

AGENDA ITEM 1(b)

**TOWN OF SAN ANSELMO
STAFF REPORT
January 7, 2004**

For the Meeting of January 13, 2004

TO: Town Council
FROM: Janet Pendoley, Finance & Administrative Services Director
SUBJECT: Report of Warrants Issued, December 2003

RECOMMENDATION

That Council acknowledge and file warrant numbers 47470 to 47676 issued during the month of December 2003 in the amount of \$988,336.50. The following warrant number was voided or cancelled: 47460, 47590 and 47673.

BACKGROUND

This report is an itemization of payments made to vendors during the month just ended. It also includes warrants written to Bank of America for the month's two regular payrolls as well as reimbursements to employees for work-related approved expenditures.

Respectfully submitted,

Janet Pendoley
Finance and Administrative Services Director

Attachment 1: Warrant Registers, December 2003

AGENDA ITEM 1(c)

For the Meeting of January 13, 2004

To: San Anselmo Town Council
From: Charles L. Maynard, Chief of Police
Subject: Use of COPS Funds

Date: December 16, 2003

RECOMMENDATION

That Council approve the attached resolution authorizing the use of Citizens Option for Public Safety (COPS) funds for maintaining the Police Traffic Officer and Police Dispatcher positions currently funded under the COPS Program. Additionally, the COPS program provides partial funding for the Lead Police Dispatcher position.

BACKGROUND

In May 1998 a request was made to Council to increase the Police Department staff by two (2) sworn positions. Department staff demonstrated the need and justification for these two positions and Council acknowledged that need. At that time Council authorized the addition of one (1) sworn police officer and cited fiscal constraints for the denial of the second position. Since that time the State of California has substantially increased the amount of funding to the COPS program. This increase in funding has since allowed and will continue to allow for the continuation of the enhanced traffic program including the additional Traffic Officer originally hired with COPS funds.

In past years the State of California has provided (COPS) funds to be available to local law enforcement agencies to be used for first line law enforcement. Funds from this program can be used to fund both sworn and non-sworn positions, purchase and maintain equipment and fund technology programs as long as these expenditures can be shown to assist front line law enforcement. The Town of San Anselmo has been the recipient of these funds for the past several years, and will be receiving funds for FY 2004-05 in the amount of \$100,000.

In FY 2001-02 the department received \$100,000 in COPS funding. These funds were earmarked for an additional Police Traffic Officer position. Funds rolling over from the previous year continue to fund a dispatch position as well as partial funding for the Lead Dispatcher position. As explained in a previous staff reports, any funding shortfall in the funding of the Traffic Officer's position will be more than made up through the increase in revenue to the Town generated by this very same position.

Senate Bill 736, authored by Senator Charles Poochigian was signed into law making COPS funding a permanent part of the State budget. The Governor signed this legislation to ensure that additional law enforcement employees hired with COPS funds continue to be employed by local police departments. This legislation lifted the sunset clause on the COPS Program and will ensure funding in future years by making this program a permanent part of the State budget.

CONCLUSION

Continuation of the funding of the Police Traffic Officer, Police Dispatcher and the Lead

Dispatcher positions will allow the department to continue its comprehensive traffic safety and enforcement programs and to better serve the residents and visitors of our community. These programs will be funded through a combination of COPS funding and increased traffic fine revenue.

CHARLES L. MAYNARD
Chief of Police

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
APPROVING THE USE OF FUNDS DISTRIBUTED PURSUANT TO CALIFORNIA
GOVERNMENT CODE SECTION 30061 ET AL.

WHEREAS, Assembly Bill 3229 provided for the Citizens Option for Public Safety (COPS) funds to local law enforcement agencies; and

WHEREAS, the Governor signed Senate Bill 736, that extends the COPS program indefinitely and provides local government law enforcement jurisdictions with annual baseline funding in the amount of \$100,000, for frontline law enforcement personnel and other related equipment, and

WHEREAS the Chief of Police has prepared a recommendation on the use of the COPS funds, pursuant to the requirement of AB 3229; and

WHEREAS, the recommendation is that the funds be used to continue to employ a full time Police Traffic Officer, Police Dispatcher, provide partial funding of the Lead Dispatcher position, and to provide support to the department's records management system.

NOW THEREFORE, BE IT HEREBY RESOLVED that the San Anselmo Town Council approves the recommendation of the Police Chief to appropriate the COPS funds as stated above.

I hereby certify that the foregoing resolution was approved by the San Anselmo Town Council on the 13th day of January 2004, by the following vote, to wit:

AYES:

NOES:

ABSENT:

PAUL CHIGNELL
Mayor

BARBARA CHAMBERS
Town Clerk

AGENDA ITEM 1(d)

TOWN OF SAN ANSELMO

TOWN COUNCIL STAFF REPORT

For the meeting of 1-13-04

DATE: 1-6-04

TO: Mayor and Council Members

FROM: Rabi Elias, Public Works Director

SUBJECT: Accept the project and authorize filing Notice of Completion of contract for the 2002/2003 Measure G Improvements Phase II Resurfacing and Drainage Projects at Oakwood Ct., Florence Ave., Grove Ln., Sycamore Ave., San Rafael Ave., Magnolia Ave., Woodland Ave., Greenfield Ave., Kemp Ave., Elm Ave. and Center Blvd. from Saunders Ave. to Town limits. The contractor is Interstate Grading and Paving Inc. of South San Francisco.

RECOMMENDATION

Accept the project and authorize filing Notice of Completion.

BACKGROUND AND DISCUSSION

The Town Council at the meeting of 7-8-03 awarded the contract to Interstate Paving and Grading Inc. in the amount of \$676,363.50

The project was completed 10-29-03 in accordance with the plans and the specifications.

FISCAL IMPACT

Final Contract items plus extra work	\$694,481.14
Budgeted 2002/2003 Measure G Funds	\$732,000

AGENDA ITEM 1(e) – Continued to January 27, 2004

AGENDA ITEM 1(f) – Continued to February 24, 2004

AGENDA ITEM 2

**TOWN OF SAN ANSELMO
STAFF REPORT
January 13, 2004**

For the Meeting of January 13, 2004

TO: Town Council

FROM: Debra Stutsman, Town Administrator

SUBJECT: Appointments to Volunteer Advisory Board and Historical Commission

RECOMMENDATION

That Council appoint three members to the Volunteer Advisory Board (3 seats) and one member to the Historical Commission. (1 seat).

BACKGROUND

The Volunteer Advisory Board has a membership of seven seats. The Board presently has three vacancies, to term expiring in September 2006. Council has interviewed three candidates, Norma Keating, Susan Barstow, and Ellin Purdom.

The Historical Commission has a membership of fifteen seats. The Commission presently has three vacancies to term expiring in September 2007. Council has interviewed one candidate, David Schock..

Respectfully submitted,

Debra Stutsman

Town Administrator

Attachment

AGENDA ITEM 3(a)

TOWN OF SAN ANSELMO

TOWN COUNCIL STAFF REPORT

For the meeting of 1-13-04

DATE: 1-6-04

TO: Mayor and Council Members

FROM: Rabi Elias, Public Works Director

SUBJECT: Request \$12,573.50 Measure G contributions to drainage project at 20 Veterans Place, the Log Cabin.

RECOMMENDATION

Approve Measure G contributions to the drainage project at 50% of the lowest quote but not to exceed \$12,573.50.

BACKGROUND

Town Resolutions Nos. 3268 and 3363 established policies for Town assistance toward cooperative efforts in non-Town- maintained streets and drainage improvement projects.

DISCUSSION

This project consists of removing the present 4Ft x 5 Ft dilapidated wood culvert. This culvert is a main drainage watercourse for the Sorich Ranch and the San Francisco, Los Angeles Boulevards drainage basin. It is in bad shape and falling apart. If it collapses the wood planks will enter the closed system under Memorial Park blocking the flow of water and creating major flood damage. The new pipe will connect into the 3 Ft x 5 Ft concrete box culvert at the property line between the Log Cabin and Memorial Park. The Town has contributed previously towards the replacements of culverts on private properties that carry town water.

The applicant obtained an estimate from one contractor in the amount of \$25,147 and is requesting 50% contribution. Pending Council contribution approval, the applicant will solicit more bids and the contribution will be 50% of the lowest bid but not to exceed \$12,573.50

FISCAL IMPACT

To be funded from Measure G.

AGENDA ITEM 3(b)

TOWN OF SAN ANSELMO

TOWN COUNCIL STAFF REPORT

For the meeting of 1-13-04

DATE: 1-6-04

TO: Mayor and Council Members

FROM: Rabi Elias, Public Works Director

SUBJECT: Request \$15,000 Measure G contributions to hydraulic drainage study for Corte Madera Creek in the vicinity of Nokomis Bridge.

RECOMMENDATION

Approve Measure G contributions of \$15,000 to the drainage study, based on 50% of the consultant proposal plus \$5,000 to cover the Town's share of the study cost.

BACKGROUND

Town Resolutions Nos. 3268 and 3363 established policies for Town assistance toward cooperative efforts in non-Town- maintained streets and drainage improvement projects.

DISCUSSION

The neighborhood in the vicinity of Nokomis Ave. bridge floods before almost anywhere else in town. It is a constant threat of damage with water and mud blocking the bridge and the street. In order to find out ways to reduce or alleviate the flooding the neighbors asked the consulting firm of Stetson Engineering for a proposal, copy attached. The consultant figured a \$20,000 budget to collect data and perform the study. It is in the

interest of the Town to have hydraulic data on the major and flood prone Corte Madera Creek and analysis of the channel sections. The bridge and Nokomis Ave. right-of-way, are Town maintained, are in the basin and very much affected by the flooding. The application requested a contribution of 50% of the study cost. The neighbors are also counting on additional \$5,000 cost share based on the fact that the Town right-of-way is one of the properties affected and covered by the study.

FISCAL IMPACT

To be funded from Measure G.

AGENDA ITEM 3(c)

TOWN OF SAN ANSELMO

TOWN COUNCIL STAFF REPORT

For the meeting of 1-13-04

DATE: 1-6-04

TO: Mayor and Council Members

FROM: Rabi Elias, Public Works Director

SUBJECT: 95 Oak knoll Avenue. Robert Parfitt appeal of mandated sidewalk repairs.

RECOMMENDATION

Deny the appeal.

BACKGROUND AND DISCUSSION

The owner was notified on 4-2-03 by Public Works to repair the sidewalk and that if he chose the Town Contractor it would cost \$940. The roots of the camphor tree next to the curb damaged the sidewalk. On 4-21-03 the owner applied for a permit to remove the tree. The Public Works Director waved the permit fee. With the application the owner noted in writing that he will pay for the removal of the tree and grinding of the roots and requested the Town to pay for the sidewalk repair. The reasoning is that he repaired the sidewalk in 1986 due to tree damage but the Town did not let him take the tree down, which resulted in the present damage. The building

file does not contain evidence in writing of the tree removal request and denial at that time. The tree removal permit was approved 6-25-03; the tree to date has not been removed.

The property owner appealed the mandated sidewalk repairs in a letter dated 11-17-03, copy attached. His reasoning is basically the Town planted the tree and had they let him remove it when he repaired the sidewalk the first time, then he would not have to do it now. He referred to the Woodland Ave. situation where the Town paid for the removal of the trees and half the cost to repair the sidewalks.

FISCAL IMPACT

Estimated cost for repairing the sidewalk is \$1000 and for removing the tree and grinding roots is \$1,600. Whatever Town cost the Council decides will be charged to the applicable accounts of the 2003/2004 General Fund Budget.

AGENDA ITEM 4

TOWN OF SAN ANSELMO STAFF REPORT

January 6, 2004

For the meeting of January 13, 2004
TO: Town Council

FROM: Debra Stutsman, Town Administrator

SUBJECT: Settlement Agreement
125 Redwood Road

A. RECOMMENDATION

That Council conduct a public meeting and consider approval of the draft settlement agreement with Patricia Johnstone regarding the property at 125 Redwood Road.

BACKGROUND

Patricia Johnstone owns a single family dwelling at 125 Redwood Road. In 1985, her mother, now deceased, obtained, via a variance, town approval to construct an accessory structure on the property with access at Savannah Avenue. There has been ongoing controversy over the use of this structure by the Johnstone family, culminating in an abatement proceeding that ended with a determination by the Council that the structure constituted a public nuisance because of its use as an alleged residential second unit without the required town permits.

DISCUSSION

This matter has been heard by Judge Taylor in Marin Superior Court, and she has been working with both parties to arrive at a mutually agreement settlement agreement. A draft of the proposed agreement is attached.

Respectfully submitted,

Debra Stutsman
Town Administrator

**SETTLEMENT AGREEMENT REGARDING THE PROPERTY
LOCATED AT 125 REDWOOD ROAD
SAN ANSELMO**

This Settlement Agreement is entered into between the Town of San Anselmo (TOWN) and Patricia R. Johnstone (JOHNSTONE).

RECITALS

WHEREAS,

- JOHNSTONE owns a single family dwelling at 125 Redwood Road in San Anselmo;
- There has been ongoing controversy over the use of an accessory building by the Johnstone Family culminating in an abatement proceedings before the Town Council commencing December 11, 2001 and ending with a determination by the Town Council that the structure constituted a public

nuisance because of its use as an alleged residential second unit without the required town permits.

- In response to the TOWN's determination a public nuisance existed on the property, JOHNSTONE has filed a petition for a writ of administrative mandamus challenging the TOWN's action, Marin Superior Court No. CV021564. The TOWN filed a cross-complaint for declaratory and injunctive relief. The TOWN then filed a motion for judgment denying the Writ, which was denied.
- The Town Council in the interest of resolving this matter consistent with the public welfare has agreed to allow JOHNSTONE use of the building as an accessory living quarters on a restricted basis.
- On execution of this Settlement Agreement, after approval by the Town Council after a public meeting described below, (1) JOHNSTONE shall present to the TOWN a request for dismissal with prejudice of JOHNSTONE's petition for administrative mandamus in Marin Superior Court Action No. CV 021564; (2) the TOWN shall file and record withdrawal of the Notice Of Pending Action previously filed and recorded by the TOWN; (3) after all the executory provisions of this Settlement Agreement have been completed, including compliance with all code violations and the inspection period provided, the TOWN will file a Conditional Dismissal of its Cross Complaint.
- The Conditional Dismissal shall provide that should, in the opinion of TOWN, there be a violation of this Settlement Agreement, TOWN, in its

sole discretion, at any time in the future, may make an ex parte application to any Marin Superior Court Judge for an order setting aside the Conditional Dismissal. The request to set aside the Conditional Dismissal will not be subject to any objection by Court or counsel; however, TOWN agrees to give Rifkind's office 24 hours or other person or entity designated by Rifkind, faxed notice of TOWN's intention to seek to set aside the Conditional Dismissal. The purpose of the request to set aside the Conditional Dismissal is to immediately revive the enforcement provisions of the Settlement Agreement, so that enforcement can take place — subject to all legal and equitable defenses.

NOW, THEREFORE, in consideration of the mutual conditions, covenants, agreements, promises, acknowledgments, parties agree:

TERMS OF SETTLEMENT AGREEMENT

1. Use By JOHNSTONE

JOHNSTONE may reside in the accessory building located at 125 Redwood Road alone and not with additional family members or friends or others. If necessary, a caregiver (who may be a member of her immediate family) the need approved by a physician, may attend JOHNSTONE. The caregiver must take his or her meals elsewhere. The Town does not approve use of the structure *by anyone else* at this time.

2. Kitchen Facilities

The accessory structure shall not include a "kitchen" which is defined as:

... any portion of a structure with any combination of the following: sink (other than pertinent to a bathroom), food storage and preparation areas, refrigerator, or cooking facility including stove, microwave, oven, confection oven, cooking burners or similar appliances which may reasonably be used for the preparation of food.

However, JOHNSTONE may maintain a coffee pot for her use.

After obtaining a plumbing permit, JOHNSTONE shall remove the sink but may retain the cabinets. She will not be required to remove the sink until it has been determined, if she promptly applies within 10 days after execution of the Settlement Agreement, that she does not qualify for a second unit under Government Code § 65852.2, effective July 1, 2003 or any other applicable state or local law. In that event, the sink must be removed within 15 days after she fails to qualify the structure as a second unit.

3. Meals

All JOHNSTONE's meals will be prepared and must be eaten in the main structure at 125 Redwood Road except for occasional take-out prepared food or if JOHNSTONE is seriously ill and/or contagious, evidenced by a physician's note, to the tenants residing in the main structure.

4. Code Violations And Removal of Siding

The Code Violations listed by the Building Official Keith Angerman in his memo of December 18, 2002, attached, as well as all the other executory provisions of the settlement shall be remedied within 125 days after

withdrawal of the Notice of Pending Action has been filed and recorded by TOWN. JOHNSTONE will submit a building permit converting the accessory building to R-3 under the California Building Code, along with necessary plans. Everything in the accessory structure may remain, e.g., cabinets, shower, fireplace, washer and dryer, except the sink (as discussed above). All code violations will be corrected to the satisfaction of the Building Official who may freely inspect the progress of correction of the code violations, during normal business hours while the work is ongoing, or alternatively upon appointment any week day between 9:00 a.m. and 5:00 p.m., which shall be promptly granted by Johnstone. Town represents and warrants that all Town departments and officials necessary to the remediation process confirm the above permits and approvals shall not be unreasonably withheld. Work will begin as soon as possible after signing of the Settlement Agreement, after refinancing is obtained as discussed below, except that any work which will be duplicative should Johnstone receive a permit for a second unit under the new law will not be executed until the second unit permitting process has been completed. In the event JOHNSTONE is granted a second unit permit, this agreement shall no longer be in effect except to the extent that code violations exist as identified in the December 18, 2002 memorandum prepared by Mr. Angerman.

Upon execution of this Agreement JOHNSTONE intends to refinance her property immediately to obtain sufficient funds to pay for repair and remediation of alleged code violations referenced in this Section. All permit fees and second unit fees will be due on receipt of the loan disbursement to JOHNSTONE.

JOHNSTONE agrees to set aside, as the first disbursement of any loan, a construction reserve account (Construction Reserve Account) from loan proceeds in an

amount not less than \$20,000, which shall be deposited in the trust account of Leonard A. Rifkind, Attorney at Law (Rifkind). Rifkind shall not make any disbursements or progress payments from the trust account to contractors, subcontractors and material suppliers or to anyone else, without first obtaining the written consent of the Town Building Official, or designee, whose consent shall be provided within five business days of Rifkind's or JOHNSTONE's faxed or hand delivered written request for disbursement.

In addition, JOHNSTONE shall remove the siding beneath the unit where JOHNSTONE will reside on the restricted basis provided in this Settlement Agreement. There is approximately 14 feet of plywood siding to be removed.

Within 5 days after execution and approval of the Agreement by the TOWN, JOHNSTONE shall fill out and submit an application to the TOWN for a permit, if one is necessary, to remove the siding. Fees for the permit shall be waived.

In the event that JOHNSTONE does not complete all code remediation and removal of the siding within 125 days of the date of filing and recordation of withdrawal of the Notice Of Pending Action previously filed and recorded by the TOWN, JOHNSTONE shall leave the accessory building in accord with paragraph 8 below and shall not return until the code violations have been finally corrected as approved by the Town Building Official, subject however to force majeure, and all other commercially reasonable delays (e.g. rain) common to the construction industry in Marin County as approved by TOWN, or any other extension to complete the code remediation approved by the Town Building Official.

5. Inspection and Verification of Compliance

To insure compliance, the Town may inspect the entire accessory building on 24 hours notice, 6 times during a one year period after completion of the correction of the code violations, to confirm compliance and the contents of the accessory building pursuant to the restricted use by JOHNSTONE as described above. The notice to inspect shall be given to Rifkind's office by fax at (415) 453-7605 and by telephone at (415) 485-2200 or to any person or entity designated by Rifkind. Rifkind or designee agrees to retain a key to the accessory building.

6. Public Meeting

The Town intends to place this proposed Settlement Agreement on a regular Town Council agenda for the meeting of January 13, 2004 for public discussion prior to its approval, with advance notice to interested neighbors.

7. Notice of Violation

Any notice of violation of this Agreement, except notices of inspections provided above, may be hand delivered or mailed to JOHNSTONE at 125 Redwood Road, San Anselmo, CA 94960 and considered delivered, if mailed, upon placing it in a United States mail box. A faxed copy will also be sent to Rifkind, at 790 Mission Avenue San Rafael, CA 94901 or to any other person or entity designated by Rifkind.

8. Remedies

In the event the Town Administrator, after receiving a written report from the Town Building official at any time determines that JOHNSTONE has violated any of the material terms of this Agreement, JOHNSTONE shall vacate occupancy of the accessory

structure, except as provided in section 6 (which provides that she may return after all code violations are corrected) within 15 days after notification, either hand delivered or sent to her address by regular mail and to Rifkind's office by fax or to any other person or entity designated by Rifkind.

This Settlement Agreement may be enforced pursuant to its terms by all statutory and case law enforcement procedures, including Code of Civil Procedure section 664.6 and JOHNSTONE and TOWN expressly agree the Court may retain authority — or revive jurisdiction as provided — over the parties to enforce any and all aspects of the Settlement Agreement.

9. Attorney's Fees, Costs, and Penalties

Town agrees to waive any fees, attorney fees, or penalties incurred pursuant to Town Resolution No. 3588 and to withdraw its Notice of Pending Action against the record title to 125 Redwood Road upon execution this Agreement. Johnstone agrees to waive any and all known or unknown claims whatsoever against the Town, its officers, agents, and attorneys including attorney fees and costs against Town in connection with this matter.

In expressly agreeing to waive all claims against the Town, its officers, agents and attorneys, Johnstone understands and waives Civil Code § 1542 which provides:

A general release does not extend the claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have maturely effected his settlement with the debtor.

In the event that either party defaults in any of its obligations under this agreement, the prevailing party in a motion brought pursuant to Code of Civil Procedure 664.6 to enforce this Agreement shall be entitled to its or her reasonable attorneys fees, costs and expert witness fees.

10. Entire Agreement

This settlement agreement contains the entire agreement between the parties and no promises, representations or warranties have been made to this Settlement Agreement other than those which are expressly set forth in the Agreement. It is expressly understood and agreed that this Settlement Agreement may not be amended, altered, modified or otherwise changed in any way whatsoever except by a writing duly executed by each party to the Settlement Agreement and expressly stating that it is an amendment to this Agreement.

11. Binding on Successors

This Settlement Agreement shall be recorded and be binding upon the respective parties, their agents, assigns, heirs, representatives, successors, without limitation.

The Town, under this Settlement Agreement, has the authority to enforce the restrictions concerning the use and the occupancy of the accessory structure as set forth in the Agreement and to enjoin any violation which would be contrary to the restrictions against, not only Johnstone, but her heirs, assigns, representatives or successors, without limitation.

12. Interpretation

This Agreement will be interpreted in accordance with the

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plain meaning of its terms and not presumptively for and against

either of the parties, who hereby acknowledge and agree that this Agreement has been prepared jointly.

Date _____
Patricia R. Johnstone

Approved Leonard A. Rifkind
Attorney for JOHNSTONE

Town of San Anselmo
By:

Debbie Stutsman
Town Administrator

Approved Hadden Roth
Town Attorney

Approved:

Hon. Lynn O'Malley Taylor
Judge of the Superior Court

Date: _____

SA JOHNSTONE - SETTLEMENTAGREE-FINAL-12-15-03

AGENDA ITEM 5

TOWN OF SAN ANSELMO

STAFF REPORT

January 7, 2004

For the Meeting of January 13, 2003

TO: Town Council

FROM: Lisa Wight, Senior Planner

SUBJECT: Appeal of Planning Commission's denial of a setback variance to construct
a one-car garage within 2' of both the east side and rear property lines;
parking variance to remove an existing legal parking space and replace it
with the new garage space at 39 Belle Avenue, APN 7-302-04

RECOMMENDATION

That the Town Council upholds the Planning Commission's denial of the variance requests, thereby denying the appeal.

APPLICANTS/APPELLANTS: Margot and Chris Enbom, 39 Belle Avenue

BACKGROUND: **November 3, 2003:** Planning Commission denied the garage and parking variance requests (4-3) on the grounds that there are no special circumstances associated with the property that would prevent the required on-site parking from meeting the Code setbacks. At that meeting the applicants advised they were withdrawing the variance request for the pergolas at the neighbor's request.

DISCUSSION OF APPEAL

Appeal points are noted in *italics*, followed by staff's comments in normal font.

- *"There seemed to be universal agreement among board members that the location for the garage we had chosen was the most logical . . . only argument was over the ability of the board to allow the variance . . . since there was not (in the minds of 4 members) sufficient reason within the Ordinances to grant the variance. There was much debate about the fact that the Ordinances should be changed in order to allow garages on narrow lots."*

In 1993, the original dwelling was demolished by more than 50% and a new, larger dwelling was constructed on this lot. At that time, the same setback requirements were in effect for parking and the former owners chose to install a parking pad behind the new

dwelling, rather than design the dwelling to incorporate a garage that met the Code setback requirements. Other properties in the neighborhood have not demolished and reconstructed a dwelling, thereby freeing yard area for a conforming garage. Because it has been shown that parking can be accommodated in conformance with the Code, the findings for the variances were not made.

- *“The fact that the lot is narrow and long should have been reason enough under the Ordinance for the variance . . .”*

Because the lot has the same size (8,000 square feet), shape (rectangular), topography (flat), location and surroundings as the neighboring lots, the majority of the Commission found no special circumstances associated with the project.

- *“The Planning Commission has effectively forced us to choose between putting a garage in the middle of our backyard and having no garage at all . . .”*

The former applicants chose to not construct a garage to meet the Code setbacks when the dwelling was reconstructed.

- *“We feel the Ordinance is prejudicial against our home and our family . . . every home with a detached garage on our block (over ½ of the homes have a detached garage) is on the side line with no setback . . . there are no garages in the middle of backyards . . .”*

The variance procedure provides an alternative to the Code requirements, provided the required findings for approval can be made: that there are special circumstances with the lot itself in terms of its size, shape, topography, location or surroundings. In this case, those findings were not made. It is true that the majority of the single family homes on this street have garages in the rear and side setbacks: two of those were replacement-in-kind garages and there are no records for the others (which were likely constructed prior to current Code requirements).

RECOMMENDATION

- To uphold the Planning Commission’s denial of the application, thereby denying the appeal.
- Should the Council vote to grant the appeal and thereby approve the project, staff recommends the following conditions of approval:
 1. Approval is based on the plans date stamped received by the Town on October 2, 2003, with the elimination of the two pergolas;
 2. All conditions of approval shall be printed at the top of Sheet 1 of the Building permit drawings.
 3. Should construction not begin within one year from the date of this approval, the approval shall be considered null and void. A one-time-only, one-year extension

can be requested in writing to the Planning Director prior to the expiration date.

Attachments: Appeal
Planning Commission minutes and staff report for November 3, 2003
Letters from neighbors
Plans and APN map
c: Margot and Chris Enbom, applicants/appellants

AGENDA ITEM 6

TOWN OF SAN ANSELMO TOWN COUNCIL STAFF REPORT

January 2, 2004

For the meeting of January 13,

2004

TO: Town Council
FROM: Tom Bell, Planning Director
SUBJECT: ER-0304, Z-0303 Environmental review and consideration of an ordinance amending Ordinance Number 1001 establishing zoning regulations for **Wireless Communication Facilities**.

RECOMMENDATION

Authorize an outside counsel (as recommended by the Town Attorney) to revise the draft ordinance as deemed appropriate, and refer the subsequent revision to the Planning Commission for further review and recommendations.

PREVIOUS ACTION

December, 1998: Town Council adopted Ordinance 1001 establishing regulations for wireless communication facilities.

March 12, 2002: Town Council adopted urgency Ordinance 1023 temporarily prohibiting the construction of wireless communication facilities.

April 9, 2002: Town Council adopted Ordinance 1025 extending the prohibition of wireless facilities.

August 27, 2002: Town Council extended Ordinance 1025 until March 12, 2004 and received a preliminary draft ordinance from concerned citizens regarding wireless facilities.

December 15, 2003 & January 5, 2004: Planning Commission reviewed ER-0304 and Z-0303 and forwarded a recommendation to Town Council.

DISCUSSION

As the Council is aware, a wireless communication facilities moratorium has been in effect since March, 2002 and will expire March 12, 2004. In an effort to develop an acceptable alternative ordinance, staff has been working with a citizen committee over the past year. The attached draft ordinance represents the result of that effort.

The proposed draft ordinance is modeled after a recently adopted Santa Cruz County ordinance modified and condensed to meet San Anselmo's format. Due its technical orientation, the draft provides for extensive third party peer review.

The most significant aspects of this draft are:

1. Technical determination of need (that a "significant gap" in coverage exists).
2. Alternative site analysis (determination of technically feasible alternative sites).
3. Verification and monitoring of Non-Ionizing Electromagnetic Radiation (NIER) levels consistent with federal/state law.

Because these provisions are extremely technical in nature, peer review and analysis would be required to accomplish.

The Federal Telecommunications Act generally limits local agency authority to land use/zoning. In reviewing the draft, the Town Attorney had some initial concerns and requested additional review by an expert in the field. That review conducted by the firm of Miller & Van Eaton is attached. As a result, the Town Attorney recommended that the firm revise the ordinance draft as deemed appropriate and return to the Planning Commission for final review and recommendation to Council.

At its meeting of January 5, 2004, the Planning Commission recommended:

- 1. Approval of the Negative Declaration based upon the draft ordinance provided, and**
- 2. That an outside counsel revise the draft ordinance as appropriate, and return to the Planning Commission for final recommendation consideration.**

Notice of both the Planning Commission meeting and tonight's hearing has been provided to the state and other interested parties including the telecommunication operators. As of the date of preparation of this report, staff has not received comments from those agencies.

B. OPTIONS AVAILABLE TO COUNCIL

1. Approve the Negative Declaration and adopt the attached ordinance subject to any minor corrections, spelling changes, deletions, etc. This alternative would allow the Council to adopt the ordinance provided that no significant changes occur that would be materially different from the Planning Commission's draft review.
2. Authorize the revision/preparation of the ordinance by an outside expert in the telecommunications field as recommended by the Town Attorney and Planning Commission. This would cost approximately \$7,500.
3. Do nothing. This option would allow telecommunication facilities to be processed in accordance with the Town's current requirements (Chapter 10-3.2810 through 10-3.2818) as of March 13, 2004.

Respectfully submitted,

Tom Bell
 Planning Director

- Attachments:
1. Draft ordinance
 2. Negative Declaration and environmental checklist
 3. Ordinance review prepared by Miller & Van Eaton
 4. Planning Commission minutes of 12/15/03 & 1/05/04

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING ORDINANCE NUMBER 1001 ESTABLISHING ZONING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES

C. _____ SECTION I. Sections 10-3.2810 through 10-3.2818 of the San Anselmo Municipal Code are hereby repealed and replaced to read as follows:

10-3.2810 Purpose and intent.

The purpose of this Article is to establish regulations, guidelines and circumstances for the siting, design, construction, major modification, and operation of wireless communication facilities in the Town of San Anselmo. It is also the purpose of this Section to locate wireless communication towers/facilities so as to minimize negative impacts, such as, but not limited to, visual impacts, attractive nuisance, noise and falling objects, diminution of property values, and the general safety, welfare and quality of life of the community. ["Design" here should be narrowly understood to mean those aspects of a facility which relate to visual effects, safety, etc. rather than design of a wireless system to maximize reliable communication. The former are acceptable local government concerns, the latter is not.]

10-3.2811 Findings.

- (a) The location, design, and construction of antennas, towers, and or satellite dishes may create significant, adverse impacts as set forth in 3.2810; therefore, there is a need to regulate such to ensure that the appearance, safety and general welfare of the community is maintained.
- (b) General Order 159A of the Public Utilities Commission (PUC) of the State of California acknowledges that local citizens and local government are often in a better position than the PUC to measure local impact and to identify alternative sites. Accordingly, the PUC will generally defer to local governments to regulate the location and design of cell sites, wireless communication facilities and Mobile Telephone Switching Offices (MTSOs). [This comes very close to saying that the PUC and local governments have a say over “system” design. See comment at 2810 above.]
- (c) While the licensing of wireless communication facilities is under the control of the Federal Communication Commission (FCC), and certain other regulations are the responsibility of the Public Utilities Commission (PUC) of the State of California, local government must address public health, safety, welfare, zoning, and environmental concerns where not preempted by federal statute or regulation.
- (d) In order to protect the public health, safety and the environment, it is in the public interest for local government to establish rules and regulations addressing certain land use aspects relating to the construction, design, siting, major modification, and operation of wireless communication facilities and their compatibility with surrounding land uses.

10-3.2812 Applicability

Facilities regulated by this ordinance include the placement, construction, and modification of all wireless communication facilities, including Federal Communication Commission (FCC) regulated dish antennas, antennas used for Multi-channel, Multi-point Distribution Services (MMDS) or “Wireless Cable” and personal wireless service facilities. [“Operation” of personal wireless facilities is not within the province of local governments.] [Were radio and TV broadcast facilities intentionally left out?]

The regulations in this ordinance are intended to be consistent with state and federal law, particularly the Federal Telecommunications Act of 1996, Section 704 in that they are not intended to: **1.** be used to unreasonably discriminate among providers of functionally equivalent services; **2.** have the effect of prohibiting personal wireless services within the Town of San Anselmo; or **3.** have the effect of prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

10-3.2813 Definitions:

“Antennas” (Including parabolic, omnidirectional, dipole, monopole, or bi-directional) Any system attached to a telecommunications tower or other structure, used for the transmission or reception of electromagnetic waves. Also including any wires, poles, rods, reflecting discs, flat panels, or similar devices. [The reciting of

various kinds of antennas gives rise to the inference that any style left out is not covered. It might be better to remove the parenthesized enumeration.]

“Available Tower Space” The space on a tower or structure to which telecommunications providers’ antennas are both structurally and electromagnetically able to be attached.

“BS Base Station” A Base Station is a wireless telephony network component-node that makes connections with allowed Mobile Stations in a wireless telecommunications network.

“BSC Base Station Controller” A wireless telephony network component-node that governs/controls the operation/use of Base Station sites in a wireless telecommunications network.

“Cell Site or Base Station” Any local cellular tower and/or radio antenna including the radio, controller switch interconnect, etc. which is the primary sending and receiving site in a wireless telecommunications network. More than one cell site or base station and/or more than one telecommunications service provider can be located on a single structure. [This seems to duplicate the definition of “base station” above, yet it describes the term differently and is confusing.]

“Cellular Service” A personal communications service that provides two-way voice and data communication through handheld portable, and car-mounted phones. [In common parlance, a handheld phone is a portable phone.]

“Channel” The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate many channels simultaneously.

“Co-location or Co-located Facility” When more than one wireless service provider share a single wireless communication facility, such as a telecommunications tower. A co-located facility is comprised of a single tower or mast/pole including a public utility pole or tower, that supports two or more wireless service providers’ antennas, dishes, or similar wireless communication devices, that are separately owned or used by more than one public or private entity.

“dB” Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt. [When dB is referenced to 1 milliwatt, it usually is abbreviated “dBm.”]

“Dish Antenna” Any device incorporating a reflective surface that is solid, open mesh or bar configured, that is shallow dish, cone, horn or cornucopia shaped and is used to transmit and/or receive electromagnetic signals.

“Facility Site” A property, or any part thereof, which is owned or leased by one or more wireless service provider and upon which one or more wireless service providers are co-located.

“FCC” Federal Communications Commission, the government agency chiefly responsible for regulating wireless telecommunications in the United States. [Note: State PUCs have a lot to say about intrastate wire telecommunications.]

“Ground-Mounted Wireless Communication Facility” Any wireless communications facility with its base placed directly on the ground or that is attached to a mast or pipe, with an overall height of not exceeding sixteen (16) feet from the ground to the top of the antenna. [There is potential danger from RF radiation at such low-rise facilities. See discussion at 2814(a) below.]

“Least Visually Intrusive” Technically feasible facility site and/or design alternatives that render the facility the most inconspicuous relative to other technically feasible sites and/or designs. It does not mean that the facility must be completely hidden, but it may require screening or other camouflaging so that the

facility is not immediately recognizable as a wireless communication facility from adjacent properties and roads used by the public.

“Macrocell Site” A low power radio transceiver facility (up to 100 watts per radio transmitter) that is comprised of an unmanned equipment shelter approximately 300 square feet per licensed provider, omni-directional whip, panel or microwave dish antennas mounted on a support structure or building. A macrocell site typically includes 60 radio transmitters. [I could not find “macrocell” or “microcell” used subsequently in the ordinance. What is the need to define them?]

“Major Modification of an Existing Wireless Service” Any major modifications or reconfigurations of any physical or electronic equipment components. These include but are not limited to proposed increase in power output gain, in size or number of antennas, change in antenna type or model, repositioning of antenna(s), or change in number of channels per antenna above the maximum number of an existing and permitted telecommunications tower. This also applies to any other structure designed to support telecommunication transmissions, receiving and/or relaying antennas and/or equipment previously approved by the Town of San Anselmo. Included are changes to any/all RF-generating equipment attached to antennas resulting in an increase in the wireless communication facility’s power output and/or increase in the intensity or change in the directionality of NIER propagation patterns. [Many cellular and PCS antennas change power dynamically and constantly. I assume these operational fluctuations are not meant to be recertified each time they occur.]

“Major Modification to Visual Impact” Any increase or intensification, or proposed increase or intensification, in dimensions of an existing and permitted telecommunications tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment, resulting in an increase of the visual impact of said wireless communications facility.

“Megahertz –MHz” One million hertz.

“Microcell Site” A small low power radio transceiver facility (10 watts per radio transmitter) comprised of an unmanned equipment cabinet with a total volume of one hundred (100) cubic feet or less that is either under or aboveground, and one omni-directional whip antenna with a maximum length of five feet, or up to three small (approximately 1’x 2’ or 1’x 4’) directional panel antennas, mounted on a single pole, an existing conventional utility pole, or some other similar support structure.

“Minor Antenna” or “Minor Wireless Communication Facility” any of the following: a) A ground- or building-mounted receive-only radio or television antenna ten (10) feet or less tall (including mast or pipe), and six (6) inches or less in diameter or width, and, for building mounted antennas, not exceeding the height limit for non-commercial antennas in the zoning district. b) A ground- or building-mounted citizens band radio antenna ten (10) feet or less tall (including mast or pipe), and six (6) inches or less in diameter or width, and, for building mounted antennas, not exceeding the height limit for non-commercial antennas in the zoning district. c) A ground- or building-mounted satellite receiving dish not more than one (1) meter in diameter for a residential zoned parcel, and two (2) meters in diameter for a commercial or industrial zoned parcel. d) A ground-, building-, or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, the height of which (including tower or mast) does not exceed the height limit for non-commercial antennas in the zoning district. [Is there a need to define both minor and major? What about making “minor” anything not “major?” The risk of defining both is that something will fall thorough a crack in between.]

“Monitoring Protocol” An industry accepted radio-frequency (RF) radiation measurement protocol used to determine compliance with FCC RF radiation exposure standards, in accordance with the National Council on Radiation Protection and Measurements Reports 86 and 119 and consistent with the RF radiation modeling specifications of OET Bulletin 65 (or any superceding reports/standards), which is to be used to measure the emissions and determine radio-frequency radiation exposure levels from existing and new telecommunications facilities. RF radiation exposure measurements are to be taken at various locations, including those from which public RF exposure levels are expected to be the highest.

“MMDS” Multi-channel, Multi-point Distribution Services (also known as “wireless cable”).

“MTSOs” Mobile Telephone Switching Offices/Centers .

“Monopole” A single pole-structure, erected on the ground to support one or more wireless communication antennas groups and inter-connecting appurtenances.

“Non-Ionizing Electromagnetic Radiation”(NIER) Radiation from the portion of the electromagnetic spectrum with frequencies of approximately 1 million GHz and below, including all frequencies below the ultraviolet range, such as visible light, infrared radiation, microwave radiation, and radio frequency radiation. [Why is “microwave radiation” enumerated separately from “radio frequency radiation?”]

“Personal Communications Services”(PCS) Service that bundles voice communications, numeric and digital text messaging, voice mail and other features into one device or service.

“PUC or CPUC” California Public Utilities Commission. (Use FCC definition of PCS to avoid confusion.)

“Personal Wireless Services” Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communication services, specialized mobile radio services, and paging services. (Use statutory definition at Sec. 332(c)(7)(C)(i) to avoid confusion.)

“Radial Plots” The result of drawing equally-spaced lines (radials) from an antenna, calculating the expected signal graphically.

“RF” Radio Frequency

“RFR or Radio Frequency Radiation” Radiation from the portion of the electromagnetic spectrum with frequencies below the infrared range (approximately 100 GHz and below), including microwaves, television VHF and UHF signals, radio signals, and low to ultra low frequencies.

“Significant Gap” A gap in a service provider’s personal wireless services network within the Town of San Anselmo as defined in federal case law and the Federal Telecommunications Act of 1996 and any amendments thereto.

“Telecommunication Tower (Tower)” A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas.

“Wireless Communication (or Telecommunications) Facility” A facility, including all associated equipment, that supports the transmission and/or receipt of electromagnetic/radio signals. Wireless communication facilities include cellular radio-telephone service facilities; personal communications service facilities (including wireless internet); specialized mobile radio service facilities and commercial paging service facilities.

10-3.2814**Exemptions:**

The following are types of wireless communications facilities that are exempt from the provisions of this Article.

- a) A ground or building-mounted citizens band or two-way radio antenna. [Two-way radio is a very broad term. I would be concerned about a bank of cellular or PCS antennas mounted only 16 feet above the ground, in the same way that rooftop antennas are of concern to persons who work on rooftops.]
- b) A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur or Business Radio Service. [Business Radio is a very broad category. Amateur radio is not off-limits to local regulation. I do not understand the reason for these exemptions.]
- c) A ground- or building-mounted receive-only radio or television antenna which does not exceed the height requirements of the zoning district, or television dish antenna which does not exceed three (3) feet in diameter if located in a residential district within the exclusive use or control of the antenna user.
- d) A television dish antenna that is no more than six (6) feet in diameter and located in any commercial district.
 - e) Temporary mobile wireless services, including mobile wireless communication facilities and services providing public information coverage of news events, of less than two-weeks duration. Any mobile wireless service facility intended to operate in any given location for more than two weeks is subject to the provisions of this Article.
- f) Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices.
- g) Wireless communication facilities and/or components of such facilities to be used solely for non-commercial public safety purposes, installed and operated by authorized public safety agencies.
- h) Any “minor” antenna or facility described in Section 10-3.2813.
- i) Any non-major modification or maintenance activities carried out as part of the routine operation of wireless communication facilities. [The use of different definitions for “minor” and “non-major” is confusing.]
- j) Small scale, low powered, short-range wireless internet transmitter/receivers (e.g., “Wi-Fi hotspots”).

10-3.2815**General Requirements:**

- a) Required permits. All new wireless communication facilities shall be subject to a Use Permit in accordance with the requirements herein and Article 13 of this Chapter. Such Use Permit shall be acted upon by the Planning Commission. Additionally, a building permit shall be required for the construction of all such facilities.
- b) Prohibited Areas. Wireless communication facilities are prohibited in:
 - 1. all residential zoning districts, subject to the exception procedure described herein,
 - 2. all public and private K-12 school sites and within five hundred (500) feet of such schools, subject to the exception procedure described herein. [It seems to me the “exception procedure” is nothing more than: “If you (the applicant) can prove that refusal of a residential site is unlawful, we will consider an exception.” This is

problematic because it is not an affirmative safety valve; rather, the carrier is forced to prove the Town has violated federal law.]

In addition to the above prohibited zones, wireless communications shall be prohibited unless there exists a need for such facilities, as determined herein. [Putting the Town in the position of determining “need” is highly risky, as discussed further below.]

- c) Site Selection - Visual Impacts. Wireless communication facilities shall be sited in the least visually intrusive location technically feasible. [Argument over whether a given site is the least intrusive from a visual perspective may become endless and heavily subjective. The Town may wish to write this in such a way that visual and other factors are “balanced.”]
- d) Inter-Carrier Service Agreements. Inter-Carrier Service Agreements shall be required where feasible to assist in minimizing the number of wireless facilities necessary to provide communication services in the Town. If Inter-Carrier Service Agreements cannot be obtained, documentation of the effort and the reasons why these agreements were not possible shall be provided. [The Town should not place itself in the position of requiring carriers to agree with each other, especially with the subjective qualifier, “where feasible.” It’s OK to express a preference for co-location, but not so wise to attempt to force literal carrier agreements. Better for the carriers to exercise the initiative of voluntary agreement in order to meet co-location preferences.]
- e) Co-location. Co-location of facilities may be required by the approving authority. Where the visual impact of an existing tower/facility must be increased to allow for co-location, the potential increased visual impact shall be weighed against the potential visual impact of constructing a new separate tower/facility nearby. Where one or more wireless communication tower/facilities already exist on the proposed site location, co-location shall be required if it will not, in the opinion of the Planning Director or approving body, significantly increase the visual impact of the existing facilities. If a co-location agreement cannot be obtained, or if co-location is determined to be technically infeasible, documentation of the effort and the reasons why co-location was not possible shall be provided.
- f) Public Notification. Public hearing notice shall be provided pursuant to the Government Code. However, due to the potential adverse visual impacts of wireless communication facilities the neighboring parcel notification distance for wireless communication facility applications is increased from the normal 300-feet to 1,000-feet from the outer boundary of the subject parcel. [Is this the California Government Code? What is the citation?]
- g) Major Modification to Power Output. Any proposed major modification that would increase the power output of a wireless communication facility, as defined herein shall require the submission of an affidavit by a professional engineer registered in the State of California that the proposed facility improvements will not result in RF exposure levels to the public in excess of FCC’s NIER exposure standard. In addition, within 90-days of commencement of operation of the modified facility, the applicant shall conduct RF exposure level monitoring at the site, utilizing the Monitoring Protocol, and shall submit a report to the Planning Department documenting the results of said monitoring. [Reading the definition and this section

together, it looks like any power increase, no matter how small, is considered “major.” Why?]

- h) Major modification to Visual Impact. Any proposed major modification **that would increase the visual impact** of a wireless communication facility, shall be subject to all requirements herein. [The highlighted words define change in visual impact differently than in the definition at 3.2813. This invites arguments over which set of words to use.]
- i) Transfer of Ownership. In the event that the original permittee sells its interest in a wireless communication facility, the succeeding carrier shall assume all responsibilities concerning the project and shall be responsible for maintaining consistency with all project conditions of approval, including proof of liability insurance. A new contact name for the project shall be provided by the succeeding carrier to the Planning Department at the time of transfer of interest of the facility.
- j) Onsite Visual Demonstration Structures (Story poles) shall be required for all proposed wireless communication facilities except for co-located and microcell facilities. The applicant will be required to arrange to raise a temporary mast/story poles at the height and at the location of the proposed facilities. At minimum, the onsite demonstration structure shall be in place prior to the first public hearing to consider project approval or earlier as determined necessary by the Planning Commission.
- k) Third Party Technical Review. An independent third party review shall be conducted regarding the following: (1) conformance with expected FCC RF radiation exposure levels; (2) determination of need for a facility; and (3) analysis/suitability of alternatives to a proposed facility. The Planning Director shall employ, on behalf of the Town, an independent technical expert or experts to review any technical materials submitted including but not limited to those required under this Article. The applicant shall pay all the costs of said review and shall be required to deposit funds in advance to cover the estimated costs of said review. Any application shall not be deemed complete until such third party completes said review. [Generally speaking, the Town should not second-guess a carrier’s decision to install a new site. Yes, the law allows the Town to question whether a gap in service is “significant.” But this analysis should take place with particular facts in hand. An abstract requirement for proof of need does not belong in a generic ordinance. The Town risks being challenged by the carrier for attempting to regulate its “entry” into service, in violation of Section 332(c)(3) of the Communications Act. The fact that the carrier would be forced to pay for the second-guessing simply rubs salt in the wound.]
- l) Non-Ionizing Electromagnetic Radiation (NIER) Safety Monitoring Requirements for Wireless Communication Facilities. Regular and ongoing monitoring of wireless communication facility NIER/radio-frequency (RF) emissions is required for all wireless communication facilities constructed under this Article. Wireless communications service providers are required to provide ongoing documentation that all wireless communications operate in compliance with the FCC RF radiation exposure standards. NIER monitoring is to be conducted annually utilizing the Monitoring Protocol, as described herein. The required NIER/RF radiation monitoring reports will be prepared and submitted to the Town by a professional engineer in the State of California. Such reports shall certify that the facility is in conformance with all federal and state standards and conform to the following: [This

entire subsection “pushes the envelope” in an area that is federally preempted. The Town should limit itself to what is required to be assured of compliance with federal standards.]

- a. **Public Health and Safety.** No wireless communication facility shall be located or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no telecommunication facility or combination of facilities shall produce at any time power densities in any area that exceed the FCC-adopted standard for human exposure, as amended, or any more restrictive standard subsequently adopted or promulgated lawfully by the Town, the State of California, or the federal government. Areas in the immediate vicinity of all antennas or other transmitting devices in which the FCC RF radiation exposure guidelines could potentially be exceeded, especially near rooftop antennas, must be clearly demarcated and/or fenced off, with warning signs in English and Spanish and International Symbols clearly visible. [On publicly-owned sites where the governmental body is acting as a proprietary lessor in the commercial marketplace, it is possible that NIER restrictions could exceed federal standards. This topic can be explored later if the Town is interested.]
- b. **Initial Post-Construction Monitoring of NIER.** Initial compliance with the FCC’s NIER standards shall be demonstrated for all new wireless communication facilities for all new wireless communication facilities and for all wireless communication facilities proposing to undergo a major modification of power output through submission of a report documenting initial NIER monitoring at the facility site upon **six months** after the commencement of operations or within **90-days** after any major modification to power output of the facility. The NIER measurements shall be taken at various locations, including those from which public RF exposure levels are expected to be the highest. The report shall list and describe each transmitter/antenna present at the facility, indicating the effective radiated power of each (for co-located facilities this would include the antennas of all other carriers at the site). The report shall include field measurements of NIER emissions generated by the facility and also other nearby emission sources, from various directions and particularly from adjacent areas with habitable structures. The report shall compare the measured results to the FCC NIER guidelines for such facilities. [Why the difference is these two time intervals?]
- c. **Ongoing Monitoring of NIER Levels and Structural Integrity/Appearance.** Every wireless communication facility authorized under this section, shall demonstrate continued compliance with the NIER standard established by the FCC, and any NIER guidelines of other regulatory agencies as may become effective. **By July 1st of each year, a report listing and describing each transmitter antenna present at the facility and the effective radiated power of each shall be submitted to the Planning Director.** This annual report shall also include field measurements of NIER emissions generated by the facility and other nearby emission sources including the power generator, utilizing the Monitoring Protocol, from various directions and particularly from adjacent areas with habitable structures and/or other locations from which public RF exposure levels are expected to be the highest, during typical peak-use periods. [The detail of this section invites challenge by carriers who see the law as requiring no more than a periodic demonstration of compliance with federal standards. What does ERP have to do with this? Power levels are only one factor in the formulas for calculating human bioexposure.]

10-3.2816 Application Requirements

Application Submittal Information. For all wireless communication facilities, except exempt facilities as described in herein, the Planning Director shall establish and maintain a list of information that must accompany each application. Said information shall include, but may not be limited to: [This list of requirements is so voluminous as to invite the carrier's challenge on the ground that the Town is regulating his entry into wireless service in violation of Section 332(c)(3). Much of the information has little, if anything, to do with the Town's zoning responsibilities.]

- a) The identity and legal status of the applicant, including any affiliates; the name, address and telephone number of the property owner, officer, agent, or employee responsible for the accuracy of the application, including a 24-hour emergency contact phone number.
 - b) The address and assessor parcel number(s) of the proposed wireless communication facility site, including the precise latitude/longitude coordinates (NAD 83) in digital degree format, of the proposed facility location on the site.
- c) **Evidence of need** for the proposed new wireless communication facility through written documentation demonstrating that a significant gap exists and existing facility sites in the Town or its incorporated areas cannot reasonably be used to provide wireless services to the intended service area. The documentation shall include a description of the applicant service provider's complete existing wireless communication facilities network and proposed/anticipated future facilities for all proposed sites for which an application has been submitted, and for all proposed sites for which site access rights or agreements have been secured by the provider. Information regarding proposed network expansions will be kept confidential by the Town if identified in writing as trade secrets by the applicant. ["Evidence of need" is problematic for the reasons discussed above. The carrier will take the position that as long as he can meet the other zoning standards, "need" is none of the Town's business.]
- d) Map of facility sites in town
- e) Table listing facility sites/addresses, site names/identification, facility types and precise latitude/longitude coordinates (in NAD 83) in digital degree format
- f) Base Station Controller
- g) Mobile Telephone Switching Offices
- h) Transit Switching Centers
- i) Elevation at base of tower or structure to which antenna(s) are attached
- j) Height above average grade of tower or structure to which antenna(s) are

attached

- k) Height of antenna(s) above average grade on tower or structure
- l) Antenna type(s), manufacturer(s) and model number(s)
- m) Operational multiplexing system - Analog, IDEN, CDMA, TDMA, or GSM (If TDMA, specify 16 to 32 channel combiner per antenna)
- n) Amplifying equipment manufacturer(s) and model number(s)
- o) Physical & electrical tilt of each antenna
- p) Operating transmit and receive frequencies of each antenna
- q) Minimum and maximum number of operating channels per antenna
- r) Maximum power input and output per channel per antenna (and per the aggregate of
 - s) provider's antennas in incorporated and unincorporated areas of San Anselmo)
 - t) DB gain per antenna
 - u) Predictions for and the actual levels of RFR per antenna
 - v) Radiated propagation analysis pattern of each antenna
 - w) Radiated spread sheets of power output of each antenna
 - x) Polarization of each antenna (horizontal, azimuth, or circular)
 - y) ERP and EIRP of the main lobe antenna(s) pattern(s)
 - z) Minimum power level at ground level with minimum channels
 - aa) Maximum power level at ground level with maximum channels
 - bb) Available Inter-Carrier Service Agreement potential
 - cc) Available space on the tower/facility for potential co-location
- dd) Information sufficient to determine that the applicant has applied for and/or received any certificate of authority, operating license or other approvals which may be required by the FCC or California Public Utilities Commission (if applicable) to provide wireless communications services or facilities within the incorporated areas of San Anselmo.
 - ee) Information demonstrating that the proposed facility will be in compliance with the FCC's non-ionizing electromagnetic radiation (NIER) standards, provided by a professional engineer registered in the State of California at the time of application. Such information shall be evaluated and verified by a qualified Town-approved third-party telecommunications engineer utilizing Monitoring Protocol defined herein.
- ff) proposed measures to ensure that the public would be kept at a safe distance from any NIER transmission source associated with the proposed wireless communication facility, consistent with the NIER standards of the FCC or any potential future superceding standards, must be submitted as part of the application. The submitted plans must also show that the outer perimeter of the facility site (or NIER hazard zone in the case of rooftop antennas) will be posted with bilingual NIER hazard warning signage that also indicates the facility operator and an emergency contact. Each wireless communication facility shall have an on-site emergency shut-off switch to de-energize all RF-related circuitry/componentry at the base station site (including a single shut off switch for all facilities at a co-location site), or some other type of emergency shut-off by emergency personnel acceptable to the local Fire Chief, unless the applicant can prove that the FCC public exposure limits cannot be exceeded in the vicinity of the proposed facility. [The FCC has no requirements like this. It simply tells the carrier to keep to the exposure limits and the carrier decides

whether signs, fences, etc are needed. This pushes the envelope and makes it appear that the Town is regulating in an area preempted by the federal government.]

gg) A detailed Visual Analysis, including computer photo simulations of the proposed wireless communication facility from various public viewing locations. Photo-simulations shall be submitted of the proposed wireless communication facility from various locations and/or angles from which the public would typically view the site. The Visual Analysis shall include an assessment of the cumulative visual impacts of the proposed and shall include all potential mitigation measures for visual impacts.

hh) An Alternatives Analysis which shall at a minimum:

1. Identify all technically feasible alternative locations and/or facility designs or types. This should include assessment of the relative environmental impacts of constructing multiple facilities (e.g., on top of existing utility poles) in lieu of the single proposed facility.
2. Address the potential for co-location with existing facilities.
3. Explain the rationale for selection of the proposed site in view of the relative merits of any of the technically feasible alternatives, including evidence that none of the technically feasible potential alternative sites or facility design-types are environmentally superior to the proposed site.
4. Include photo-stimulations and preliminary/conceptual facility diagrams/plans of all technically feasible and potentially environmentally superior alternative designs and sites.
5. Document attempts to rent, lease, purchase or otherwise obtain the use of technically feasible alternative sites, which may be environmentally superior to the proposed project site.

Review and verification of the Alternatives Analysis by a qualified Town-approved third-party telecommunications engineer shall be required, at the applicant's expense. Said review shall be complete prior to determination of complete application.

ii) Detailed site plans, elevations, sections to scale showing existing and proposed improvements with appropriate dimensions and details necessary to consider the proposal. [The risk of putting all the alternatives on the table at once is that the Town and the carrier will “lock” themselves into a prior record and leave no room to negotiate an alternative that nobody could foresee at the beginning.]

10-3.2817 Fees/Deposit.

Fees for review of Use Permits for wireless communication facilities shall be established by Resolution of the Town Council.

10-3.2818 Indemnification

Each permit issued pursuant to Article shall have as a condition of the permit, a requirement that the applicant defend, indemnify and hold harmless the Town and its officers, agents, and employees from any claim (including attorney fees) against the Town of San Anselmo, its officers, employees or agents to attack, set aside, void or annul the approval of the permit or and subsequent amendment of the permit.

10-3.2819 Failure of Compliance

Failure to meet conditions of approval of a Use Permit required by this Article or comply with ongoing monitoring requirements of this Article shall render any Use Permit authorized hereunder subject to revocation.

10-3.2820 Prohibited Area Exception Procedure

If the limitations set forth in Section 10-3.2815(b) regarding prohibitions within certain land uses would have the effect of violating the Federal Telecommunications Act as amended, the approving body shall grant an exception to the offending requirement or application. The applicant shall have the burden of proving that application of the requirement or limitation would violate the Federal Telecommunications Act, and that no alternatives exist which would render the approval of an exception unnecessary. [It is difficult, if not impossible, to “prove a negative” such as this. The ordinance should consider language such as: “If non-residential sites are unavailable or infeasible, the Town will consider residential siting.” This is a far cry from “In order to gain a residential site, you will have to show that our refusal is a prohibition in violation of federal law.” This potentially makes a lawsuit out of every application.]

10-3.2821 Findings for Approval of Wireless Communication Facility Use Permits

In addition to the findings for Use Permits required in Section 10-3.1305 and, as applicable, Design Review findings in Section 10-3.1505, the Planning Commission shall make the following findings:

1. A “significant gap” exists.
2. The site location is superior to available alternative locations.
3. The facility as approved is determined to be “Least Visually Intrusive”.

10-3.2822 Site Restoration Upon Termination/Abandonment of Facilities:

Upon termination of any wireless communication facility, the site shall be restored as nearly as possible to its natural, or pre-construction state within six months of termination of use or abandonment of the site.

SECTION II TABLE 3A, Chapter 3, Title 10 is hereby amended to add the following:

Zoning District:	<u>R-1H</u>	<u>R-1C</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>P</u>	<u>C-1</u>	<u>C-2</u>	<u>C-3</u>
Wireless Communication Facilities	-	-	-	-	-	C(10)	C(10)	C(10)	C(10)

Footnote (10): See Sections 10-3.2810 through 10-3.2822 of this Title for additional requirements.

PASSED AND ADOPTED by the Town Council of the Town of San Anselmo at a regularly scheduled meeting on _____, 2004 by the following roll call vote:

AYES:

NOES:

ABSENT:

Paul Chignell, Mayor

ATTEST:

Barbara Chambers, Town Clerk

AGENDA ITEM 7

**TOWN OF SAN ANSELMO
STAFF REPORT**

January 6, 2004

TO: Town Council

FROM: Dean Nyberg, Parks Director

RE: Pesticide Neighbor Notification Resolution

For the meeting of January 13, 2004

Recommendation

Staff recommends Council adopt the attached resolution establishing the Town's commitment to preserving the health, safety, and welfare of the inhabitants of the Town by encouraging the notification of all adjacent neighbors of the outdoor use of pesticides

on private property and the establishment of a pesticide sensitive registration program for town residents.

Background

Staff recommends immediately addressing public concerns regarding the sensitivity of residents and the dangers of pesticides in the form of the attached resolution. The resolution encourages private property owners to notify their neighbors at least twenty-four hours prior to making airborne pesticide applications. This would afford people the opportunity to take simple precautions to avoid exposure.

Staff would conduct a public information campaign using local media, the Town’s website, radio broadcasts, and the Recreation Department brochure to encourage a good neighbor policy of informing neighbors before using airborne pesticides.

The resolution would also establish a program for the registration of all pesticide sensitive residents so they may be informed by their neighbor or a commercial applicator within a four hour window and at least twenty-four hours before the application of an airborne pesticide. Commercial applicators would be given the list of pesticide sensitive residents during the business license application process and residents would be encouraged through the public information campaign to contact the Town for an updated list before making pesticide applications. The public information campaign would also be included in seminars conducted as part of the Town’s ongoing Integrated Pest Management program.

Respectfully submitted,

R. Dean Nyberg,
Parks Director

TOWN OF SAN ANSELMO

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO ESTABLISHING THE TOWN’S COMMITMENT TO PRESERVING THE HEALTH, SAFETY, AND WELFARE OF THE INHABITANTS OF THE TOWN BY ENCOURAGING THE NOTIFICATION OF ALL ADJACENT NEIGHBORS OF THE OUTDOOR USE OF PESTICIDES ON PRIVATE PROPERTY AND THE ESTABLISHMENT OF A PESTICIDE SENSITIVE REGISTRATION PROGRAM FOR TOWN RESIDENTS

WHEREAS, the Town Council has heard testimony from Town Staff, concerned citizens, and pesticide education groups regarding the dangers of pesticides.

WHEREAS, a number of residents and children have a sensitivity to chemicals and pesticides.

NOW, THEREFORE, BE IT RESOLVED that to facilitate and enhance the protection of the public's health, safety, and welfare, the Town shall:

- Encourage residents that prior to airborne applications of any pesticide, private property owners give at least twenty-four hours verbal or written notice to all adjoining neighbors. The most immediate benefit of adjoining property notification is that it provides a warning to afford people the opportunity to take simple precautions to minimize their exposure.
- Conduct a public information campaign using local newspapers, the Town website, Town radio station, and Recreation brochure to encourage the good neighbor policy of informing neighbors before using airborne pesticides.
- Establish a program for the registration of all pesticide sensitive residents for the purpose of informing all commercial applicators of the name, address, and telephone number of these pesticide sensitive residents during the business license application process and to encourage commercial applicators and private property owners to contact the Town for an updated list of registered pesticide sensitive residents before making any application of airborne pesticides within the boundaries of the Town.
- Request all commercial applicators and private property owners to be aware of our registered pesticide sensitive residents and to make every possible effort to notify these residents within a four hour time frame and twenty-four hours in advance, before an application of airborne pesticides is made to an adjoining property owner.

PASSED AND ADOPTED by the San Anselmo Town Council at a regularly scheduled meeting on January 13, 2004 by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED

Paul Chignell, Mayor

ATTEST:

Barbara Chambers, Town Clerk

AGENDA ITEM 8

**TOWN OF SAN ANSELMO
TOWN COUNCIL STAFF REPORT**

January 2, 2004

For the meeting of January 13,

2004

TO: Town Council

FROM: Tom Bell, Planning Director

SUBJECT: Resolution amending Planning Department Fee Schedule.

RECOMMENDATION

Adopt the attached resolution amending Planning Department fees.

BACKGROUND

On August 24, 1993, the Town Council adopted Resolution 3241 setting the fee schedule for Planning Department services and providing for annual adjustments.

On May 27, 2003, the Town Council reviewed Planning Department fees and created a Council Subcommittee to further review fees, and continued the item to July 8, 2003.

On July 8 and July 22, 2003, the Council continued the item to a later date in order for the subcommittee to evaluate the proposed increases.

DISCUSSION

As the Council is aware, the last Planning Department Fee Resolution was adopted in 1993 and contained subsequent annual fee adjustment authority based upon increases in labor and materials. Since that time, significant changes in salary, benefits, and other overhead costs have resulted in a fee schedule that does not fully recover the cost of providing such services. Additionally, current Government Code regulations require such changes/increases to be approved by the Council at a noticed public meeting.

The attached Planning Fees-2003 study is a basic analysis of services within the Planning Department prepared to provide a reasonable estimate of various service costs.

The Council Subcommittee (Kroot and Thornton) met with the Town Administrator and Planning Director on November 24 to discuss the fee schedule and develop a final recommendation to Council. The attached committee recommended fee schedule represents a moderate fee increase, but less than the estimated full cost recovery. Assuming this modified approach is adopted, staff will monitor costs and expenditures over the next year and recommend adjustments as appropriate for future Council consideration.

If adopted, the Resolution would not take effect for 60 days as required by state law.

Respectfully submitted,

Tom Bell
Planning Director

Attachments:

TOWN OF SAN ANSELMO

TOWN COUNCIL RESOLUTION NO. _____

**A RESOLUTION OF THE SAN ANSELMO TOWN COUNCIL SETTING AND AMENDING
PLANNING DEPARTMENT FEES FOR ALL SERVICES AND ENTITLEMENTS PROCESSED
UNDER TITLE 10 OF THE SAN ANSELMO MUNICIPAL CODE**

WHEREAS, Town Planning services are deemed necessary to assure compliance with mandated Federal, State and Municipal laws; and

WHEREAS, the current Planning Fee Schedule authorized under Resolution No. 3241 does not fully recover the cost of providing related services; and

WHEREAS, the 2003 Planning Fees document attached hereto as Exhibit "A" has been prepared for the purpose of evaluating costs and time associated with various Planning services; and

WHEREAS, the Housing Element of the General Plan encourages the production of affordable housing and reduced fees may encourage such housing and be considered a public benefit; and

WHEREAS, Planning service fee increases are authorized in accordance with Sections 65104 and 66016 of the California Government Code.

NOW THEREFORE, BE IT RESOLVED that the Town Council of the Town of San Anselmo has determined as follows:

1. The analysis in Exhibit "A" attached hereto represents an accurate assessment of costs and expenditures attributable to the various services provided by the Planning Department; and the recommended fees therein reflect a reasonable estimate of the costs to provide such services.
2. The Planning Fee Schedule attached hereto as Exhibit "B" is hereby adopted and shall become effective sixty (60) days after the adoption of this resolution.

AYES:
NOES:
ABSTAIN:
ABSENT:

Paul Chignell, Mayor

ATTEST:

Barbara Chambers, Town Clerk

Exhibit "B"

SAN ANSELMO PLANNING DEPARTMENT
FEE SCHEDULE

ITEM	(ESTIMATED FULL COST RECOVERY)	PROPOSED FEE
1. Use Permits Design Reviews		

General Plan Amendments			
Zoning Amendments			
Tentative Maps			
Annexations			
Variances	..... (\$1500*)	.....	\$
840*			
2. Administrative Design Reviews			
Administrative Variances	..... (\$ 750)	.....	\$
300			
3. Administrative Sign Reviews			
Temporary Outdoor Displays	..... (\$ 140)	.....	\$
100			
4. Certificates of Compliance	..... (\$ 468)	.....	\$
500			
5. Environmental Reviews**			
Negative Declarations	..... (\$1405***)	.....
\$800***			
Environmental Impact Reports	.....	.....	consultant
cost plus 20%			
6. Peer Reviews	.....	.....	consultant
cost plus 20%			
6. Lot Line Adjustment	..... (\$ 573)	.....	\$
600			
7. Appeals	..... (\$ 199)	.....	\$
210			
8. Hourly Fee	..... (\$ 93.71/hr)	.....	\$
94/hr			

* Includes the first 8 hours of direct planner time. Projects exceeding 8 hrs planning time will be required to submit deposits in \$500 increments to cover additional planner time at the current hourly research rate.

** Fees charged by outside agencies for review and processing of environmental documents will be charged to the applicant in addition to the fees herein (County filing fees, State fish & Game review fee, etc.).

*** Includes the first 10 hours of planner time. Projects exceeding 10 hours planning time will be required to submit deposits in \$500 increments to cover additional planner time at the current hourly research rate.

General Conditions:

1. The above fees include Town costs of processing, notice, legal review, and advertising. Projects requiring technical consultant input or legal analyses/opinions shall be charged the actual cost of such services in addition to the above fees.
2. When multiple applications are submitted for the same project (e.g., Use Permit and Variance), the application fee shall be the sum of the most costly fee plus 50% of each of the other application fees.

3. Fee reductions/waivers may be requested and considered for the creation of **affordable housing**. Such requests shall be considered by the **Town Council** on a case by case determination of public benefit consistent with needs identified in the Housing Element of the San Anselmo General Plan.

Exhibit "A"

PLANNING FEES - 2003

**OVERVIEW PLANNING DEPARTMENT
EXPENDITURES/REVENUES**

- FY02-3 Planning Dept Budgeted Costs ≈ \$313,000
- Budgeted Planning Fee Revenue ≈ 59,000 (35,000 estimated)
- In addition to Planning Department budgeted expenditures, other related administrative and overhead costs exist as support services to the Planning Function (dedicated Administrative Assistant support, Admin&Finance, Legal, and Insurance costs)

Expenditures

Revenue

Planning Budget	\$313,000
-----------------	-----------

Overhead @ 6.35%

Admin/Finance (\$575,000x.0635)	≈\$ 36,510
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Legal (\$150,000x.0635)	≈ 9,525
-------------------------	---------

Insurance (\$390,000x.0635)	≈ <u>24,765</u>
-----------------------------	-----------------

	70,800
--	--------

Administrative Assistants (1/2 planning, 1/2 building/public works)*

* (This administrative staff is budgeted within the Public Works Department Budget)

\$62,099 @ 50%	
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<u>51,844 @ 50%</u>	
---------------------	--

	<u>57,000</u>
--	----------------------

TOTAL PLANNING DEPARTMENT COST	≈ \$ 440,800
---------------------------------------	---------------------

Revenue

Budgeted Planning Fees FY02-03	
--------------------------------	--

	\$ 59,000
--	------------------

(estimated annual revenue based upon collections to date)

(\$35,000)*

*In previous budgets (FY200-01 and prior years), annual Planning Fees were in excess of \$70,000. However such fees were overstated because they failed to consider the effects of **refundable** deposits. Actual FY2001-02 planning fee collection was \$33,095.

PLANNING STAFF TIME ALLOCATION ESTIMATE

This past year, Planning Staff expended approximately 50% of its time reviewing, processing, administering, and assisting citizens in private development activity.

Approximately 15% of staff time was allocated to Building Plan Check and inspection.

The remaining 35% was allocated to general public planning activity such as public projects, code revisions, code enforcement, public assistance, general administration, supervision, & training.

These time estimates fluctuate substantially due to a variety of economic and social variables. Currently, it appears that the private development activity may be declining somewhat with the general planning activity increasing.

Estimated annual planning staff hours are 4704 hours due to vacation, holidays, sick leave and administrative leave.

Director	1628
Senior Planner	1538
Assistant Planner	<u>1538</u>
	4704 hours

Consequently, the estimated total average cost/hour for Planning Services is approximately **\$93.71/hr**.

(\$440,800/4704 hr)

Based upon a 50% staff allocation to private development, the Town could potentially receive approximately \$220,400 in annual Planning Application fees assuming full cost recovery.

(50% x 4704 hr x \$93.71/hr)

CURRENT FEE STRUCTURE

Currently, **hourly rate fees are used for all major entitlement processing**. Hourly fees are charged at a rate based upon budgeted Planning Department Labor Costs with a 15% overhead estimate. These rates are adjusted annually to cover salary/benefit increases. Minor projects such as **administrative approvals** are charged a **fixed fee** and adjusted annually by CPI increases.

The January 2003 hourly fee rate is \$83/hr. This represents a \$20/hr increase over the 2002 rate of \$63/hr. The 2002 rate was discovered to be inadequate because it failed to adjust for revised productive hours worked and did not consider the fact that more private processing time is generally performed by senior planning staff due to the complex issues involved. Therefore, a weighted average hourly cost of planning staff is now in effect.

Only **direct** hourly charges for review and processing time are currently assessed. This time does not account for interdepartmental or interagency consultations, nor does it include neighborhood inquiries regarding a particular project. Unfortunately, even though such time may be related to a particular application, is not charged to the applicant because of the difficulty in documenting the many contacts and lack of applicant consent/control over unknown costs. It is estimated that staff spends about as much time with interested citizens and agency consultations on projects as it does on direct plan review and processing. Consequently, approximately 50% of staff time expended upon a project is actually billed to a project.

CURRENT FEE STRUCTURE PROBLEMS

As mentioned above, it is almost impossible to document staff time for every citizen/agency contact regarding a particular project. Additionally, applicants may not be aware of the amount of citizen interest and have no control over the time staff expended in such efforts. Consequently, direct review and processing time only is charged.

Another problem with the hourly fee charges is the issue of refunds. Since some projects receive a residual refund from deposits collected, the cost to process refunds often exceeds the refund itself. Although not indicated in the overall planning cost of doing business, individual refund preparations and processing can be a burden on the Administration and Finance functions of the Town.

FEE STRUCTURE COMPARISON

In reviewing other agency methodologies, several are based upon a minimum flat fee for various project types with added hourly charges when a given project exceeds a certain number of review hours. Because agencies have different zoning procedures and levels of

review, direct comparative analysis cannot be fully achieved. The following is an example of current fee rates for basic comparative purposes.

CURRENT FEE SCHEDULES – JANUARY, 2003

	<i>San Anselmo</i>	County	Ross	San Rafael	Mill Valley
Use Permit	hourly fee \$560 deposit	\$3,320 \$2,100-2 nd unit \$1,035-minor/acc use	\$1,000	\$1,550 –PC* \$730 – Admin *includes 10 hrs	\$945 includes first 10 hours planner time
Design Review	Hourly fee \$560 deposit –PC \$139 – Admin	\$2,430 single-family \$1,100-\$24,595 –mf & com depending upon valuation \$1,055- minor	\$1,000- 500-999sq ft \$2,000 <2000sq ft \$3,000 <3000sq ft \$4,000 >3000sq ft	\$1,700-PC* \$400- Admin *includes 10 hr planner time	\$575< 50k valuation* \$ 740<100k val* \$1,006<250k val** \$1273<500k val** *inc 5hr planner time **inc 10 hr planner time
Variance	Hourly fee \$560 deposit –PC \$178 – Admin	\$2,520 \$1,260- Admin var.	\$800	\$1,550* \$730 – Admin var. *includes 10 hr planner time	\$945* *includes 10 hrs planner time
Sign Review	\$43 -Admin	\$895 review \$365 zoning permit	\$300	\$80 Admin \$1600PC* includes 10 hrs pln	\$103 –Admin \$575 -PC
Environmental Review	Included in primary project application If EIR, = cost of consultant	\$235-catagorical exemption \$2,290- Initial Study cost & 30%- EIR prep	\$3,500 –initial study cost & 15%- EIR & additional studies	\$2,500 – neg dec cost & 25%-EIR	\$155-catagorical exemption \$513- neg dec \$513&15%/contract cost-EIR
Lot Line Adjustment	\$573	\$635	\$500/parcel	\$930	\$740* *includes 5 hr of planner time
Appeals	\$199	\$675 – Board of Sup	\$250	\$150-PC non-appl. \$200-CC non-appl \$1,600-applicant* *includes 15hr of time	\$100

When processing various entitlement combinations such as simultaneous Design Review and Variances for a particular project, San Anselmo considers the application as one item and processes the application with one deposit (\$560) on an hourly basis. The other agencies listed above charge separate fees for each entitlement processed.

With the exception of San Rafael (and San Anselmo), initial deposits are not refundable even if the hours allotted for processing are not fully utilized. Generally, San Anselmo’s \$560 deposit has been adequate in the past given the number of direct hours and rates charged. However, with the updated fee schedule such deposits appear to be inadequate.

In reviewing the above fee comparisons, San Anselmo’s fees are significantly below other jurisdictions. Further, in discussing fees with other jurisdiction personnel, significant fee increases in some agencies may be contemplated in the near future.

D. PROPOSED FEES

1) USE PERMITS, DESIGN REVIEW, VARIANCES

In San Anselmo, the majority of time-consuming projects include **Use Permits, Design Review, and Variances**. Typically these applications have a similar process in that the Planning Commission in the context of a public hearing considers such applications. Such applications generally require about 8 hours planning staff time in direct review and processing. As mentioned previously, an additional 8 hours staff time is spent in discussions with interested neighbors and other staff/ reviewing agencies. Consequently, at \$93.71/hr, the cost of processing an average application is approximately \$1500. Therefore, based upon the problems identified with hourly fees, I would recommend the adoption of a fee of **\$1500 as a base fee with an additional per hour charge for projects exceeding 8 hours of direct planner time.**

Since each entitlement mentioned above requires separate findings and considerations, an application involving more than one entitlement consideration would generally require approximately 4 hours of additional staff time. Therefore, combination application fees of the above entitlements are recommended to be 1 ½ times the \$1500 fee or **\$2250 for any combined application with an additional per hour charge exceeding the first 12 hours of direct planner time.**

Although other agencies charge separate fees for each entitlement requested, staff believes that such combination applications result in some economies in processing and therefore should be reflected in the fees.

2) ADMINISTRATIVE DESIGN REVIEW AND VARIANCES

Administrative Design Review and Variances generally require about ½ the time as regular Variances/Design Review applications because they are minor in nature and do not require Planning Commission processing. Consequently, I would recommend the adoption of a **flat fee of \$750** for these projects (1/2 x \$1500).

The current fee for Administrative Design Review is fixed at \$139. The fee for Administrative Variance is fixed at \$178.

3) ZONE CHANGES/GENERAL PLAN AMENDMENTS/TENTATIVE MAPS/ANNEXATIONS

Although applicant requested General Plan Amendments, Zone Changes, Annexations, and Tentative Maps may require slightly more time to process than Use Permits and Design Review applications, the base fee plus hourly charge proposed (for Use Permits, Variances, & Design Review) would also assure cost recovery. Since San Anselmo is predominantly built out, the frequency of these requests is not significant. Therefore, I would recommend these fees to be the same as the other major entitlements, or **a base fee of \$1500 with an additional per hour charge for projects exceeding 8 hours of direct planner time.** Likewise, combination applications would be charged as indicated above.

4) SIGN REVIEW/TEMPORARY OUTDOOR DISPLAY- ADMINISTRATIVE

A simple sign permit or temporary outdoor display application requires between 1 and 2 hours to review, research, and issue at staff level. Therefore, I would recommend that a **flat fee** be established for 1 ½ hour's time or **\$140** (1.5 x \$93.71). Sign review at Planning Commission level would be included within another application (Design Review or Use Permit).

5) CERTIFICATES OF COMPLIANCE

A Certificate of Compliance is a certification and recognition of a legal lot or parcel consistent with the Subdivision Map Act. Staff review includes research and legal description review to determine if the subject lot was created legally. This requires approximately 5 hours of planner time per application to make the determination. Currently, the charge is an hourly fee of the planner's time but requires a \$500 deposit. Since the average time is 5 hours, I recommend this fee to be a **flat fee of \$468** (5 x \$93.71). This flat fee would save significant time and cost in preparing residual refunds associated with per hour fees.

6) ENVIRONMENTAL REVIEW

To date, environmental review has been charged to the project as a direct staff time. However since it represents a substantial increase in staff effort (as opposed to an exempt project), it should be charged as a separate fee similar to other agencies. In preparing an Initial Study, Negative Declaration and processing, direct staff time is approximately 15 hours. Therefore, I would recommend a **flat fee of \$1405 with an additional hourly rate in excess of 15 hours** for the preparation and processing of a **Negative Declaration.**

If an Environmental Impact Report should be warranted, a consultant would be required to prepare the document. Since staff would be required to review the document, process it, and administer the contract, an overhead charge of approximately 20% would seem appropriate. Therefore **EIRs** should be charged the consultant **cost plus 20% for review and administration.**

Additional fees charged by outside agencies for review and processing of environmental documents (County filing fee, State fish & Game review fee, etc.) would be charged to the applicant as well.

7) REQUIRED PEER REVIEW

The Town currently requires professional peer review of all geotechnical studies and other reports as may be determined by the Planning Commission/Council. Although consultants conduct these reviews, such peer reviews are reviewed, evaluated, and administered by Town staff. Therefore, I would recommend that the fee be the consultant **cost plus 20%** for evaluation and administration purposes.

8) LOT LINE ADJUSTMENT

The current Lot Line Adjustment fee is **fixed at \$573**. Since staff spends about 5-7 hours in reviewing and processing these items, I would not recommend changing this fee.

9) RESEARCH FEE

Currently, research requested by private citizens is charged at an hourly rate of \$83.00/hr. Since the cost of the department is **\$93.71/hr**, all hourly fees should be changed to reflect this cost.

10) APPEALS

Currently all appeals are charged a fixed fee of **\$199**. Although staff time could be extensive and require additional legal consultation, I would not recommend a change because of the nature of this request. If however, full cost recovery is desirable, a fee of \$468 would be appropriate to cover the cost of review, agenda preparation and processing (approximately 5 hours).

Included in the above-recommended fees would be all administrative processing, noticing, and plan storage charges (microfiche).

AGENDA ITEM 9

**TOWN OF SAN ANSELMO
STAFF REPORT
*January 7, 2004***

For the meeting of January 13, 2004

TO: Town Council

FROM: Debra Stutsman, Town Administrator
SUBJECT: Franchise Agreement for Solid Waste,
Recycling, and Green Waste Services

E. RECOMMENDATION

That Council approve the five-year Franchise Agreement for Solid Waste, Recycling, and Green Waste Services with Marin Sanitary Service.

BACKGROUND

The Town had just entered into a five-year Franchise Agreement for Solid Waste, Recycling and Green Waste Services with Marin Sanitary Service in August, 2002 when a referendum was successfully filed against the Council's award of the franchise. The Council set the matter for the general election of November 2003 and took bids from companies wishing to provide interim garbage service to the Town. An interim contract was awarded to Marin Sanitary Service for the period December 1, 2002 through November 30, 2003. The question was put to the voters in November 2003 and the voters upheld the Town Council's award of the franchise to Marin Sanitary Service. The interim contract was extended to January 31, 2004 to allow staff time to make the necessary date changes in the originally approved franchise agreement.

DISCUSSION

The following date and language changes were made to the franchise agreement to account for the one-year time lag:

1. Base Term of Agreement – February 1, 2004 through January 31, 2009. (Originally December 1, 2002 through November 30, 2007)
2. Transition – To be completed by May 1, 2004. Other transition language remains but without dates (p.8).
3. Periodic Review of Franchise Services – Meet to discuss issues no later than September 1, 2004. (p.20). (Originally July 1, 2003)
4. Adjustment of rates – Dates put forward one year, i.e. 2002 becomes 2003, 2003 becomes 2004, etc. (p.28-29).
5. Faithful Performance Bond – Date changed to February 1, 2004 (p.42).
6. Exhibit A – Delete dates on program implementation (p.A-7).
7. Exhibit B – Delete dates on cart delivery (p.B-1).

8. Exhibit C – Delete date on contingency planning and cart order (p.C-2,3). Delete language on cart order and delivery as it has been accomplished (p.C-4). Language changed to reflect past tense on actions already accomplished. (p.C-4,5,6). Years added to task listing for clarity (p.C-7)
9. Exhibit I – Date changed to February 1, 2004 (p.I-1).
10. Exhibit J – new performance bond inserted.
11. Exhibit K- new insurance certificates inserted.

There were no changes made to the agreement of a substantive nature. Every effort was made to keep the terms of the agreement unchanged whenever possible. The draft franchise agreement has been reviewed by Marin Sanitary and the Town Attorney.

Respectfully submitted,

Debra Stutsman
Town Administrator

AGENDA ITEM 10

TOWN OF SAN ANSELMO STAFF REPORT

January 6, 2004

For the meeting of January 13, 2004

TO: Town Council

FROM: Debra Stutsman, Town Administrator

SUBJECT: Red Hill Community Park
Joint Powers Agreement

F. RECOMMENDATION

That Council approve the Joint Powers Agreement (JPA) between the Town and the Tamalpais Union High School District (District) and appoint two Councilmembers to serve on the JPA Board of Directors.

BACKGROUND

The District and the Town have entered into a lease agreement with the Ross Valley School District to develop the Red Hill field site. The next step in the process is a joint powers agreement between the District and Town for the purposes of developing, maintaining and operating athletic and recreational facilities at the Red Hill Community Park.

DISCUSSION

The draft agreement contains the following provisions:

- Authority to be governed by a five-member Board of Directors, comprised of two representatives of the Tam District Board, two representatives of the Town Council and one member of the Ross Valley School District Board of Trustees.
- Town's Recreation Director shall serve as Executive Director to the Authority.
- Town Attorney shall serve as General Counsel to the Authority
- Authority shall reimburse Town and District for the cost of services provided.
- Agreement would terminate on termination of the Lease Agreement.
- District shall be responsible for administering contracts for the development of the Park.
- Town is responsible for operating and maintaining the Park for joint use of the District and Town.
- Town's Finance and Administrative Services Director shall serve as Treasurer to the Authority.

G. ISSUES

When Council discussed the draft agreement at the meeting of November 25, 2003, the proposal was to have the JPA governing board made up of a five-member Board of Directors, comprised of two representatives appointed by the District Board (one to be a member of the Board), two representatives appointed by the Town Council (to be a member of the Council) and one community representative to be appointed initially by mutual agreement of the parties and thereafter by a majority vote of the Board of Directors. Representatives of the Ross Valley School District attended the meeting and requested that the fifth seat be filled by a representative of their Board.

Subsequent discussions between the three entities centered on accountability issues, and the direct accountability of elected officials to the community. Given the importance of this union to the community, the agreement presented this evening calls for the JPA Board to be made up of all elected officials. This follows the successful pattern set by the Ross Valley Fire Service, which is governed by a board that is made up of elected officials from San Anselmo (2), Fairfax (2) and Sleepy Hollow (1).

Respectfully submitted,

Debra Stutsman
Town Administrator

DRAFT
12/19/03

**JOINT POWERS AGREEMENT
TO ESTABLISH
*THE RED HILL COMMUNITY PARK JOINT POWERS AUTHORITY***

This Agreement by and between the Tamalpais Union High School District (“District”) and the Town of San Anselmo (“Town”) (collectively the “parties”) is entered into pursuant to the provisions of the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, Article 1 (Section 6500, et seq.) of the California Government Code and Section 10905 of the California Education Code.

The parties to this Agreement have determined and hereby declare that it is both in the public interest and the best interest of the parties to join together for the purposes of developing, maintaining and operating athletic and recreational facilities at the Red Hill Community Park.

NOW, THEREFORE, the parties mutually agree as follows:

1. Summary of Purposes

This Agreement is intended to establish a separate agency which shall administer this Agreement and develop, maintain and operate athletic and recreational facilities at Red Hill Community Park (“Park”), located at 110 Shaw Drive, San Anselmo, California, which is more particularly described in Exhibit A, attached hereto and incorporated herein. This Agreement is further intended to serve as an Operations Contract pursuant to Part IV of the Agreement for the Lease and Improvement of Red Hill Field (“Lease

Agreement”) between the parties and the Ross Valley School District ("RVSD"), a copy of which Lease Agreement is attached hereto as Exhibit B and incorporated herein.

The parties agree that this Agreement shall not be construed to alter their duties and obligations to RVSD pursuant to the Lease Agreement. Without limiting the foregoing, the parties further agree: a) if the Red Hill Community Park Joint Powers Authority ("Authority," hereafter defined) contracts with any third party, the third party shall be deemed a "contractor" of the parties for purposes of the indemnification provision (Part II.F.1) to the Lease Agreement; and b) independent of the Authority, the parties are obligated to provide insurance pursuant to the insurance provision (Part II.F.2) to the Lease Agreement.

2. Establishment of the Red Hill Community Park Joint Powers Authority

In order to carry out the above-described purposes, this Agreement establishes a separate agency to be known as the Red Hill Community Park Joint Powers Authority (“Authority”), effective January 31, 2004, or upon execution of this Agreement by both parties, whichever is later.

The Authority shall have all of the powers authorized by Government Code Section 6508, and may do any of the following in its own name: make and enter contracts; employ or contract for agents and employees; acquire, construct, manage, maintain or operate any building, works or improvements; acquire, hold and dispose of property; incur debts, liabilities and obligations; sue and be sued; and adopt an annual budget. Pursuant to Government Code Section 6509, the Authority's powers are subject to only to such restrictions upon the manner of exercising its power as are imposed upon the Town in the exercise of similar powers.

3. Board of Directors
 - a. The Authority shall be governed by a five-member Board of Directors, comprised of: two representatives appointed by the District's Governing Board, both of whom shall be current members of the District's Governing Board; two representatives appointed by the Town's Council, both of whom shall be current members of the Town's Council; and one representative appointed by the RVSD, who shall be a current member of RVSD's Governing Board. Within one hundred and eighty (180) days of the commencement of operations of the Park, the Town and the District shall determine whether to reduce the number of Town and District representatives on the Board of Directors from two to one, respectively. The parties and the RVSD may also designate one alternate for each of their respective appointed representatives to serve on the Board of Directors in the absence of the appointed representative ("designated alternate"). Each such designated alternate shall be a current member of the legislative body of the Town, District or RVSD which appoints him or her. In the event of the death, resignation or incapacity of a member of the Board of Directors, or in the event a member cease to be a current member of the legislative body which appointed him or her, the designated alternate shall be appointed to the Board of Directors. If there is no qualified designated alternate, as set forth above, that legislative body shall appoint a successor to the Board of Directors who shall be a current member of that legislative body. The Board of Directors shall annually select a member of the Board of Directors to serve as Chairperson and a member to serve as Vice Chairperson.
 - b. The Board of Directors shall be wholly separate and apart from the parties to this Agreement. The Board of Directors shall have the power and authority to authorize the Authority to exercise any power or duty of the parties for the purpose of implementing and maintaining the Authority provided that the power or duty is consistent with this Agreement and in furtherance of the objectives of this Agreement. The Board of Directors shall exercise its power or duties in conformance with the Bylaws attached hereto as Exhibit C, and incorporated herein, and as may be amended from time to time.
4. Executive Director and General Counsel
 - a. The Town's Recreation Director shall serve as Executive Director to the Authority.
 - b. The Town Attorney shall serve as General Counsel to the Authority in consultation with the District's Legal Counsel as appropriate.
 - c. The Authority shall reimburse Town and District for the cost of the services provided pursuant to this Section, and pursuant to Section 8 herein.
5. Term of this Agreement

The term of this Agreement shall commence on January 31, 2004, or upon execution of this Agreement by both parties, whichever is later. This Agreement shall terminate upon termination of the Lease Agreement, unless sooner terminated by agreement of the parties, or by the withdrawal of one of the parties from the Agreement, which withdrawal shall not be effective until six (6) months following written notice to the Board of Directors of intent to withdraw from the Agreement. The term of this Agreement shall not be extended except by a writing approved by a majority vote of the Board of Directors. Any such extension shall not be effective until approved by both the Town and the District.

6. Contributions to Support the Authority

In addition to the contributions of funding and services set forth in Sections 6 and 7 herein, the parties shall provide such personnel, equipment, and property as provided in the Bylaws or as set forth in separate agreements to be entered into between the parties and the Authority. The parties shall bear their own costs for such contributions to support the Authority, except as otherwise provided herein or in separate agreements between the parties and/or the Authority.

7. Development and Operation of the Park

The Authority shall develop and operate the Park in accordance with the Lease Agreement and this Agreement. The Authority will be the contracting agency for the development of athletic and recreational facilities at the Park (including design and construction).

a. District Responsibilities

The District shall be responsible for administering contracts for the development of the Park, including design and construction, subject to Authority oversight. The District's costs incurred pursuant to this subsection shall be reimbursed by the Authority.

b. Town Responsibilities

The Town shall be responsible for compliance with the California Environmental Quality Act in the development of the Park, the costs of which shall be reimbursed by the Authority. The Town shall be responsible for operating and maintaining the Park for joint use of the District and Town, subject to Authority oversight.

c. Funding

Within ninety (90) days of the establishment of the Authority, the Board of Directors shall approve a plan for initial funding of the development and construction of the Park and submit it to the Town Council and District Board for approval. Within one hundred and eighty (180) days of the establishment of the Authority, the Board of Directors shall approve a plan for funding of the ongoing operation and maintenance of the Park, and submit the plan to the Town Council and District Board for approval. The Authority will seek additional funding for development, operation and/or maintenance of the Park, including grant monies.

8. Fiscal Accountability/Treasurer

All funds shall be accounted for and report of all receipts and disbursements made in accordance with Government Code Section 6505. The Town's Finance and Administrative Services Director shall serve as Treasurer to the Authority and shall provide all duties related thereto, including, but not limited to, filing a notice of this Agreement with the Secretary of State pursuant to Government Code Section 6503.5, and performance of those duties set forth in Sections 6505 and 6505.5 of the Government Code. The Treasurer shall file an official bond as required by Government Code Section 6505.1, in an amount to be determined by the Board of Directors before it accepts funding on behalf of the Authority. The Board of Directors shall review and approve all budgets, reports, and audits.

9. Disposition of Property and Funds

In the event of dissolution of the Authority or final termination of this Agreement, following a discharge of all obligations of the Authority, any remaining property shall be disposed of as the Board of Directors shall then determine with the objective of returning to each party a proportionate share of the contributions made to such properties by each party.

10. Liability and Indemnification

In accordance with the provisions of Section 895.4 of the Government Code, each party agrees to indemnify, defend and hold harmless the other party, its officers, agents and employees from any and all liability, claims, or losses of any nature, to the extent caused by, arising out of or in connection with the indemnifying party's negligent acts or omissions pursuant to this Agreement. Notwithstanding the foregoing, once the Park is developed and in operation, as determined by the Authority, the Town's or Authority's rights to indemnification or contribution from the District shall be limited, pursuant to Government Code Section 895.4, to liability arising from the District's use of the Park. Nothing in this Section shall be construed to operate as a limitation or restriction on or to otherwise affect the RVSD's right to indemnity pursuant to the Lease Agreement.

11. Liability/Insurance

Except as provided in Section 10 of this Agreement, neither the Authority nor its Board of Directors shall have the power or authority to bind the District or the Town to any debt, liability, contract or obligation. No debt, liability, contract or obligation of the Authority or its Board of Directors shall be or constitute thereby a debt, liability, contract or obligation of the District or the Town. No action or omission of the parties pursuant to this Agreement shall be attributed to the District or Town except as expressly provided in Section 10 of this Agreement. The Authority may insure itself, to the extent required by law or deemed necessary by the Board of Directors, against loss, liability, and claims arising out of or connected with this Agreement.

12. Amendments

This Agreement may be amended by a writing approved by a majority vote of the Board of Directors. Any such amendment shall not be effective until approved by both the Town and the District.

13. Dispute Resolution

This Agreement shall be construed and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the County of Marin. The parties agree to make a good faith effort at resolving any dispute through mediation prior to initiating a legal proceeding, the costs of such mediation (exclusive of the parties' own legal fees) to be shared equally between the parties.

14. Entire Agreement

This Agreement and the exhibits attached hereto and incorporated herein contain the entire understanding of the parties concerning the subject matter hereof. Any prior agreements or representations not expressly set forth herein are null and void.

15. Severability

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16. Headings

The headings of the sections of and exhibits to this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

17. Execution

The parties shall take such action as necessary to approve execution of this Agreement and appoint representatives and alternates to the Board of Directors on or before January 31, 2004. This Agreement may be executed by each party on a separate copy thereof with the same force and effect as though both parties executing separate copies had executed a single original copy. The collection of both such executed copies shall be treated as a single copy executed by both parties. Each party shall transmit three (3) executed copies of this Agreement to the Board of Directors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers as set forth below.

TAMALPAIS UNION HIGH SCHOOL DISTRICT

By: _____

Date:

William Levinson, Superintendent

TOWN OF SAN ANSELMO

By: _____

Date:

Debra Stutsman, Town Administrator

Approved as to form:

By: _____

Hadden Roth, Town Attorney