subsequent interviews that this was never done.

The agendas for the first four Council meetings in 2007 collectively include six appeals to the Council requesting that certain decisions or representations made by the former Building Official be allowed to stand, those decisions having been subsequently countermanded by the current Building Official. There were no such appeals in 2006. The Council has sought and obtained advice from two outside law firms to guide the Council as they attempt to resolve these appeals.

## **Conclusions**

The problems of the Building Department were caused by the wide spectrum of deficiencies listed above and the absence of supervision and control by senior Town officials. It is fair to say that the former Building Official and the Building Department were not properly monitored and controlled by the Town Manager.

Many of the residential construction-related problems currently facing the Town of Atherton are a result of ambiguities in the poorly-written zoning ordinance and questionable interpretations of that ordinance by the former Building Official.

3. Direct the Town Manager to implement a formal, written procedure for documenting a citizen's complaint, the actions taken to investigate and resolve the complaint, and the Town's response to the complainant.
4. Direct the Town Manager to inform the community of measures that have been and are being implemented to remediate the Building Department problems.



## Town of Atherton

91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0500  
Fax: (650) 688-6528

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September 20, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
County of San Mateo  
400 County Center  
Redwood City, CA 94063-1655

Re: Response to Grand Jury Report  
Reforms in Atherton Building Department  
Putting the Building Department Back on the Tracks

Dear Judge Grandsaert:

This letter responds to the report of the San Mateo County Civil Grand Jury entitled: Summary of Reforms in Atherton Building Department and Putting the Building Department Back on the Tracks.

The Town appreciates the statement in the report that the Grand Jury recognizes the substantial progress which the Town has made to correct deficiencies in the Building Department. This includes:

- acquisition of a modern computerized permit tracking system (capable of tracking citizen complaints);
- assignment of the responsibility for review of excavation and grading to the Public Works Department;
- preparation and implementation of a Building Department Policy and Procedure Manual;
- retention of an outside firm which has reviewed and is preparing recommendations for revisions to the Town Zoning Ordinance;
- retention of a contract planner who will report directly to the City Manager, hiring a new permit technician to process routine building permit applications;
- pursuing the process of hiring a senior building inspector;

- retention of the services of a contract code enforcement officer who has created a mechanism for documenting complaints of zoning ordinance violations and the response to such complaints;
- revising the ordinance regarding fire sprinklers to require fire sprinklers in conformance with the statutes of the Menlo Park Fire Protection District (MPFPD). There is a further requirement for sprinklers in the basements of all structures regardless of size of the basement.

#### MPFPD Review of Building Plans

The Grand Jury references an interim report issued in February 2007 which noted that the Town Building Department review and approval process did not insure that the MPFPD was included in the review and approval of all projects for which approval was prudent or appropriate. As explained below, after meetings in 2001 and 2002, insofar as the Town was aware, this issue did not arise again until 2006.

Beginning in 2001, the City Manager reported to the City Council on four (4) different occasions of meetings with the MPFPD. The City Manager has no recollection of any meeting with the MPFPD ending acrimoniously. The first meeting occurred in the Fall of 2001. During the week of October 18, 2001 there was a meeting attended by the City Manager, Building Official and MPFPD personnel regarding the review by the MPFPD of building plans. The MPFPD wanted plans sent to their office for review. The Building Official expressed concern about the security risk of releasing plans from Town offices. A MPFPD director demanded a retraction of the report after which there was another meeting with the MPFPD on the week of October 26, 2001. At that time, it was mutually agreed that plans would be viewed by Menlo Park Fire District personnel at the Building Department offices in the Town of Atherton.

In January 2002 the City Manager and building official met with the MPFPD. At that time it was agreed that plans would be submitted directly to the MPFPD regarding site access and water pressure requirements relating to fire flow. There was no request for a delegation of authority from the MPFPD to the town regarding approval of building permits.

From January 2002 through 2006 there was never any communication from the MPFPD to the City Manager concerning the review of building plans. The City Manager was never informed that anything to the contrary of what had been agreed to in January of 2002. The first time the City Manager became aware of any issue concerning MPFPD's not reviewing the plans was upon the appointment of the current Chief of the MPFPD and the commencement of the Grand Jury investigation.

### Public Employees Discipline

The Grand Jury observes at page 4 of the report that investigations by the Town of its Building Department began with one which dealt with employee conduct and resulted in "belated" disciplinary measures against two employees. The report observes that the Grand Jury did not further investigate these personnel matters. However, despite this statement, at page 6 of the report there is reference to several incidents of unidentified misconduct by an employee, the nature of which was such that an impartial observer could reasonably conclude the disciplinary measures were justified and appropriate. On page 7 of the report there is the statement that "while an investigation was eventually undertaken and the offender was disciplined, some of the incidents might not have occurred had the responsive senior town officials intervened in a timely manner." This allegation is without adequate foundation, in view of the earlier statement that no further investigation was conducted upon personnel matters for which discipline resulted.

As reported previously, the Town has conducted investigations of allegations of employee misconduct related to operations of the Town's Building Department. These investigations have been lengthy, thorough, and the reports of them, along with conclusions and recommendations for employee discipline have been provided to the Grand Jury. Disciplinary action has been taken in a degree supported by the findings and conclusions of an independent investigator and consultation with legal counsel with due regard for the constitutional rights of public employees.

### Resident Notification of Building Permit

The Grand Jury report states, at page 6, that in Atherton, for all practical purposes, residents are notified of new construction only when a construction acquires a conditional use permit or zoning ordinance variance. This is not accurate. In Atherton, neighbors are notified of any project which not exempt under the California Environmental Quality Act. Notification is also provided whenever a heritage tree is removed (Chapter 8.10 Atherton Municipal Code). Neighbor notification is also done when a conditional use permit is required under the provisions of the Atherton Municipal Code (Chapter 17.52) as well as variances under the provisions of Atherton Municipal Code (Chapter 17.56).

Significant construction projects invariably involve tree removal. The Town of Atherton was incorporated in 1923 as a large lot (one acre and above) residential community. The Town has enacted regulations which prescribe a building area on each lot with generous setbacks from neighboring properties. Floor area ratio restrictions regulate bulk and mass of structures built within the prescribed building area. Height limitations effectively keep Atherton homes at a two-story limit. Town requirements for landscape screening have resulted in a unique community with an urban forest, largely the result of intentional development activities. The extensive landscaping planted, maintained and enjoyed by Atherton residents obviates the detailed controls of residential property development employed by other communities. It is the principal reason for the fact that Atherton has

Hon. John L. Grandsaert  
Judge of the Superior Court  
9/25/2007  
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not adopted design review regulations such as those in effect in than many other communities.

#### Conclusion

In conclusion, addressing the four (4) recommendations of the Grand Jury report the Town states:

1. The Atherton City Council does require the Manager to keep the Council fully informed of all significant matters related to administration and operation of the Town. (Section 2.12.070 of the Atherton Municipal Code). It should be noted that the City Manager did keep the Council informed of issues with the MPFPD as described on page 2 above.

2. As recited above, the practical reality of development in Atherton does not require examination or has not resulted in a "narrow" policy of notifying neighbors of substantial construction projects.

3. As described above, the new computerized system being installed in the Building Department will implement procedures for documenting citizens' complaints, actions taken to investigate and resolve them, and documentation of the Town's response.

4. The community is being informed of the measures which have been implemented to remediate Building Department problems. This letter has been reviewed and discussed at a public meeting of the City Council on September 19, 2007.

Very truly yours,

MARC G. HYNES  
City Attorney, Town of Atherton

MGH:cwb

cc: Mayor and City Councilmembers, Town of Atherton  
John C. Fitton, Court Executive Officer  
[grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)  
Michael Murphy, Chief Deputy County Counsel  
Acting City Clerk  
Interim City Manager

**Hon. John L. Grandsaert**  
**Judge of the Superior Court**  
**9/25/2007**  
**Page 5**

**John C. Fitton, Chief Executive Officer**  
**Superior Court of San Mateo County**  
**400 County Center**  
**Redwood City, CA 94063-1655**

**Michael P. Murphy, Chief Deputy County Counsel**  
**County of San Mateo**  
**Hall of Justice and Records 6<sup>th</sup> Floor**  
**400 County Center**  
**Redwood City, CA 94063-1662**

## Judi Herren

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**From:** Michael Greenlee  
**Sent:** Wednesday, May 17, 2017 2:24 PM  
**To:** Dori Ganetsos; Judi Herren  
**Cc:** Theresa DellaSanta  
**Subject:** RE: Report Town of Atherton / Safai ABGV25280A2  
**Attachments:** 37 Irving-Request for refund.pdf

Hi Judi,

In the attached document (Permit Cancellation and Request for Refund) that is signed by Mr. Safai, states under Fee Refunds #2 The building official may authorize refunding of 80% of the plan review fee paid when an application for a permit for which a plan review fee has been paid is **withdrawn or cancelled before any plan reviewing is done**. Like I stated before plan reviewing was done for this permit, so no refund should be granted. Hope this helps you out.

Any other questions, please give me a call.

Thank you,

Mike Greenlee  
Building Official  
Town of Atherton  
(650)752-0518 Office  
(650)776-7188 Cell  
mgreenlee@ci.atherton.ca.us



**PERMIT CANCELLATION  
AND REQUEST FOR REFUND**

**Town of Atherton**  
Permit Center  
93 Station Lane  
Atherton, CA 94027  
650-752-0560

**Fee Refunds:**

1. The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.
2. The building official may authorize refunding of 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.
3. The building official may authorize refunding of 80 percent of the permit fee paid when no work has been done under a permit issued.
4. The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

**All fields Required:**

This is to certify that I, Cyrus S. Safai, owner/contractor hereby authorize the cancellation of the building permit or application for the following project. I am also requesting a refund of fees as allowed by the California Building Code and the Town of Atherton.

Project Address: 37 Irving Ave  
Atherton, CA 94027  
Building Permit Number(s) BP-16-00835

The check will be payable to the applicant listed on the permit who paid the fees. If the check should be made payable to another party, a letter from the applicant approving this action must accompany your request.

Reason for Cancellation: No Work has been done.  
(Permit fee of \$605.45 was paid on October 31, 2016)

**Contact Information:**

Name: Cyrus Safai Phone: 650-324-2499  
Address: 37 Irving Ave  
Atherton, CA 94027  
Signature: Cyrus Safai Date: 4-14-2017

Office use Only:

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**Cash Register Receipt**  
Town of Atherton

**Receipt Number**  
**MR1252**

DESCRIPTION	ACCOUNT	QTY	PAID
<b>PermitTRAK</b>			<b>\$440.27</b>
<b>BP16-00835 Address: 37 IRVING AVE Aprn: 061131010</b>			<b>\$440.27</b>
<b>BUILDING PLAN CHECK FEE</b>			<b>\$440.27</b>
PLAN CHECK	101-00-47021-025	0	\$440.27
<b>ProjectTRAK</b>			<b>\$165.18</b>
<b>IRB16-00335 Address: 37 IRVING AVE Aprn: 061131010</b>			<b>\$165.18</b>
<b>INITIAL REVIEW</b>			<b>\$160.00</b>
FENCE FEE	101-00-47019-020	0	\$160.00
<b>TECHNOLOGY SURCHARGE</b>			<b>\$5.18</b>
TECHNOLOGY SURCHARGE	101-00-22007-020	0	\$5.18
<b>TOTAL FEES PAID BY RECEIPT: MR1252</b>			<b>\$605.45</b>

Date Paid: Monday, October 31, 2016

Paid By: SAFAI CYRUS S & FATIMA T

Cashier: TM

Pay Method: CHECK 1120

**RESOLUTION 17-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
REJECTING THE CLAIM OF CYRUS S. SAFAI AND SENDING A NOTICE OF  
REJECTION LETTER**

(Date of Occurrence: April 18, 2017)

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ATHERTON,  
CALIFORNIA, AS FOLLOWS:**

That the claim of Cyrus S. Safai for damages, which was filed with the City Clerk on May 9, 2017 is hereby rejected.

**DULY AND REGULARLY ADOPTED** this 20<sup>th</sup> day of September, 2017.

TOWN OF ATHERTON

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Michael Lempres, Mayor

ATTEST

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Theresa Della Santa, City Clerk