

# Town of Los Altos Hills

## City Council Regular Meeting Minutes

July 23, 2009

Council Chambers, 26379 Fremont Road

### CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Warshawsky called the City Council Regular Meeting to order at 6:30 p.m. in the Council Chambers at Town Hall.

Present: Mayor Dean Warshawsky, Mayor Pro Tem Breene Kerr, Councilmember Jean Mordo, Councilmember Rich Larsen and Councilmember Ginger Summit

Absent: None

Staff: City Manager Carl Cahill, City Engineer/Public Works Director Richard Chiu, Finance Director Nick Pegueros, Planning Director Debbie Pedro, Associate Planner David Keyon, Public Safety Officer Steven Garcia, City Attorney Steve Mattas, and City Clerk Karen Jost

City Attorney Steve Mattas advised Council that staff was recommending the continuation of the two closed session items on the agenda to a future meeting and that Council consider taking action to add a closed session item to the agenda. Pursuant to the Brown Act, they had the right to add an item to the meeting agenda if it was determined that there was an immediate need to take action on the item. This action would require a 2/3 vote of the Council. Mattas explained that Council had received correspondence from Waidy Lee and Earl Killian with regards to agenda item #16 subsequent to the agenda being posted. The letter had threatened litigation and it was appropriate for the Council to confer with their legal counsel prior to hearing the agenda item to discuss exposure issues. Additionally, Lee and Killian had indicated in conversations with staff that they would consider litigation if they believed that any processes had been violated.

**MOTION SECONDED AND CARRIED:** Moved by Kerr, seconded by Larsen and passed unanimously to add an item to the agenda; specifically:

**CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL — ANTICIPATED LITIGATION:** Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: 1 case

## CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LABOR NEGOTIATOR(S)

(Pursuant to Government Code Section 54957.6)

Agency Designated Representative: Mayor/City Attorney

Unrepresented Employee: City Manager

CLOSED SESSION: EMPLOYEE EVALUATION

(Pursuant to Government Code Section 54957)

Title: City Attorney

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL — ANTICIPATED LITIGATION: Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: 1 case

## PUBLIC SESSION

Council reconvened to Open Session at 7:05 p.m.

City Attorney Steve Mattas reported out of Closed Session: Direction was given on the one item considered in Closed Session; Council had provided direction to staff and there was no reportable action taken. Items not considered were continued to a future City Council meeting.

## APPOINTMENTS AND PRESENTATIONS

### 1. Certificate of Commendation – Carl Cottrell

Mayor Warshawsky presented former Planning Commissioner Carl Cottrell with a Certificate of Appreciation for his service to the Town. Cottrell had served as a Planning Commissioner for three consecutive four year terms. Cottrell had also been a key participant in the Town's General Plan Update process and a member of the New Town Hall Committee that had been responsible for the development of the new facility.

### 2. Administration of Oath to Community Emergency Response Team (CERT) Volunteers

The City Clerk administered the Oath of Alligance to CERT Volunteers Kalen Gruber, Davy Davidson, Tim Mechikoff, Andy Gurrola, Gina Bertolino, Anne Raphael, Tracy Warren and Mark Warren. Council thanked them for their dedication to the program and service to the community.

### 3. Appointments to Standing Committees:

MOTION SECONDED AND CARRIED: Moved by Mordo, seconded by Summit and passed unanimously to appoint resident Wendie Ward to the Standing Open Space Committee for a term of four years.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Larsen and passed unanimously to appoint resident Kathy Evans to the Standing Community Relations Committee for a term of four years.

MOTION SECONDED AND CARRIED: Moved by Summit, seconded by Mordo and passed unanimously to appoint resident Duncan MacMillan to the Standing Emergency Communications Committee for a term of four years.

MOTION SECONDED AND CARRIED: Moved by Mordo, seconded by Larsen and passed unanimously to appoint resident Tracey Stewart to the Standing Education Committee for a term of four years.

4. Presentation by the Los Altos Hills Pacific Ridge Pony Club and 4-H Riding for the Handicapped (Presentation in Support of Westwind Community Barn Repair Project)

By consensus of the City Council, the agenda was reorganized to allow Agenda Item #4 to be presented in conjunction with Agenda Item #20.

#### CONSENT CALENDAR

Item Removed: Agenda Item #7 (citizen-Jim Abraham); Agenda Item #9 (Staff: Finance Director N. Pegueros);

MOTIONED SECONDED AND CARRIED: Moved by Mordo, seconded by Summit and passed unanimously to approve the remainder of the consent calendar, with the exception of Councilmember Larsen recusing himself from consideration of Agenda Item #15A:

5. Approval of Meeting Minutes: City Council Regular Meeting – July 9, 2009
6. Review of Disbursements:
  - A. May 2009 - \$733,420.30
  - B. June 2009 - \$586,106.76
8. Appropriation Limit for Fiscal Year 2009-10 (Staff: N. Pegueros) Resolution No. 41-09
10. Annual Approval of Investment Policy (Staff: N. Pegueros)
11. Authorization of Account Signatories (Staff: N. Pegueros) Resolution No. 42-09
12. Authorization to Establish a Checking Account at Comerica Bank (Staff: N. Pegueros) Resolution No. 43-09
13. Approval of Request for Funding and Authorization for Town-Wide Mailing – Standing Water Conservation Committee (Staff: K. Jost)
14. Notice of Completion – Little League Fields Improvement Project (Purissima Park) (Staff: R. Chiu) Resolution No. 44-09
15. Acceptance of the El Monte Road Pathway Project-Segment#3 as Complete

(Staff: R: Chiu) Resolution No. 45-09

- 15A. Authorize City Manager to Award Contract for West Loyola Sanitary Sewer Project-West Loyola Sewer Assessment District No. 1 to the Lowest Responsible Bidder in an Amount Not-To-Exceed \$2,500,000 and Related Action, and Authorize the City Engineer to Accept on Behalf of the Town Necessary Easements for the Public Sewer Line Related to the West Loyola Sanitary Sewer Project (Staff: R. Chiu) Resolution No.46-09 (Due to a potential conflict of interest, Councilmember Larsen did not participate in consideration nor the vote of this item.)

Items Removed:

7. Contribution to Day Workers Center of Mountain View (Staff: N. Pegueros)

Resident Jim Abraham expressed his opposition to the \$25,000 contribution to the Day Worker's Center of Mountain View. He believed it was not appropriate to use taxpayer's money for a facility in another jurisdiction given the current economic climate. Abraham challenged the population numbers that had been used to calculate the donation.

**MOTION SECONDED AND CARRIED:** Moved by Mordo, seconded by Summit and passed by a 4-1 voice vote (Warshawsky-No) to approve the contribution to the Day Workers Center of Mountain View.

9. Quarterly Investment Report for Period Ending June 30, 2009 (Staff: N. Pegueros)

Finance Director Nick Pegueros provided an overview of the Town's finances. He shared a report of the Town's investments as of June 30, 2009 which reflected a current reserve balance of \$14.05 million. The majority of the money was invested in US Treasuries. Pegueros noted that the Town's recent CPI contracts had been favorable with the awards under their projected budgets. The State's impact on Town finances was still an unknown. However, during the budget preparation process, the reduction in State revenue had been anticipated and had been factored into the adopted budget. Pegueros offered that it was important for the Council to understand the Town's fiscal exposure to the potential loss of revenues including the COPS grant funding and gas tax money.

Pegueros reviewed possible avenues for a reduction in budget expenditures for the remainder of the fiscal year. Areas that could be considered included the funding for the Town's Standing Committees special projects and the Community Service Grants.

Pegueros concluded his report by noting that at this time, the Town's "worst case scenario" would be a fund balance increase of \$167,000. An additional \$250,000 could be realized if the State did not withhold the COPS grant funding and gas tax revenues.

Council thanked Pegueros for his report. It was noted that the State budget discussions were in their initial stages.

**MOTION SECONDED AND CARRIED:** Moved by Kerr, seconded by Larsen and passed unanimously to receive the report.

## PRESENTATIONS FROM THE FLOOR

Roy Woolsey, resident, voiced his support for the Town moving forward with the revision of the “Residential Design Guidelines” but cautioned that it was important that the guidelines reflect current Town zoning ordinances. He encouraged the Council to include the noise ordinance in the reference document.

## PUBLIC HEARINGS

### City Council Ex Parte Contacts Policy Disclosure

16. LANDS OF BROCKWAY: (Formerly Lands of Moeller) (#137-09-MISC) 11990 Page Mill Road; Hearing of an Appeal of the Planning Commission’s determination that required findings could not be made for a conditional exception to allow an existing overhead utility line that was proposed to be undergrounded to remain above ground. The City Council will also consider taking Final Action on an appeal filed by Waidy Lee of the Improvement Plan approved for Lands of Brockway for which a public hearing was already properly noticed and held at the City Council’s June 11, 2009 meeting.(Staff: R. Chiu)

Mayor Warshawsky introduced the item. He provided a brief history, noting that the matter had been reviewed twice by the Planning Commission and by the City Council with countless hours of staff time dedicated to the issue without a final resolution. He encouraged the audience and participants to keep an open mind and avoid personal attacks and negative comments during the public hearing that would be counter productive to bringing the issue to a conclusion.

City Engineer Richard Chiu proceeded with a PowerPoint Presentation. It included photo/slide simulations of the following:

Option 1) Lands of Brockway Underground Utility Plan: Plan approved by the City Engineer (5-11-09). Chiu noted that the plan was consistent with the Town’s Municipal Code and in conformance with the Tentative Map. The plan called for undergrounding of the existing line between C-D; installation of a transformer box to serve Parcels A and B of the subdivision; and, a PG&E access “road” to maintain the undergrounding.

Option 2) Killian and Lee Proposed Plan: Plan required an upgrade of electrical lines A-G and G-F to permit a change in the direction of the electrical flow; installation of a new PG&E equipment box at F; undergrounding of lines by directional bore from F-E with a new transformer box at the parcel line to serve Parcel A, Parcel B and the Land of Killian and Lee; and the granting of a private utility easement to Killian and Lee along the property line between Parcel A and Parcel B for the private line. The proposal would remove the overhead lines between A-B-C-D-E.

Option 3) Applicant’s (Brockway) Proposed Alternate Plan: Power to Parcel A and Parcel B would be supplied by a new transformer box with Pole E as the power source and the installation of the required PG&E access. No additional burden would be added

to Poles C and D in the event of future undergrounding. The applicant had offered to dedicate a 15 foot PG&E easement for future undergrounding of lines from Pole F-E.

Appellant Presentation:

Gregg Brockway, applicant/appellant's son, addressed Council. He explained that he would be speaking on his mother's behalf for tonight's public hearing. Ms. Brockway had received correspondence from Killian and Lee late the afternoon of the scheduled hearing threatening potential litigation and was unsettled by the letter and believed it would be best to delegate the appeal presentation to her son.

G. Brockway proceeded with an overview of the subdivision project and shared with Council the numerous concessions that had been made by the applicant (B. Brockway) and burdens that had been placed on the property to date. Every effort had been made to address any issues in a friendly fashion. He showed a slide of the map that reflected the easements and road. Brockway noted that the property was encumbered to the point that only 40% of the land was currently buildable. He explained that the applicant was hopeful that the outstanding issue could be resolved expeditiously and they could move forward with the project.

Brockway reviewed what he believed were the two viable options for undergrounding. They had been outlined by the City Engineer prior to Brockway's presentation and were Option 1 (City Engineer Approved Plan/undergrounding C-D) and Option 3 (Applicant's Proposed Alternate Plan). Brockway noted that Option 1 had been approved by the Town and PG&E prior to his mother acquiring the property. Brockway pointed out that they had spent time and money to evaluate Option 3 and believed it was feasible with the added bonus that it did not involve the Killian and Lee property. The City Engineer and PG&E were also supportive of the Applicant's Proposed Alternative Plan Option 3.

Brockway commented on two concessions that they would be amenable to. With respect to Option 1 they would provide an easement from E-H so as not to preclude any future undergrounding by the neighbors. Additionally, if Council were to support Option 3 to accommodate future removal of overhead lines C-D they would deposit \$20,000 to be used towards the undergrounding.

Council briefly discussed the offer tendered by the applicant's representative to deposit funds for the future removal of the overhead lines C and D by the neighbors.

OPENED PUBLIC HEARING

Waidy Lee, immediate neighbor-Central Drive, addressed Council. She explained that the correspondence that had been sent to the City Council and the Applicant prior to the meeting was at the direction of her counsel. Lee expressed her opinion that to leave the C-D overhead lines was in violation of the tentative map procedure. Lee had spoken with numerous consultants during the interim between the Planning Commission meeting and the Council meeting and obtained several cost comparisons for the Killian and Lee Proposed Plan (option 2) that ranged between (approximately) \$62,000 and \$90,000. She offered to share in the costs of undergrounding with \$30,000 for their (Killian and Lee) connection. But, acknowledged that if they continued to incur additional costs in pursuing their option, they could not participate at that level.

Earl Killian, immediate neighbor–Central Drive, commented that they had several pages of information to share with Council that could not be covered in the allotted time. He stated that the issue had been contentious because he believed the law had not been followed and the approved undergrounding plan was in violation of the Town’s General Plan and the tentative map’s conditions of approval. Killian referenced the Town’s Municipal Code. He questioned if there was any plan to underground the cable and telephone utilities. Killian noted that his engineer was in the audience to answer questions.

John Beebe, Alliance Engineering Consultants, Killian and Lee representative, addressed Council. He reviewed the Killian and Lee’s Proposed Plan with Council that included the undergrounding of F-E. He believed it was a feasible option that offered additional benefits including the removal of the poles on the Killian and Lee property.

Councilmember Summit referenced the correspondence Council had received prior to the meeting from PG&E regarding the Killian and Lee proposal. PG&E had contended that the proposal would require a road the length of the undergrounding from E-F that would be 12 feet wide. Additionally, a major study of the whole area, not just the affected section, would be required and the costs of the study and work were significant unknowns. The expectation was for the complex project to take several months at a minimum.

Beebe acknowledged that he was surprised to learn of the access road requirement and it had not been considered or included in their cost estimates.

#### CLOSED PUBLIC HEARING

##### Closing Comments from the Appellant:

Gregg Brockway clarified several points that had been made earlier in the hearing by the speakers. Both of their proposals as presented by the City Engineer included the undergrounding of the other utilities and no funds or cost sharing of the project had been requested of Killian and Lee. He closed by saying that the comments made by PG&E regarding the Killian and Lee proposed plan “spoke for itself”.

City Attorney Steve Mattas, for the record, noted that the agenda packet before Council contained extensive presentation materials from Killian and Lee on the item and Council had the benefit of those materials with regards to their discussion.

Mattas reviewed the correspondence from Killian and Lee that the City Council had received prior to the meeting (July 23, 2009). Mattas clarified that with regards to the CEQA issues identified in the letter, there had been a Negative Declaration prepared for the project at the time of the subdivision’s approval and he believed that no additional CEQA analysis was required at this time.

Mattas reviewed the relevant exemptions per the CEQA guidelines (Sections 15302 and 15303) that were applicable to the undergrounding of utilities and location of utility lines that are part of development. Additionally, the language in the Town’s Municipal Code was specific to the underground and relocation for service necessary for the tract

(subdivision). He reviewed each of the undergrounding options before Council, and noted that they were all compliant with the Code. If an option was approved where C-D were to remain overhead, with the provision of easements, there would be an opportunity for all of the utilities on the property (tract/subdivision) to be ultimately undergrounded. This could eliminate the need for the conditional exception.

Mattas summarized the Subdivision Map Act procedures that were germane to tentative and final maps and advised Council that there were procedural guidelines for map amendments to final maps. The project before Council did not have a final map. As of this date, not all of the subdivision requirements had been satisfied. Council had within their authority to consider the items before them for final resolution without revisiting the tentative map process.

Council had before them for consideration several issues: the Brockway Appeal of the Planning Commission's determination on the conditional exception by a 3-2 vote; and the Killian and Lee Appeal of the City Engineer's approval of the undergrounding plan (C-D) option that had been previously heard by the City Council as a public hearing.

Mattas noted that if there was consideration of another option that would accomplish the goals of the Council, they should afford the applicant/appellant and the appellant an opportunity to indicate on the record if it was acceptable.

Council Discussion:

Councilmember Mordo reviewed the options before Council. He expressed his concerns with all of the proposals. Mordo suggested that if Killian and Lee were amenable to Brockway's alternate plan that might be their best option for undergrounding, otherwise it was most likely that Council would accept the C-D plan approved by the City Engineer. Mordo noted that if the Council should approve the applicant's alternative proposal, the applicant should be required to place a deposit with the Town to assist with the future cost of undergrounding C-D. He suggested that most likely the proposed applicant's alternative plan would be less costly than the approved plan. The future undergrounding would not be the responsibility of Brockway.

Mayor Pro Tem Kerr initiated discussion of an additional proposal. He suggested that the transformer box that would serve Parcel A and Parcel B as shown on the applicant's alternate plan could be located closer to the property line and between the dividing line of the two parcels with the proposed driveway serving as the access road. Undergrounding would be from Pole E. He believed this option had possibilities for future undergrounding in the area. Outstanding issues to be resolved included a voluntary easement from the Brockway's subdivision to the Killian and Lee property and possible deposit for future C-D undergrounding.

Summit noted that the proposal sounded like a good starting point but did not remove poles/lines A-B-C-D.

John Beebe, Alliance Engineering, consultant for Killian and Lee, concurred with the assessment that the proposal of Mayor Pro Tem Kerr was a good starting point.

Applicant/Appellant and Appellant Comments:

Waidy Lee commented that she wished to discuss the cost estimates that she had not been able to present. Lee believed that the \$20,000 was not an adequate deposit for undergrounding of C-D. Killian questioned what the plan was for Pole H. He suggested they were being burdened with costs for undergrounding their wires. Lee stated that it was the responsibility of the applicant to underground the distribution/residential line.

Gregg Brockway reviewed the newly proposed option with Council. He commented that they understood that if the proposal was approved, they would be responsible for placing a new transformer box with power from Pole E at the property line between Parcels A and B and placing a cash deposit of \$20,000 with the Town for future undergrounding which would not be their responsibility. Brockway added that they were willing to voluntarily grant an easement (utility) for a single residence to Killian and Lee's property line. Brockway clarified that they were planning to underground the cable and telephone utilities from Pole H.

Discussion regarding the option ensued. It was determined that the City Engineer would have the final approval of the undergrounding plan.

City Attorney Mattas reviewed the tentative conditions of approval with Council. They included: power service from Pole E to the property line; utility easement from Page Mill boundary of Lands of Brockway across the subdivision property line between Parcels A and B to the Killian and Lee property line for a single service; the undergrounding of utilities from H-E; and C-D utilities would remain above ground. The utilities would be sufficient to serve the primary (12kv). The applicant would make a deposit of \$20,000 with the Town for the future removal of lines C-D.

Waidy Lee requested additional easements on the Brockway property. City Attorney Mattas advised that there was not a nexus for the additional request. Killian asked that another method be used to calculate the deposit for future funding. It was suggested that if the neighbors that had expressed interest in the issue participated in the future re-routing/undergrounding it would be more cost effective.

COUNCIL RECESSED 10:50 PM

COUNCIL RECONVENED TO PUBLIC SESSION 10:55 PM

Earl Killian and Waidy Lee, for the record, agreed to the proposal as articulated by the City Attorney.

Gregg Brockway, on behalf of his mother, agreed to the proposal as articulated by the City Attorney and the deposit of \$20,000.

MOTION SECONDED AND CARRIED: Moved by Mordo, seconded by Larsen and passed by the following roll call vote to deny the appeal of the Planning Commission's determination filed by applicant Beverly Brockway.

AYES: Mayor Warshawsky, Mayor Pro Tem Kerr, Councilmember Mordo,  
Councilmember Larsen and Councilmember Summit

NOES: None

ABSENT: None

ABSTAIN: None

City Attorney Steve Mattas clarified that the utility easement between Parcels A and B to the Killian and Lee property was for a single service and not correctly represented on the slide before Council by the wide yellow line, the red thin boundary line was more appropriate.

**MOTION SECONDED AND CARRIED:** Moved by Mordo, seconded by Summit and passed by the following roll call vote to grant the appeal filed by Killian and Lee of the City Engineer's previously approved plan for undergrounding and approve the undergrounding plan that had been articulated by the City Attorney during the meeting and appeared before Council as a visual. Conditions of Approval included:

- 1) The Applicant shall obtain power from Pole E to serve the subdivision, subject to approval of the City Engineer.
- 2) Lines from C-D would remain above ground until such time as there was an opportunity to remove the lines.
- 3) The Applicant shall underground the telecommunications utilities from H to E subject to approval of the City Engineer.
- 4) The Applicant would be required to install the underground utilities from Pole E to the property line between Parcels A and B along the driveway alignment shown on the applicant's proposed alternative plan. A transformer box shall be located on or adjacent to the property line between Parcels A and B to serve the two parcels and single utility service connection to the Lands of Killian and Lee. The transformer box would include both primary and secondary lines.
- 5) The Applicant would provide an easement to Lands of Killian and Lee for underground electrical, cable and telephone utility service from the Page Mill property line (Brockway) from the west to the property line of the Lands of Killian and Lee on the east for a single service.
- 6) The Applicant would deposit \$20,000 with the Town to be held for up to five years to be used for the cost of removing the above ground lines from C-D when that was possible and to assist with the undergrounding connection to F when and if that is possible.

AYES: Mayor Warshawsky, Mayor Pro Tem Kerr, Councilmember Mordo, Councilmember Larsen and Councilmember Summit  
NOES: None  
ABSENT: None  
ABSTAIN: None

Prior to the adoption of the aforementioned motion, Applicant Gregg Brockway on behalf of his mother, stated on the record, that they fully understood and agreed to the conditions as stated and that the resolution reached fully satisfied the issues between the parties.

Prior to the adoption of the aforementioned motion, Earl Killian (Killian and Lee) agreed on the record that he understood and agreed to the conditions as stated and that the resolution fully satisfied the issues between the parties.

17. UPDATE OF THE HOUSING ELEMENT OF THE GENERAL PLAN AND NEGATIVE DECLARATION. Consideration of the proposed amendments to the Housing Element as required by State Law, and adoption of a Negative Declaration. CEQA Review: Negative Declaration. (Staff: D. Pedro)

Planning Director Debbie Pedro introduced Geoff Bradley, Metropolitan Planning Group, to Council. Bradley had been engaged by the Town as a consultant to assist with the Housing Element update. Bradley proceeded with an overview his presentation that would include: the Housing Element update process; Regional Housing Needs Allocation (RHNA) process; and, the Draft Housing Element. Council had before them a copy of the Draft Housing Element with the recommendations from the July 2, 2009 Planning Commission hearing highlighted in yellow. Bradley noted that the Town had meet and surpassed their 2002-2006 housing goals. The Regional Housing Needs Allocation (RHNA) for 2009-2014 was 81 units to be divided amongst very low to above moderate income levels.

State law mandates that each town, city and county prepare a Housing Element that must be updated once every five years. The 2009 Housing Element update is the statutory update of the Town's Housing Element which was previously updated by the Town and certified by the State in 2004. Bradley reviewed the benefits of Housing and Community Development compliance (HCD) and the new requirements for the 2009 Housing Element.

Bradley summarized the Town's Housing Element update process that began in February 2009 with the formation of a Housing Element Subcommittee consisting of Mayor Mordo, Councilmember Summit, former Planning Commissioner Dot Schreiner and resident Joan Sherlock. The subcommittee had met four times and reviewed the 2002 Housing Element; current housing issues in the Town; and, explored options to meet the RHNA numbers and new requirements from the State. Additionally, the Town had conducted a town-wide survey on secondary dwelling units, held a community workshop and distributed a public comment card for community feedback to residents.

Bradley explained that the 2009 draft Housing Element was meant to build on the existing 2002 Housing Element with modifications to areas that were no longer relevant. He reviewed the new statutory requirements and the programs and new policies that had been added to address the new State requirements. Bradley identified the Planning Commission's recommendations that were highlighted in the Council's draft document. Bradley reviewed staff's recommendation for Council approval of the Initial Study and Negative Declaration for the project given the overall minimal impact of the Housing Element and its consistency with other parts of the General Plan. If approved, there would be a 60 day HCD review period (August-September) of the draft document. The expectation was to address the comments form HCD in October and schedule the adoption of the Housing Element by the City Council in October.

Planning Director Debbie Pedro thanked the subcommittee for their efforts in this process. Councilmember Summit thanked the consultants, Geoff Bradley and Lauren Mattern, for their guidance and professionalism on the project.

#### OPENED PUBLIC HEARING

Samuel Broydo, Purissima Road, requested clarification on the Town's second unit policy. He wondered what the difference was in the regulations for an addition to a house and a secondary dwelling. Planning Director Pedro noted that the Town currently had a secondary dwelling ordinance and if the application met those requirements it would qualify for an administrative review. She offered to meet with Mr. Broydo to review the requirements with him.

Stephanie Munoz, Robleda, commented on the League of Women Voters' letter that had been submitted as comment for the Housing Element review with regards to low income housing. She spoke to the numerous properties in Los Altos Hills that might serve as possible sites for cottages with long term leases for those that could not afford to purchase a home in Town. Munoz suggested that the State could use the former Agnews property for low income housing and the Town could pay their fair share for housing units.

#### CLOSED PUBLIC HEARING

**MOTION SECONDED AND CARRIED:** Moved by Kerr, seconded by Mordo and passed by the following roll call vote to approve the Initial Study and Negative Declaration for the 2009 Housing Element update and to direct staff to forward the draft 2009 Housing Element update to the Department of Housing and Community Development (HCD).

AYES: Mayor Warshawsky, Mayor Pro Tem Kerr, Councilmember Mordo,  
Councilmember Larsen and Councilmember Summit  
NOES: None  
ABSENT: None  
ABSTAIN: None

#### UNFINISHED BUSINESS

##### 18. Town Goal

- Discussion of Potential Annexation of Hidden Villa

Mayor Warshawsky introduced the item to Council. He and Mayor Pro Tem Kerr had presented the concept of a potential annexation of Hidden Villa as a Town Goal at the July 9, 2009 meeting. The Mayor requested Council input on the proposal. Discussion ensued. Council consensus of the proposal was favorable and they supported moving forward with the investigation if the interest was mutual. Mayor Pro Tem Kerr advised Council that exploration of the opportunity with Hidden Villa would require some staff time and suggested that it was appropriate to have direction from the City Council. Kerr noted that the Hidden Villa's Board of Directors would be meeting in September and there would be an opportunity for them to offer input on the proposal.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Larsen and passed unanimously to authorize staff time for a preliminary investigation of the potential annexation into the Town of Hidden Villa.

19. Consideration of Request for Waiver of Appeal Fees – Waidy Lee and Earl Killian (Item continued from July 9, 2009 Regular City Council Meeting.)

Councilmember Mordo requested clarification on the fees and charges for the appellants. City Manager Cahill explained that the \$2,000 consisted of a fee and deposit. The deposit was charged against for staff and City Attorney time. The amount owed to date was unknown and offered that it was most likely above the deposit on hand. Cahill suggested that if the Council was considering any waiver, they consider waiving the outstanding charges beyond the initial \$2,000.

City Attorney Mattas advised Council that they could not take any action on the Brockway fees given that it was not on the agenda. The item would have to be agendaized for a future meeting.

Mordo suggested that Council consider continuing the item to the next Council meeting to allow the opportunity to gather a full accounting of the charges and include the Brockway appeal fee for consideration at the same time.

Council discussion ensued. There was no consensus to continue the item.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Larsen and passed by the following roll call vote to deny the request for a refund of the appeal fees by Lee and Killian and to waive any additional charges over the \$2,000.

AYES: Mayor Warshawsky, Mayor Pro Tem Kerr, Councilmember Mordo,  
Councilmember Larsen and Councilmember Summit  
NOES: None  
ABSENT: None  
ABSTAIN: None

#### NEW BUSINESS

20. Consideration of Award of Contract: 2009 Westwind Community Barn Repair Project (Staff: R. Chiu)

#### *Agenda Item #4:*

Jitze Couperus, resident, commented that he was before Council on behalf of the numerous users and supporters of Westwind Barn. He proceeded with a PowerPoint Presentation and noted that the compilation of photos in his presentation could best represent the real value of this community treasure. The presentation included historical

photos of the Barn; a review of the programs and events held at the facility in 2009; photos of the 4H Riding for the Handicapped program and participants; photos of the Pacific Ridge Riding Club members and equestrian events; photos of the Year Round Riding Program and Gitty-Up Summer Riding Camps; and, photos of the Ohlone Summer Day Camp classes.

Couperus offered that Westwind Community Barn was an important and integral part of the Town. The programs offered at the facility provided both educational and self growth opportunities for children. He respectfully requested that the Council approve the Barn repair project and consider it an investment that would ensure the preservation of the community asset for generations to come.

*Agenda Item #20*

Mayor Warshawsky recused himself from consideration of the item due to a potential conflict of interest and stepped down from the dais.

Mayor Pro Tem Kerr introduced the item. The item before Council was an award of contract for the seismic retrofit and repair of Westwind Community Barn (WCB).

City Engineer Richard Chiu provided an overview of the project's components and the public agency bid and evaluation of bids process. Eight bids have been received ranging from \$564,173 to \$1,199,000. Staff's recommendation was to award the contract to the lowest bidder (Nexgen Builders, Inc.) and to add Alternate B to the award for an additional cost of \$474,331 with a total award amount \$1,038,504. Additionally, Staff recommended engaging an outside construction management firm and special inspection services for the project in the amount of approximately \$113,000 which included a 10% contingency.

Chiu reviewed the project's tentative schedule with Council. If the award were to be approved, the construction was scheduled to begin in August, 2009 with a projected completion date of March, 2010.

Mayor Pro Tem Kerr noted that the engineer's estimates for the project had been \$1,700,000 and the project including all of the noted work (new ADA bathroom, new 40 year roof, seismic upgrade to the building and roof, solar tube lighting, replacement of flooring, and new electric and plumbing) was approximately \$700,000 under the estimates.

Councilmember Larsen questioned if the project addressed the liability issue of the structure noting that it had been deemed unsafe. City Manager Cahill explained that the total repair project as recommended by staff would bring the building in compliance with the recognized minimum standard known as collapse prevention. If Council should choose to approve only certain components of the project, the entire structure would not meet the recognized minimum standard.

Councilmember Mordo questioned if Council could select a different contractor/bid using the alternatives as the determining factor not just the base bid now that the bid submittal prices were known. The City Attorney clarified that it would not be legal to change the

criteria once it had been announced. However, they could reject all of the bids and start the process over.

Mordo requested clarification on the need for the project construction services. Chiu noted that numerous special inspections would be required and construction management services to oversee the project would be beneficial. Chiu offered that the management could be done in house, but would adversely affect his time on other public works projects and development project reviews.

#### OPENED PUBLIC COMMENTS

Allan Epstein, resident, addressed Council. Council had before them on the dais a “Westwind Barn Position Statement” prepared by the speaker. Epstein noted that he was neither for nor against the Barn but had issues with the source of funding of the project and questioned if there would be any presentation on the subject.

Finance Director Nick Pegueros responded to Epstein’s comment. He shared a PowerPoint presentation that identified the 2009 Capital Planning at Westwind Barn. The overview included previously approved projects; the Seismic Retrofit and Restoration Project; estimated and actual project costs; and, funding sources. The projects were funded by a variety of sources including Park Bond monies, private gifts, cell tower rental fees and the sale of Town owned properties. It was noted that the project before Council was well below the estimated cost of \$1,760,000.

Councilmember Mordo commented that the Council had set aside \$880,000 for the WCB project and with the additional funds from the Supporters and Los Altos Hills County Fire District there was more than enough funds for the proposed project. Mordo added that the project before Council was a bare minimum project and any additional funds from the Supporters could be used for improvements.

Resident Allan Epstein continued his comments. He provided an overview of the discussions that had begun in 2007 regarding the Barn and construction improvements. He suggested that the community’s expectation was that the Supporters of Westwind Barn would provide a 1:1 match of funds for the project and that was not what was being proposed. Epstein suggested that a town wide notification would be appropriate before Council approved the award of contract.

Jim Abraham, resident, commented that he was in agreement with the comments of Mr. Epstein. He suggested that a Public Hearing would be appropriate prior to awarding the contract. Abraham referenced the recreation survey that had shown little support from residents for the Barn.

Deborah Reuter, Pacific Ridge Pony Club, addressed Council. She expressed her support for the repair project and commented that the Barn was a great learning environment for children.

Public, commented that Westwind Community Barn was an important part of the Community.

Jolon Wagner, Los Altos Hills Horseman's Association, suggested that the Barn was harmonious with the environment and an integral part of Los Altos Hills. She added that the project was considerably less costly than the Little League Fields project.

## CLOSED PUBLIC COMMENTS

### *Council Discussion:*

Mayor Pro Tem Kerr suggested that Council focus on the nuts and bolts of the project including the proposed contingency and consulting services.

Councilmember Summit voiced her support for the project. She noted that the Council had dedicated funds from the sales of the Story Hill and Altamont properties and the bid had been very successful. She agreed that it would have been great to have had matching funding; however, she did not believe that the project should be delayed or postponed. The current economic climate had reduced the private funds but had resulted in an excellent bid. Summit said the Council's objective was to ensure that the building was safe and prevent a catastrophe.

Councilmember Mordo in response to comments made during the public testimony offered that if Council were to wait for the Supporters to raise matching funds, the Barn would either have to be closed or the Town could be exposed to unacceptable risks with potential liabilities. He offered that the economy had produced a lower bid than expected and it was appropriate to take advantage of the opportunity that had been presented. Mordo clarified that the recreation survey that had been referenced by a speaker was for "new" recreation facilities only and without a need for additional equestrian facilities, the option had not scored high. Mordo commented that he and Councilmembers Larsen and Summit had been elected by a wide margin in the last election on a platform supporting Westwind Barn and the voters have spoken.

Councilmember Larsen requested an update from the Supporters of Westwind Community Barn.

Jeanne Seeley, Supporters, addressed Council. She provided an overview of the non-profits capital campaign that was launched in September. Seeley explained that they had focused on cultivating potential donors and had garnered support. However, with the setback in the economy and stock market, there had been a concern by parties to commit funds at this time. She acknowledged that the group would keep in touch with their donor list and hopefully, there would be an opportunity to re-engage them in the future to restore the Barn. The Supporters had pledged \$150,000 to the Seismic Upgrade and Repair Project and would fulfill that obligation.

Mayor Pro Tem Kerr thanked Seeley. He noted that it was encouraging to know that they would continue their efforts to seek funding for the restoration of the facility.

Councilmember Larsen concurred and noted that it was important for the Town to make the Barn a safe and useful facility. He believed that the economy had presented a unique opportunity with an exceptional bid and it was appropriate to move forward with the project.

Mayor Pro Tem Kerr noted that the project had been discussed and developed over the last two years. He concurred that the timing was right to move forward and commit to the work. Kerr suggested that he would like to encourage the City Manager to bring as much of the construction management in-house as was feasible.

**MOTION SECONDED AND CARRIED:** Moved by Larsen, seconded by Mordo and passed by the following roll call vote to adopt Resolution No. 47-09 awarding the contract for the 2009 Westwind Community Barn Repair Project to Nexgen Builders, Inc. for \$1,038,504; approve a contingency fund of \$105,000; and authorize the City Manager to enter into construction management and special inspection service contracts for an amount not to exceed \$113,000.

**AYES:** Mayor Pro Tem Kerr, Councilmember Mordo, Councilmember Larsen and Councilmember Summit  
**NOES:** None  
**ABSENT:** Mayor Warshawsky  
**ABSTAIN:** None

*Mayor Warshawsky recused himself from consideration of this item and had stepped down from the dais.*

21. Selection of Voting Delegate – League of California Cities Annual Conference September, 2009 (Staff: K. Jost)

**MOTION SECONDED AND CARRIED:** Moved by Mordo, seconded by Larsen and passed unanimously to appoint City Manager Carl Cahill to act as the voting representative for the Town of Los Altos Hills at the annual League of California Cities Business Meeting.

22. Consideration of Approval of Operation and Maintenance Service Agreement for Sanitary Sewer Service Systems and Overflow Emergency Response Services (Staff: R. Chiu)

Agenda Item 22 was re-ordered by consensus of the City Council to accommodate the interested parties in attendance.

City Engineer Richard Chiu introduced the item to Council. Council had before them a resolution authorizing the City Manager to execute an agreement with Able Underground Construction, Inc. to provide operation and maintenance services for sanitary sewer systems and overflow emergency response services. Currently, the sewer system was maintained by Collection Systems Maintenance Service with the annual contract to end on July 31, 2009.

Chiu reported that an RFP had been sent to five companies. He outlined the scope of services and proposal evaluation process. Staff was recommending that the contract be awarded to Able Underground Construction, Inc.

In response to a query from Councilmember Larsen, Chiu offered that references had been checked and public agency experience verified.

## OPENED PUBLIC COMMENT

Rich Landi, CSMS, stated that he had been the contractor of record for the Town the past 25 years and was very surprised by the RFP. He suggested that the RFP was flawed and suggested that a new proposal be prepared.

Allan Epstein, resident, expressed his concern that the RFP might not have been sufficiently clear given the low proposal price submitted by Able.

Glen Gilbert, Able Underground, commented that the scope of services had been very clear and he stood by his proposal. He explained that he currently provides similar services to seven neighboring cities with the same cost factors. Gilbert added that he was hopeful that once he established a working relationship with the Town, he would be considered for the renewal of the contract.

## CLOSED PUBLIC COMMENT

MOTION SECONDED AND CARRIED: Moved by Summit, seconded by Larsen and passed unanimously to adopt Resolution No. 48-09 “Approving and Authorizing and Agreement between the Town of Los Altos Hills and Able Underground Construction Inc. for Maintenance Service and Sanitary Overflow Emergency Response Services”.

COUNCIL RECESS: 8:45PM

COUNCIL RECONVENED TO PUBLIC SESSION: 9:00PM

## PLANNING COMMISSION REPORT

### 23. Notification of Planning Commission Approvals:

LANDS OF SINGH, 11267 Magdalena Road; File #298-08-ZP-SD-GD; A request for a Site Development Permit for a new 5,675 square foot two-story residence (maximum height 29 feet) with a 1,098 square foot basement, and a 700 square foot swimming pool. The applicant is requesting a grading policy exception for up to 8 ½ feet of cut for the rear yard and patio. CEQA Review: Categorical Exemption per Section 15303(a) (Staff: David Keyon).

- Planning Commission Vote: Unanimous Approval (5-0)
- Appeal Deadline: July 24, 2009

*No verbal report was given.*

## REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

*No reports were given.*

## STAFF REPORTS

City Manager  
City Attorney  
City Clerk

*No reports were given.*

ADJOURNMENT

There being no further business, the July 23, 2009 regular meeting of the City Council was adjourned by consensus of the Council at 11:40 p.m.

Respectfully submitted,

Karen Jost  
City Clerk

The meeting minutes were approved as presented at the September 10, 2009 regular City Council meeting.