

Claim against the Town of Woodside

Town of Woodside
2955 Woodside Road
Woodside, California 94062
650 851.6790
www.woodsidesetown.org


Please return to Town Clerk, Town of Woodside, P.O. Box 620005, Woodside, CA 94062

Complete the following information. Add additional sheets if necessary.

1. Claimant's Name: Nancy Reyering
2. Claimant's Address: (Street or PO Box) 1820 Portola Road
(City, State, Zip Code) Woodside, California 94062
3. Home Phone: 650-851-4058
4. Work Phone: _____
5. Amount of Claim: \$ _____ (Attach Copies of bills/estimates)
If amount claimed is more than \$10,000, indicate where jurisdiction rests:
Limited Civil Case Unlimited Civil Case
6. Address to which notices are to be sent, if different from #2:
(Name) N/A
(Street or PO Box) _____
(City, State, Zip Code) _____
7. Date of Incident: 2/14/17 Time of Incident: evening
8. Location of Incident: Independence Hall, 2955 Woodside Road, Town of Woodside, California
9. Describe the Incident or accident, including your reason for believing that the Town is liable for your damages:
Please see attached.

10. Describe all damages that you believe you have incurred as a result of the incident:
Plensed see attached.

11. Name(s) of public employee(s) causing the damages you are claiming:
Mayor Tom Livermore, Town Councilmember and past Mayor Deborah Gordon

Signature of Claimant: 

Date: May 8, 2017

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

Note: Claims must be filed within 180 days of incident. See Government Code Section 900 et seq.

1 G. SCOTT EMBLIDGE, State Bar No. 121613
2 JODIE SMITH, State Bar No. 299225
3 MOSCONE EMBLIDGE & OTIS LLP
4 220 Montgomery Street, Suite 2100
5 San Francisco, CA 94104
6 Telephone: (415) 362-3599
7 Facsimile: (415) 362-2006
8 Email: emblidge@mosconelaw.com
9 smith@mosconelaw.com

10 Attorneys for Plaintiff

11 THE UNITED STATES DISTRICT COURT FOR THE
12 NORTHERN DISTRICT OF CALIFORNIA

13 NANCY REYERING,
14 Plaintiff,
15 vs.

16 TOWN OF WOODSIDE; THOMAS H.
17 LIVERMORE, Mayor of Town of Woodside,
18 in his official capacity; THOMAS H.
19 LIVERMORE, an individual; DEBORAH
20 GORDON, Town Councilmember and past
21 Mayor of Town of Woodside, in her official
22 capacity; DEBORAH GORDON, an
23 individual;
24 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
MONETARY DAMAGES FOR
VIOLATIONS OF:
U.S. CONSTITUTION, AMEND. I &
CALIFORNIA CONSTITUTION, ART.
I, § 2**

Jury Trial Demanded

25 1. The Town of Woodside (“the Town”) subjected Plaintiff Nancy Reyerer
26 (“Plaintiff”) to an unlawful investigation under an unconstitutional Ethics Code for lawfully
27 expressing her concerns about ethical practices in the Town. Ms. Reyerer had a right and
28 responsibility as a member of the Town’s Architectural & Site Review Board to address issues of
public importance and raise concerns about policies and practices that she believed do not serve
Town residents well. She did precisely that by expressing a legitimate concern about how Town
officials create the appearance of impropriety by representing private clients in their business
dealings with the Town. The Town retaliated against her, in violation of the free speech
protections in the United States and California Constitutions, by enabling and actively

1 encouraging a retaliatory investigation that culminated in Ms. Reyerer's resignation from public
2 service. The Town's Ethics Code, under which the investigation was conducted,
3 unconstitutionally suppresses protected speech that is vital to vibrant public discourse about the
4 Town's affairs. Ms. Reyerer requests, among other relief, that the Court order the Town to
5 cease enforcing the unconstitutional provisions of its Ethics Code unless and until the Town
6 amends the Ethics Code to spare future Town volunteers from the type of arbitrary, retaliatory,
7 and selective investigation that silenced Ms. Reyerer.

8 **JURISDICTION**

9 2. The Court has jurisdiction of this civil matter pursuant to 28 U.S.C. § 1331. The
10 federal question is based on alleged violations of the First Amendment of the United States
11 Constitution. The Court has supplemental jurisdiction of Plaintiff's claims alleging violation of
12 the California Constitution pursuant to 28 U.S.C. §1367.

13 **PARTIES**

14 3. Plaintiff Nancy Reyerer is an individual residing in San Mateo County,
15 California.

16 4. Defendant Town of Woodside is a general law town located in San Mateo County
17 and operating under the Constitution of the State of California.

18 5. Defendant Thomas H. Livermore ("Mr. Livermore" or "Mayor Livermore") is an
19 individual residing in San Mateo County, California. At all times relevant to this Complaint, Mr.
20 Livermore was a Town Councilmember for the Town of Woodside. On December 13, 2016, he
21 was elected Mayor of the Town of Woodside.

22 6. Defendant Deborah Gordon ("Ms. Gordon" or "Mayor Gordon") is an individual
23 residing in San Mateo County, California. At all times relevant to this Complaint, Ms. Gordon
24 was a Town Councilmember for the Town of Woodside. From December 13, 2005, to
25 December 13, 2016, Ms. Gordon was the Mayor of the Town of Woodside.

VENUE

1 7. Venue is proper in the Northern District of California because all natural persons
2 who are party to this matter reside in this District and the Town of Woodside is located in this
3 District.
4

GENERAL ALLEGATIONS

Ms. Reyerling’s Public Service

5
6 8. Ms. Reyerling was a dedicated Woodside volunteer for nine years. She received
7 numerous awards for her service and is recognized by colleagues and Woodside residents as a
8 hardworking, scrupulous, and ethical public servant.
9

10 9. Ms. Reyerling served as a member of the Town’s General Plan Task Force from
11 2008 to 2010. During 2011-2012, she also worked with the Residential Design Guidelines
12 Revision Task Force. She co-founded the Town’s Backyard Habitat Award Program to promote
13 natural spaces that allow native flora and fauna to thrive and facilitated the program’s
14 collaboration with Stanford University. In 2012, the Town’s Sustainability & Conservation
15 Committee presented Ms. Reyerling with its Environmental Champion Award.
16

17 10. In 2008, the Town appointed Ms. Reyerling to serve on the Town’s Open Space
18 Committee. The Open Space Committee advises and assists the Town Council, Planning
19 Commission, and staff on implementing the Open Space and Conservation Elements of the
20 General Plan, with an emphasis on enhancing the open space system, preservation and
21 restoration of wildlife habitat, and promoting natural spaces for native flora and fauna. The
22 Committee also makes recommendations on the acquisition and maintenance of open space and
23 conservation easements. The Committee collaborates with Town governing bodies and other
24 advisory committees on goals and projects of mutual interest, and with neighboring towns and
25 regional entities.¹
26

27 11. In March of 2010, the Town appointed Ms. Reyerling to its Architectural and Site
28 Review Board (“the Board” or “ASRB”). The Board is a five-member citizen advisory
committee that reviews residential applications for community character, site planning, building

¹ <http://www.woodsidesidtown.org/boardsandcommittees/open-space-committee> (accessed April 26, 2017.)

1 design, and landscape elements; reviews applications for non-residential development; makes
2 recommendations to the Planning Director or Planning Commission; and suggests modifications
3 or conditions in accordance with the evaluation criteria set forth in the Woodside Municipal
4 Code. The ASRB ensures that projects are consistent with the General Plan and are in keeping
5 with the Residential Design Guidelines. The ASRB is charged with protecting the rural
6 character and natural beauty of the Town.²

7 12. The Town reappointed Ms. Reyerer to a full four-year term in February 2013.

8 13. On February 4, 2017, Ms. Reyerer resigned from the ASRB and the Open Space
9 Committee because of the unconstitutional, selective, and baseless investigation that is the
10 subject of this Complaint. She does not presently serve the Town in any capacity.

11 Ms. Reyerer's Protected Speech

12 14. On May 2, 2016, Ms. Reyerer emailed the Town's Planning Director and two
13 other ASRB members in anticipation of missing that evening's ASRB meeting. A true and
14 correct copy of Ms. Reyerer's email is attached as Exhibit A.

15 15. Ms. Reyerer's email stated:

16
17 Dear Jackie, Thalia, and ASRB,

18 I would like the following comments read into the minutes about
19 the proposed project on Bardet Road.

20 Even a cursory review of this project raises questions as the
21 architect is a member of the Town Council, and as such, is
22 someone in charge of writing our building regulations. Therefore
23 he, and anyone else in a similar position, has a great responsibility
24 to bring in projects that are reflective of Residential Design
25 Guidelines, the General Plan, and the Municipal Code, and these
26 projects should not ask for exceptions.

27
28 Maximum Residence Size Exception, potential lack of
neighborhood compatibility, and massive pylons would set a
precedent on this street, and create the potential appearance that
council members are privileged when bringing projects before the

² <http://www.woodsidetown.org/boardsandcommittees/architectural-and-site-review-board-asrb> (accessed April 24, 2017.)

1 ASRB. I would ask the applicant and architect to reconsider some
2 elements of this design.

3 Regards,
4 Nancy Reyering

5 This email was consistent with views Ms. Reyering had expressed to other Town officials and
6 employees about the need for projects to respect the Town's Residential Design Guidelines, and
7 for Town officials to avoid the appearance of impropriety when personally or professionally
8 involved in projects coming before Town bodies for review and approval.

9 The Town's Selective Response to Complaints

10 16. Dave Burow ("Mr. Burow") is a former Mayor and Town Councilmember of the
11 Town. He left the Town Council in December 2015. Since that time, he has appointed himself
12 as a "watchdog" for the ASRB. Mr. Burow's vision for the Town's land use and development
13 policies and the role of ASRB differs markedly from Ms. Reyering's. He has expressed his
14 opinion that he considers ASRB review of development proposals to be "nitpicking" rather than,
15 as Ms. Reyering believes, an assurance that developments comply with the Residential Design
16 Guidelines and the General Plan so as to preserve the rural character of the Town.

17 17. Mr. Burow wanted Ms. Reyering removed from the ASRB. Citing Ms.
18 Reyering's May 2, 2016, email, Mr. Burow emailed the Town Manager and Town Attorney in
19 May 2016 making a baseless accusation that Ms. Reyering had engaged in retribution against
20 another Town official and opining that the ASRB was "dysfunctional" and had "lost sight of [its]
21 goals." In a second May 2016 email, Mr. Burow directly asked the same two Town officials
22 "what is your plan for replacing her position on the ASRB?" in reference to Ms. Reyering. A
23 true and correct copy of Mr. Burow's two emails to the Town Manager and Town Attorney in
24 May 2016 are attached as Exhibits B & C.

25 18. On June 3, 2016, the Town Attorney responded to Mr. Burow with a four-
26 paragraph email. Even though Mr. Burow's previous emails did not allege that Ms. Reyering
27 violated the Town's Ethics Code, the Town Attorney recharacterized his complaints as
28 allegations of ethics violations, and instructed Mr. Burow to "identify the specific sections of the
Code of Ethics which you believe have been violated." The Town Attorney informed Mr.

1 Burow that his complaint had been referred to the Mayor, who had requested that the Town hire
2 an outside investigator. The Town Attorney asked Mr. Burow to provide additional information
3 about “additional behavior associated with the allegations.” A true and correct copy of the Town
4 Attorney’s June 3, 2016, email to Mr. Burow is attached as Exhibit D.

5 19. Emboldened by the Town’s recasting of his emails as formal complaints under the
6 Town’s Code of Ethics, Mr. Burow responded to the Town Attorney’s request by letter on June
7 6, 2016. His June 6, 2016, letter alleged that Ms. Reyerling had violated nine sections of the
8 Ethics Code. A true and correct copy of Mr. Burow’s June 6, 2016, letter is attached as Exhibit
9 E.

10 20. Not satisfied with having encouraged Mr. Burow to morph his emails into a
11 formal ethics complaint, the Town Attorney rewrote Mr. Burow’s complaint before providing it
12 to Ms. Reyerling on June 29, 2016. A true and correct copy of the Town Attorney’s June 29,
13 2016, email to Ms. Reyerling is attached as Exhibit F.

14 21. In short, the Town not only enabled, but actively encouraged Mr. Burow to file an
15 “ethics” complaint explicitly based on Ms. Reyerling’s constitutionally protected expression of
16 her views on matters of public concern.

17 22. As contrast, Ms. Reyerling had previously presented a complaint about Mr.
18 Burow’s public statements to the Town Attorney. The Town Attorney responded with a two-
19 sentence email advising Ms. Reyerling to “speak directly with the person and convey your
20 concerns.” The Town Attorney did not ask Ms. Reyerling for additional information or
21 encourage Ms. Reyerling to recast her email as a formal ethics complaint. A true and correct
22 copy of Ms. Reyerling’s email and the Town Attorney’s reply is attached as Exhibit G.

23 23. On one hand, the Town dismissed Ms. Reyerling’s complaint with two sentences.
24 On the other, the Town responded to Mr. Burow with a request for additional allegations and an
25 assurance that the Town was hiring an outside investigator. The Town’s choice to vigorously
26 pursue Mr. Burow’s complaint and investigate Ms. Reyerling, while ignoring her earlier
27 complaint against him, illustrates the Town’s selective prosecution and “singling out” of Ms.
28 Reyerling based on the content of her speech on important public issues.

1 The Unconstitutional Investigation

2 24. Mayor Gordon decided to hire Tom Brown, an outside attorney, to investigate Mr.
3 Burow's complaint against Ms. Reyering.

4 25. On August 4, 2016, Mr. Brown interviewed Ms. Reyering in person. Mr. Brown
5 ran the interview as if he were cross-examining an adverse party, rather than conducting the
6 neutral, "informal" interview he had promised. Under the Ethics Code and basic principles of
7 due process, Mr. Burow had the burden to prove his claims. Until proven, Mr. Brown and the
8 Town should have presumed that no ethics violation occurred. However, throughout the
9 interview, Mr. Brown inappropriately acted as if Ms. Reyering had the burden to disprove Mr.
10 Burow's claims.

11 26. Mr. Brown's conduct during the August 4, 2016, interview bolsters the
12 appearance of selective prosecution against Ms. Reyering.

13 27. As part of the over-zealous investigation, Mr. Brown also interviewed Mr. Burow,
14 Town Councilmember Peter Mason, Town Manager Kevin Bryant, ASRB member Thalia Lubin,
15 and Town Planning Director Jackie Young. Further, Mr. Brown met with Mayor Gordon and the
16 Town Attorney and reviewed almost 400 pages of documents.

17 28. Mr. Brown's investigation cost the Town over \$33,000.

18 29. Moreover, Ms. Reyering was forced to hire attorneys to defend her in light of the
19 hostile investigation. She incurred attorneys' fees in excess of \$34,000.

20 30. Mr. Brown delivered his report to Mayor Livermore and the Town on January 12,
21 2017.

22 31. On February 14, 2017, Mayor Livermore recommended that the Town Council
23 approve a resolution closing the investigation with no further action taken on the complaint. The
24 Town Council approved the resolution.

25 32. In his Report to Town Council, Mayor Livermore impugned Ms. Reyering for
26 thwarting the investigation by "refus[ing] to engage in the hearing process." A true and correct
27 copy of Mayor Livermore's Report is attached as Exhibit H.
28

1 The Unconstitutional Town of Woodside Ethics Code

2 33. The Town’s Code of Ethics and Conduct (“Ethics Code”), as most recently
3 reaffirmed on March 22, 2016, governs the actions of Town Councilmembers, appointed
4 officials, and Town employees. A true and correct copy of the Ethics Code is attached as Exhibit
5 I.

6 34. Section A.5 of the Ethics Code provides that “Each Councilmember, Appointed
7 Official, and Town employee has a duty to: Refrain from abusive conduct, personal charges or
8 verbal attacks upon the character, motives, ethics, or morals of members of the Town Council,
9 other appointed officials, Town employees, or members of the public.”

10 35. Section A.5 of the Ethics Code is unconstitutionally overbroad and vague.

11 36. Section A.13 of the Ethics Code provides, in relevant part, that “Each
12 Councilmember, Appointed Official, and Town employee has a duty to: Support the maintenance
13 of a positive and constructive work place environment for Town employees and for citizens and
14 businesses dealing with the Town.”

15 37. Section A.13 of the Ethics Code is unconstitutional overbroad and vague.

16 38. Section B.3 of the Ethics Code provides, in relevant part, that “Members of the
17 Town Council shall intervene when actions of elected and appointed officials that appear to be in
18 violation of the Code of Ethics and Conduct are brought to their attention. The member who is
19 made aware of the alleged violation shall report the complaint to the Mayor, who shall
20 investigate the allegation and shall provide a report of his/her findings to the involved elected or
21 appointed official...The report shall be presented to the Town Council at a public meeting of the
22 Council. The Town Council will accept testimony on the matter and determine whether a
23 violation of the Code has occurred.”

24 **FIRST CLAIM**
25 **Violation of U.S. Constitution, Amendment I**
26 **(Facial Challenge against the Town)**

27 39. Ms. Reyering incorporates by reference each and every allegation in every
28 preceding paragraph as if fully set forth herein.

1 40. Section A.5 of the Ethics Code’s provision that Town officials must “Refrain
2 from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics, or
3 morals of members of the Town Council, other appointed officials, Town employees, or
4 members of the public” is overbroad because it prohibits a vast amount of constitutionally
5 protected speech. While the Town’s emphasis on civility may be admirable, Section A.5 is the
6 wrong means to the end because it infringes on a speaker’s right to engage in uninhibited, robust
7 debate on public issues, including negative criticism—and even very sharp attacks—of public
8 officials.

9 41. Section A.5 restricts speech far beyond the categories that are not entitled to First
10 Amendment protection: fighting words, obscenity, defamatory falsehoods, and speech that
11 constitutes a clear and present danger of inciting violence. It sweeps under its terms protected
12 expressions of opinion, including the opinions that Ms. Reyerling expressed. On its face, it
13 would prohibit a Town official from remarking on questionable campaign contributions taken by
14 another official, would bar councilmember Jones from suggesting that councilmember Smith be
15 prohibited from voting on a matter in which councilmember Smith has a financial interest, and
16 would gag a volunteer Town official from pointing out that the head of Town department hired
17 her brother for a high-paying job for which the brother was unqualified.

18 42. The Town’s continued implementation of Section A.5 creates an unacceptable
19 risk of the suppression of ideas that are protected as part of a vibrant public discourse.

20 43. Section A.5 is also unconstitutionally vague in two respects.

21 44. First, Section A.5 fails to give adequate notice by which people of ordinary
22 intelligence could distinguish between speech that is prohibited and speech that is permitted.
23 Phrases such as “abusive conduct,” “personal charges,” and “verbal attacks” lack clarity. The
24 Ethics Code does not define these terms. A person of ordinary intelligence could be trapped by
25 his or her seemingly-innocuous conduct by lack of fair warning as to what speech or conduct is
26 prohibited.

27 45. Second, A. 5 is susceptible to arbitrary enforcement. The Ethics Code provides
28 no standards for determining what is “abusive conduct,” “personal charges,” or “verbal attacks,”

1 thus the phrases are subject to the subjective interpretation of the Mayor and Town Council in
2 Ethics Code enforcement actions. The Mayor and Town Council, without more direction, may
3 too easily engage in arbitrary and discriminatory application of the provisions, as they did with
4 Ms. Reyering.

5 46. As a result of Section A.5's vagueness, it may cause law-abiding Town
6 employees and officials to steer much further than necessary away from the ambiguously-defined
7 conduct, thus depriving the Town of the rich and diverse public discourse that is protected by the
8 First Amendment, in large part, because of its importance to the conduct of public affairs.

9 47. Similarly, Section A.13 of the Ethics Code is unconstitutionally overbroad and
10 vague due to its requirement that Town officials' speech and conduct support a "positive and
11 constructive" environment for "citizens and businesses dealing with the Town."

12 48. Section A.13 is overbroad because it prohibits constitutionally protected speech
13 along with unprotected speech. Many Town employees and officials have responsibilities that
14 could run afoul of Section A.13 by creating a negative experience for a private citizen or
15 business interacting with the Town. For example, staff who investigate nuisance claims, or deny
16 building permits, or enforce the traffic code, or collect the business license tax arguably create a
17 negative impact on those people and business. Given the breadth of regulatory functions the
18 Town must carry out under its Municipal Code, much necessary and protected public speech and
19 conduct is unlawfully prohibited by Section A.13.

20 49. The Town's continued implementation of Section A.13 creates an unacceptable
21 risk that Town employees and officials would be subject to an ethics investigation for allegedly
22 creating a negative business environment simply for doing their jobs.

23 50. Like Section A.5, Section A.13 is unconstitutionally vague in two ways.

24 51. First, Section A.13 fails to give adequate notice for Town employees and officials
25 of ordinary intelligence to distinguish between prohibited and permitted speech. The Ethics
26 Code does not define the phrase "positive and constructive" environment. "Positive" and
27 "constructive" are highly subjective characteristics. Especially when applied to public decisions
28 that may have a "positive" impact on some residents while having a "negative" impact on others,

1 it is impossible to determine whether a Town official’s speech is, overall, “positive” or
2 “negative” for the residents and businesses in the Town. A Town employee or official trying to
3 abide by this provision is not fairly warned as to what speech or conduct is prohibited and what
4 is permitted.

5 52. Second, because Section A.13 is unconstitutionally vague, it is vulnerable to
6 arbitrary enforcement. The Ethics Code provides no standards for determining what is a
7 “positive and constructive” environment. The phrase, thus, stands to be subjectively interpreted
8 by the Mayor and Town Council when they engage in an Ethics Code enforcement action. The
9 Mayor and Town Council, without more direction, may too easily engage in arbitrary and
10 discriminatory application of Section A.13, such as they did with Mr. Reyerling.

11 53. As a result of Section A.13’s vagueness, it may cause law-abiding Town
12 employees and officials to unnecessarily avoid speech and conduct that could subject them to
13 discipline under the Code’s unclear language. Employees and officials responsible for
14 important, but often unpopular, regulatory functions in the Town are particularly at risk.
15 Without their confidence that they can perform their jobs without fear of selective investigation
16 under the Ethics Code, Town employees and officials may be dissuaded from performing
17 necessary public functions.

18 54. Ms. Reyerling asks this Court for a declaration that the Town of Woodside Code
19 of Ethics and Conduct Sections A.5 and A.13 are unconstitutionally overbroad and vague. She
20 also requests the Court to enjoin the Town and Mayor Livermore from enforcing both sections.

21 **SECOND CLAIM**
22 **Violation of U.S. Constitution, Amendment I**
23 **(As-Applied Challenge against the Town, Livermore & Gordon)**

24 55. Ms. Reyerling incorporates by reference each and every allegation in every
25 preceding paragraph as if fully set forth herein.

26 56. Ms. Reyerling’s speech in her May 2, 2016, email was protected by the First
27 Amendment. Ms. Reyerling voiced her views on issues of public importance that were also
28 directly related to her responsibilities on the ASRB.

1 57. The Town’s investigation far exceeded the limited investigation that would have
2 been necessary to quickly determine that Ms. Reyerer could not be disciplined for speaking out
3 on matters of public concern. Mr. Brown conducted a lengthy and hostile interrogation of Ms.
4 Reyerer, interviewed five other witnesses, held a meeting with the Mayor and Town Attorney,
5 and reviewed almost 400 pages of documents. The intrusive investigation lasted seven months
6 and cost the Town over \$33,000. Moreover, it forced Ms. Reyerer to retain attorneys to defend
7 her conduct, costing her over \$34,000. The manner in which the Town conducted this retaliatory
8 investigation violated Ms. Reyerer’s First Amendment rights.

9 58. The unlawful investigation chilled Ms. Reyerer’s exercise of her First
10 Amendment Rights to engage in protected speech. As a result of the chilling effect of the
11 Town’s investigation, Ms. Reyerer resigned from the Board and the Open Space Committee.
12 She no longer engages in public service or public speech on matters of importance in the Town
13 for fear of further retaliation.

14 59. The Town’s investigation into Ms. Reyerer’s activities and beliefs would have
15 silenced a person of ordinary firmness from engaging in future protected speech.

16 60. Mayor Livermore and Mayor Gordon acted unlawfully by enforcing an Ethics
17 Code, which had been officially adopted by the Town as its ethics policy, that violated clearly
18 established constitutional free speech rights of which a reasonable person would have known.
19 Their unlawful actions include, but are not limited to, identifying Mr. Burow’s complaint as an
20 “ethics” complaint, determining that the complaint necessitated an outside investigator,
21 approving the overbroad scope of Mr. Brown’s investigation, permitting the retaliatory
22 investigation to continue to completion, failing to mitigate the investigation’s unconstitutional
23 scope when reporting it to the Town Council, and voting to close the investigation without
24 remediating the Town’s wrongs against Ms. Reyerer.

25 61. Ms. Reyerer’s claim is based on First Amendment principles that the United
26 States Supreme Court has applied for decades. No reasonable Town official could have believed
27 that it was lawful to conduct a seven-month hostile investigation into the comments of a Town
28 volunteer expressing her opinion on a matter before the ASRB to her colleagues on the Board.

1 Mayors Gordon and Livermore would also have known that high-pressure investigative
2 techniques, broad demands for documents and information, admonishments that Ms. Reyerer
3 assist in the witch hunt against her, and public criticism of Ms. Reyerer in a Town Council open
4 meeting would chill uninhibited and robust debate on issues important to the Town.

5 62. The Town unconstitutionally applied Section A.5 of the Ethics Code to Ms.
6 Reyerer. The Town subjected Ms. Reyerer to an investigation into whether she violated
7 section A.5 by sending her May 2, 2016, email. Then, the Town, through its investigator,
8 shockingly found that Ms. Reyerer *violated* section A.5 by raising concerns in her email about a
9 Town Councilmember seeking special approvals from the Town for a development project in
10 which the Councilmember and his architectural firm had a financial interest. This, the report
11 concludes, was “abusive conduct” and an “attack on the character, motives, ethics or morals of”
12 the councilmember. In other words, it is supposedly a violation of the Ethics Code to question
13 the propriety of elected officials possibly using their elected office to further private interests.

14 63. The Town also unconstitutionally applied Section A.13 of the Ethics Code to Ms.
15 Reyerer. The Town subjected Ms. Reyerer to an investigation into whether she violated
16 section A.13 by sending her May 2, 2016, email. Amazingly, the Town, through its investigator,
17 found that Ms. Reyerer *violated* section A.13 by raising her concerns about a Councilmember’s
18 possible conflicts of interest. This, the report concludes, did not “[s]upport the maintenance of a
19 positive and constructive work place environment for” the Councilmember, his firm and his
20 clients. Anyone with even a passing understanding of the First Amendment would know that it
21 is unlawful to discipline someone for raising concerns about an elected official’s possible
22 conflicts of interest, even if that speech somehow detracted from a “positive environment.”

23 64. Ms. Reyerer is entitled to a remedy for this constitutional violation. Ms.
24 Reyerer requests that:

- 25 • Mayor Livermore and the Town issue a public statement stating that the Town
26 wrongly engaged in an unconstitutional investigation of Ms. Reyerer based on
27 the content of her speech on public issues;

- Mayor Livermore and the Town agree not to investigate other Town officials or employees based on the content of their speech on a public issue;
- The Town amend its Ethics Code in a manner that no longer inhibits constitutionally protected speech;
- The Town, Mr. Livermore, and Ms. Gordon compensate Ms. Reyerer for the attorney fees and other costs she was forced to incur in light of the Town's unconstitutional conduct.

THIRD CLAIM
Violation of California Constitution, Article I, § 2
(Facial Challenge against the Town)

65. Ms. Reyerer incorporates by reference each and every allegation in every preceding paragraph as if fully set forth herein.

66. Ms. Reyerer's allegations in Paragraphs 39 through 54 also constitute a violation of the protections granted by the California Constitution against laws that abridge liberty of speech.

FOURTH CLAIM
Violation of California Constitution, Article I, § 2
(As-Applied Challenge against the Town, Livermore & Gordon)

67. Ms. Reyerer incorporates by reference each and every allegation in every preceding paragraph as if fully set forth herein.

68. Ms. Reyerer's allegations in Paragraphs 55 through 62 also constitute a violation of the free speech rights guaranteed to her by the California Constitution.

JURY DEMAND

69. Ms. Reyerer demands trial by jury.

PRAYER

WHEREFORE, Ms. Reyerer prays for relief as follows:

1. For a declaration that Sections A.5 and A.13 of the Town of Woodside Code of Ethics and Conduct are unconstitutionally overbroad and vague.

2. For injunctive relief against the Town of Woodside and Mayor Livermore from enforcement of Sections A.5 and A.13 of the Town of Woodside Code of Ethics and Conduct.

1 3. For over \$34,000 in compensatory damages against the Town of Woodside,
2 Thomas Livermore, and Deborah Gordon, including attorneys' fees for Ms. Reyerer's defense
3 against the unlawful investigation;

4 4. For attorneys' fees and costs;

5 5. For costs of suit; and

6 6. For such other relief as the Court may deem just and proper.

7
8 Dated: May 9, 2016

MOSCONE EMBLIDGE & OTIS LLP

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10 By:  _____

G. Scott Emblidge

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12 Attorneys for Plaintiff Nancy Reyerer
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EXHIBIT A

EXHIBIT A

From: Nancy Reyerling [<mailto:nanzo@alumni.stanford.edu>] **On Behalf Of** Nancy Reyerling
Sent: Monday, May 02, 2016 2:55 PM
To: Jackie Young
Cc: Thalia & Steve Lubin; Scott Larson
Subject: Today's agenda item: 168 Bardet Road

Dear Jackie, Thalia, and ASRB,

I would like the following comments read into the minutes about the proposed project on Bardet Road.

Even a cursory review of this project raises questions as the architect is a member of the Town Council, and as such, is someone in charge of writing our building regulations. Therefore he, and anyone else in a similar position, has a great responsibility to bring in projects that are reflective of the Residential Design Guidelines, the General Plan, and the Municipal Code, and these projects should not ask for exceptions.

Maximum Residence Size Exception, potential lack of neighborhood compatibility, and massive pylons would set a precedent on this street, and create the potential appearance that council members are privileged when bringing projects before the ASRB. I would ask the applicant and architect to reconsider some elements of this design.

Regards,
Nancy Reyerling

resentation and consideration of a proposal, requiring Conceptual Design Review, to remodel and construct an addition to an existing two-story single-family residence; construct a new single story guest house/Accessory Living Quarters (ALQ); install a new open vehicular gate, pylons, and trash enclosure; and, site improvement that includes grading, driveway widening, landscaping, and retaining walls. The project will require approval of a subsequent application for Formal Design Review and a Maximum Residence Size Exception which will be reviewed at future public hearings on dates to be determined. Planner: Sage Schaan, Principal Planner

EXHIBIT B

EXHIBIT B

Kevin Bryant

From: Kevin Bryant
Sent: Tuesday, May 03, 2016 1:57 PM
To: 'Dave Burow'
Cc: 'Jean Savaree'
Subject: RE: ASRB Meeting May 2 2016

Thanks for this, Dave.

From: Dave Burow [<mailto:dave.burow@gmail.com>]
Sent: Tuesday, May 03, 2016 10:14 AM
To: Kevin Bryant; 'Jean Savaree'
Subject: ASRB Meeting May 2 2016

Kevin, Jean,

I attended the first half of the ASRB meeting yesterday. Unfortunately I had to leave early because of another commitment.

Nancy did not attend but sent the attached email to Jackie, Thalia and Scott Larson. It was made a desk item at the meeting.

The only project on the agenda was 168 Bardet Road for which Peter Mason is the architect.

The email is troubling for several reasons:

1. It violates the Brown Act
2. It suggests that Town Council members should be held to a different set of rules when acting as a citizen of the Town.
3. It suggests that the exceptions provided for in our Municipal Code are not available to all residents.
4. It is clearly retribution against Peter for acts which could include his not supporting her candidacy for TC.

The email looks to have had an impact as I heard the applicant was asked to come back for a second Conceptual Review due to the ASRB's displeasure with a number of items.

When someone noted the additional cost of this extra review I understand Maggie said that there was no extra cost, revealing that she does not understand that in building projects additional time does involve costs which can often be substantial.

It is my observation that the ASRB has lost sight of the goals of the Conceptual Review and cannot resist the urge to dive into the details and nitpick away. They continually asked for data that is not required at a Conceptual Review. Jackie took no action while I was in attendance to remind the ASRB of the purpose of the Conceptual Review.

I hope you look into this and at a minimum:

- a. Clarify to the ASRB that TC members are not subject to a different set of rules than others when not acting as a TC member
- b. Exceptions that are provided for in the MC are available to all residents independent of who their architect may be
- c. Provide a refresher on the Brown Act to some or all of the ASRB
- d. Encourage someone from the TC to attend the ASRB meetings
- e. Ask the question: are Conceptual Design Reviews working as Intended?

My motivation in sending this to you is to spare residents such as Nils Loneberg and Nila Patil, the owners of 168 Bardet Road, the cost and pain of being subjected to our currently dysfunctional ASRB. I truly feel sorry for them.

Dave

Dave Burow
650 364 0697

EXHIBIT C

EXHIBIT C

Jean Savaree

From: Dave Burow <dave.burow@gmail.com>
Sent: Monday, May 09, 2016 10:32 PM
To: 'Kevin Bryant'
Cc: Jean Savaree
Subject: ASRB Attendance

Kevin,

The minutes plus my personal observations show that Nancy Reyring has now missed 6 consecutive ASRB meetings: 3/7/16, 3/21/16, 4/4/16, 4/18/16, 5/2/16, 5/9/16.

Has the Town Council excused any of these absences for good cause? If so, was this done in closed session? If not, then she should be deemed to have resigned. If that is the case what is your plan for replacing her position on the ASRB?

Thanks,

Dave

Applicable Handbook Excerpt

"The Town Council has established formal attendance standards for the members of its own body, and for all of the Town's citizen advisory bodies. Members of the Planning Commission and the ASRB who do not attend at least 75% of all regular meetings held within a calendar year, or who miss four consecutive regular meetings, and committee members who do not attend at least 60% of all regular meetings held within a calendar year or who miss four consecutive regular meetings, are deemed to have resigned from office unless excused by the Town Council for good cause upon a showing of extraordinary circumstances. The various advisory bodies may not excuse any of their members from attendance."

Dave Burow
650 364 0697

EXHIBIT D

EXHIBIT D

Brown, Thomas B.

From: Jean Savaree <jbs@adcl.com>
Sent: Friday, June 03, 2016 10:45 AM
To: dave.burow@gmail.com
Subject: Ethics Complaint
Attachments: 20160601172218651.pdf; 20160601172255627.pdf

Good morning, Dave. I am contacting you regarding the attached two emails and your statement to the Town Manager and me that you believe Ms. Reyering has violated the Town's Code of Ethics.

Pursuant to the Town's Code of Ethics Section B.3, complaints of this nature are referred to the Mayor who is tasked with conducting an investigation. The Mayor has requested that Attorney Tom Brown from the Law Firm of Burke Williams be retained to conduct the investigation. He will not be available to interview you until after June 13, 2016.

In the meantime, he has asked that you please advise whether the two emails fully reflect the behavior at issue or if there is any additional behavior associated with the allegations. In addition, Mr. Brown has asked that you identify the specific sections of the Code of Ethics which you believe have been violated. I have attached a copy of the Code of Ethics for your reference. Once received, I will forward this information to Mr. Brown so that he will be prepared for your interview and inform Ms. Reyering about the complaint.

Are there any times during the last two weeks in June when you will be unavailable? If you have any questions, please let me know. I look forward to hearing from you.

Jean B. Savaree
1001 Laurel Street, Suite A
San Carlos, California 94070
Telephone: (650) 593-3117 Ext. 214
Direct Dial: (650) 453-3914
Facsimile: (650) 453-3911

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EXHIBIT E

EXHIBIT E

Date: June 6, 2016
To: Jean Savaree
From: Dave Burow
Subject: Response to Request for Information re: Nancy Reyerling

This memo is in response to a request for information from Jean Savaree, Woodside Town Attorney, dated June 3, 2016. In it she asks two questions.

Question 1: Do the two emails I sent to Kevin Bryant, Woodside Town Manager, on May 3, 2016 and May 9, 2016 fully reflect the behavior of Ms. Reyerling associated with my allegations?

Answer: Yes. The only additional information that was not referenced in my two emails is that Ms. Reyerling was also absent from the June 6, 2016 ASRB meeting.

Question 2: Please identify the specific sections of the Code of Ethics which I believe have been violated?

Answer: I believe all of the following sections have been violated. Section 3b due to Ms. Reyerling's attendance record and the other Sections due to the content and cc: list of Ms. Reyerling's email to Jackie Young dated May 2, 2016.

Section 1: Work for the common good

Section 2: Provide fair and equal treatment for all persons

Section 3b: Attend regular meetings

Section 3c: Become thoroughly knowledgeable about items of business before voting or developing a conclusion or recommendation

Section 5: Refrain from personal charges upon motives of TC members

Section 6: Avoid improper attempts to influence decision making

Section 7: Comply with the Brown Act

Section 10: Avoid the appearance of conflict of interest between public duty and personal interests

Section 13: Support a positive work place environment for citizens and businesses dealing with the Town

Here is the explanation for each of the above allegations:

Section 1: By suggesting that the clients of architects who are also Town Council members are subject to a more strict set of building guidelines works against the common good. The common good is best achieved when everyone is subject to the same rules.

Section 2: Ms. Reyerer's email states that unequal treatment should be applied to Town Council members, even when acting outside of their official capacity, and their clients.

Section 3b: The rules for attendance are stated in:

A HANDBOOK FOR MEMBERS OF THE PLANNING COMMISSION, THE ARCHITECTURAL AND SITE REVIEW BOARD AND THE CITIZEN ADVISORY COMMITTEE Section on **Meeting Attendance**

"The Town Council has established formal attendance standards for the members of its own body, and for all of the Town's citizen advisory bodies. Members of the Planning Commission and the ASRB who do not attend at least 75% of all regular meetings held within a calendar year, or who miss four consecutive regular meetings, and committee members who do not attend at least 60% of all regular meetings held within a calendar year or who miss four consecutive regular meetings, are deemed to have resigned from office unless excused by the Town Council for good cause upon a showing of extraordinary circumstances. The various advisory bodies may not excuse any of their members from attendance."

As stated in my email of May 9, 2016 Ms. Reyerer has missed 6 consecutive ASRB meetings including the May 2, 2016 meeting for which she submitted her input via email. As of today she has missed 7 consecutive ASRB meetings. As far as I have been able to determine these absences have not been excused by the Town Council, the only body with the authority to excuse absences.

Section 3c: Ms. Reyerer came to a conclusion about the Bardet Road project without hearing all testimony about the project and communicated her recommendation to the rest of the ASRB prior to their hearing all testimony.

Section 5: Ms. Reyerer's email of May 2, 2016 to Ms. Young states that Mr. Mason has failed in his responsibility as a Town Council member and that his actions give the appearance that he is trying to take advantage of his position on the Town Council to gain special consideration for his client. This can only be characterized as a personal attack on a Council Member's motives.

Section 6: Ms. Reyerer's email of May 2, 2016 to Ms. Young attempts to improperly influence the decision making process of the ASRB with respect to the

Bardet Road project. It is improper in that she reaches a conclusion about the project based on a "cursory review" instead of hearing all the testimony. It is also improper in that it was addressed to two other members of the ASRB in violation of the Brown Act.

Section 7: Ms. Reyering's email of May 2, 2016 to Ms. Young was copied to two other members of the ASRB, Thalia Lubin and Scott Larsen. 3 members of the ASRB constitute a quorum.

Section 10: Ms. Reyering's email of May 2, 2016 to Ms. Young creates the appearance of conflict of interest between her public duty as an ASRB member and her personal interests. It is known that Ms. Reyering had a falling out with Mr. Mason related to the work he performed for her as an architect. It is also known that Mr. Mason would not endorse her as a candidate for Town Council in the November 2015 election.

Section 13: While this section seems to be aimed primarily at how members of elected and appointed bodies interact with Town Staff it also refers to maintaining a positive and constructive working environment with citizens and businesses dealing with the Town. In this case the ASRB was acting on behalf of the Town when hearing the Bardet Road project proposal. Ms. Reyering's email of May 2, 2016 to Ms. Young created a negative environment for both Mr. Mason's architecture business and his client, a citizen of Woodside.

EXHIBIT F

EXHIBIT F

Brown, Thomas B.

From: Jean Savaree <jbs@adcl.com>
Sent: Wednesday, June 29, 2016 11:54 AM
To: Nancy Reyerling
Cc: Brown, Thomas B.
Subject: Ethics Code Violation Complaint
Attachments: 20160628125029727.pdf; 20160628125123014.pdf; 20160628125135526.pdf; 20160628125931770.pdf

Good morning, Nancy.

I am contacting you to advise that an ethics complaint has been made against you by Dave Burow alleging that you have violated Sections A1, 2, 3b, 3c, 5, 6, 7, 10 and 13 of the Town's Ethics Code in your capacity as an ASRB Board member. These sections provide:

A. Each Councilmember, Appointed Official, and Town employee has a duty to:

1. Represent and work for the common good of the Town and its citizens.
2. Provide fair and equal treatment for all persons and matters coming before the Council, Commission, Board, or Town staff.
3. Faithfully perform all duties of their respective elected or appointed office, including:
 - (b) becoming thoroughly knowledgeable about items of business before voting or developing a conclusion or recommendation; and
 - (c) attending regular meetings, as defined in Resolution 1994-4936.
5. Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics, or morals of members of the Town Council, other appointed officials, Town employees, or members of the public.
6. Maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence the decision-making process or decisions.
7. Uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decision made or action taken, but also to participate in and witness the deliberations, which shape public policy.
10. Avoid even the appearance of conflict between public duties and personal interests and activities in all Town public forums. A conflict or the appearance of a conflict exists in a matter before an official for consideration or determination if the public official:
 - (1) has a material financial or material personal interest in the outcome or
 - (2) has a personal or organizational responsibility or relationship in an entity or organization that will be affected by the outcome, including an association as owner, member, partner, officer, employee, broker or stockholder.

13. Support the maintenance of a positive and constructive work place environment for Town employees and for citizens and businesses dealing with the Town. Members of the Town Council, Planning Commission, the Architectural and Site Review Board, and other advisory bodies shall recognize their special role in dealings with Town employees and must in no way create the perception of inappropriate direction to staff. Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's supervisor. Negative comments about staff performance should only be made to the Town Manager through private conversation or correspondence.

The complaint alleges the following sections of the Code of Ethics have been violated by your distribution and submission of the attached email to Jackie Young and members of the ASRB on May 2, 2016 (Attachment 1):

Section 1 by suggesting that Town Council members should be subject to a more strict set of building guidelines, thereby working against the common good;

Section 2 by stating that unequal treatment should be applied to Town Council members when they are acting in their individual capacity;

Section 3 and 3c by reaching a conclusion about the project referenced in the email without hearing testimony about the project and communicating your recommendation to the ASRB prior to the ASRB hearing testimony on the project;

Section 5 by personally attacking the motives of a Councilmember by suggesting that Councilmember Mason has failed in his responsibility as a Councilmember and that his actions give the appearance that he is attempting to take advantage of his position as a Councilmember to gain special consideration for his client;

Section 6 by attempting to improperly influence the ASRB decision-making process with respect to this project and reaching a conclusion about the project based on a cursory review before hearing testimony at the public meeting;

Section 7 by copying two other members of the ASRB; Thalia Lubin and Scott Larson, thereby having a communication between three of the five members of the ASRB;

Section 10 by creating the appearance of a conflict of interest between your public duty as an ASRB member and your personal interests based on personal disagreements with Councilmember Mason regarding work previously done for you while acting as your architect and his failure to endorse your candidacy in the 2015 election;

Section 13 by failing to maintain a positive and constructive working environment for the project applicant and Mr. Mason's business.

In addition, the complaint alleges that you have violated Section 3c because of your failure to attend more than 4 consecutive meetings of the ASRB.

I have attached both the Town's Code of Ethics and Resolution 1994-4936 for your reference.

Pursuant to the Town's Code of Ethics Section B.3, complaints of this nature are referred to the Mayor who is tasked with conducting an investigation. Attorney Tom Brown from the law firm of

Burke Williams has been retained to assist the Mayor in this investigation. He would like to meet with you at your convenience regarding the allegations. He is available on Wednesday, July 6; Wednesday, July 13; Thursday, July 14; or Friday, July 15. The interview will be conducted at my office located at 1001 Laurel Street, Suite A, San Carlos. Do any of these dates work for you?

If you have any material you would like him to review prior to the interview or a preliminary response to any of these allegations, please feel free to forward that to Mr. Brown at the email address shown above or bring it with you to the interview.

In addition, are there any persons you believe he should speak with in order for you to respond to this complaint? He will need those names, too.

If you have any questions, please feel free to give me a call. I look forward to hearing from you regarding your availability. Thank you.

Jean B. Savaree
1001 Laurel Street, Suite A
San Carlos, California 94070
Telephone: (650) 593-3117 Ext. 214
Direct Dial: (650) 453-3914
Facsimile: (650) 453-3911

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EXHIBIT G

EXHIBIT G

From: Jean Savaree <jbs@adcl.com>
Subject: RE: Question
Date: October 13, 2015 at 1:42:30 PM PDT
To: Nancy Reyering <nanzo@stanfordalumni.org>
Cc: Kevin Bryant <KBryant@woodsidetown.org>, Jackie Young <JYoung@woodsidetown.org>, Thalia Lubin <thalia@stlubin.net>

Good afternoon Nancy. My suggestion is that you speak directly with the person and convey your concerns.

Jean B. Savaree
1001 Laurel Street, Suite A
San Carlos , California 94070
Telephone: (650) 593-3117 Ext. 214
Direct Dial: (650) 453-3914
Facsimile: (650) 453-3911

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

From: Nancy Reyering [<mailto:nanzo@alumni.stanford.edu>] On Behalf Of Nancy Reyering
Sent: Tuesday, October 13, 2015 10:59 AM
To: Jean Savaree <jbs@adcl.com>
Cc: Kevin Bryant <KBryant@woodsidetown.org>; Jackie Young <JYoung@woodsidetown.org>; Thalia Lubin <thalia@stlubin.net>
Subject: Question

Jean,

Recently, a council member made a statement to the effect that ASRB members are capricious ("change their minds") and "don't want residents to build" in case their entitlements "intrude on natural state requirements". The reference was confused, and just wrong, and the fact that he would repeat rumors or conjecture in a public meeting undermines Town volunteers, is harmful to the process, and is beneath his office.

Such outlandish statements can easily be refuted by the record, as ASRB discussions and recommendations are a matter of public record.

I realize he is stepping down from the Council, but what is the correct course of action a volunteer should take if they find a Council person making outlandish remarks like this?

Thank you,
Nancy Reyering

EXHIBIT H

EXHIBIT H

TOWN OF WOODSIDE

Report to Town Council

Agenda Item 5

From: Tom Livermore, Mayor

February 14, 2017

**SUBJECT: RESOLUTION OF THE TOWN COUNCIL CLOSING INVESTIGATION INTO
CODE OF ETHICS AND CONDUCT COMPLAINT****RECOMMENDATION**

The Mayor recommends that the Town Council approve the attached Resolution formally closing the pending ethics investigation without further hearing given Ms. Reyering's February 4, 2017 notification that she would not apply for reappointment to the ASRB and Open Space Committee. (See Attachment 2.)

DISCUSSION/ANALYSIS**Ethics Code Complaint**

In May 2016, the Town received written complaints from Dave Burow alleging violations of the Town's Code of Ethics and Conduct (Ethics Code) by ASRB Member Nancy Reyering. The complaint alleged that Ms. Reyering had violated the Town's Ethics Code by sending an email message to the Town's Planning Director with copies to ASRB Members Lubin and Larson.

In the email, Ms. Reyering asked that the following comments be read into the record as the ASRB considered a proposed project located at 168 Bardet Road, Woodside:

Even a cursory review of this project raises questions as the architect is a member of the Town Council, and as such, is someone in charge of writing our building regulations. Therefore he, and anyone else in a similar position, has a great responsibility to bring in projects that are reflective of Residential Design Guidelines, the General Plan, and the Municipal Code, and these projects should not ask for exceptions.

Maximum Residence Size Exception, potential lack of neighborhood compatibility, and massive pylons would set a precedent on this street, and create the potential appearance that councilmembers are privileged when bringing projects before the ASRB. I would ask the applicant and architect to reconsider some elements of this design.

Mr. Burow's complaint alleged that by sending the email, Ms. Reyering had violated the following sections of the Town's Ethics Code:

- Section 1 by suggesting that Town Councilmembers should be subject to a more strict set of building guidelines, thereby working against the common good;
- Section 2 by stating that the ASRB should apply unequal treatment to Town Councilmembers when they are acting in their individual capacity;
- Section 3 and 3(b) by reaching a conclusion about the Bardet Road project referenced in the e-mail without hearing testimony about the project, and by communicating her recommendation to the ASRB prior to the ASRB hearing testimony on the project;
- Section 3(c) by Ms. Reyerer's failure to attend more than four consecutive meetings of the ASRB (namely, the meetings on March 7, 2016, March 21, 2016, April 4, 2016, April 18, 2016, May 2, 2016 and May 9, 2016);
- Section 5 by personally attacking the motives of a Councilmember by suggesting that Councilmember Mason failed in his responsibility as a Councilmember and that his actions give the appearance that he is attempting to take advantage of his position as a Councilmember to gain special consideration for his client;
- Section 6 by attempting to improperly influence the ASRB decision-making process with respect to this project and reaching a conclusion about the project based on a cursory review before hearing testimony at the public meeting;
- Section 7 by copying two other members of the ASRB (Thalia Lubin and Scott Larson) on the May 2 e-mail, thereby having a communication between three of the five members of the ASRB in violation of the Brown Act;
- Section 10 by creating the appearance of a conflict of interest between Ms. Reyerer's public duty as an ASRB member and her personal interests, based on her alleged personal disagreements with Councilmember Mason regarding: (i) work he had previously done for Ms. Reyerer while acting as her architect; and (ii) his failure to endorse Ms. Reyerer's candidacy in the 2015 Town Council election; and
- Section 13 by failing to maintain a positive and constructive working environment for the Bardet Road project applicant and Mr. Mason's business.¹

¹ Two additional Ethics Code complaints were made to the Town regarding this same email. Neither of those complaints was investigated because one complainant withdrew his complaint and the other complainant declined to provide information after initially making his complaint.

The Town's Ethics Code

The Town's Ethics Code Section (B)3 provides that "members of the Town Council shall intervene when actions of elected and appointed officials that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. The member who is made aware of the alleged violation shall report the complaint to the Mayor, who shall investigate the allegation and shall provide a report of his/her findings to the involved or appointed official."

This complaint was brought to Mayor Gordon, who was then tasked with investigating and making a report to the Town Council.

Based on a recommendation by the Town Attorney, Tom Brown of the Law Firm of Burke, Williams & Sorensen was retained to investigate the allegations made in Mr. Burow's complaints. (See Attachment 3, Appendix of Documents, Tab B.) Mr. Brown was retained for two reasons. First, in order to ensure that the investigation would be fair and impartial. Second, to ensure that the investigation would be conducted by an individual with experience in public ethics law.

Mr. Brown is a partner of the Law Firm of Burke, Williams & Sorensen. He currently serves as the attorney for the City of St. Helena. He served as the Napa City Attorney for 12 years and as Deputy City Attorney in Berkeley prior to his appointment as Napa City Attorney. Mr. Brown has also been a visiting professor at Sonoma State University, and is Past President of the City Attorney's Department of the California League of Cities. In both 2016-2017, Mr. Brown made presentations at the California League of Cities Conference for newly elected councilmembers and mayors throughout the State on the legal powers and obligations of their office.

Investigator Brown's Report

Once retained, Mr. Brown conducted the investigation into the allegations contained in Mr. Burow's complaints. Both Mr. Burow and Ms. Reyerer were interviewed during the investigation. Both were given an opportunity to provide information and documents to Mr. Brown. Mr. Brown's report at page 15, Findings of Fact and Conclusions of Law, (A), Presumption and Standard of Proof, provides:

- The investigation proceeded on the presumption that Ms. Reyerer did not violate the Ethics Code. Mr. Brown attempted to determine whether the facts as presented supported the charges. He did not require Ms. Reyerer to establish that she did not violate the Ethics Code.
- In weighing the evidence reviewed and considered, he applied a "preponderance of the evidence" standard of proof. He found a fact to have existed or to be true if the preponderance of the evidence obtained during the investigation supported that

conclusion, and no credibility issues existed to doubt that evidence. He also drew reasonable inferences based on other evidence reviewed and considered.

- In determining whether the alleged conduct constituted a violation of Town policy, he considered the totality of circumstances, the nature of the conduct, and the context in which the alleged conduct occurred.
- Finally, he made credibility determinations where appropriate, based on several factors (see factors for credibility determinations set forth in standard jury instructions, CACI # 107 and BAJI # 2.20), including without limitation the existence or nonexistence of bias, interest in the outcome of the investigation, or other motive.

At the conclusion of his investigation, Mr. Brown made the following determinations regarding the allegations contained in the Burow complaint:

Charge No. 1 (Section 1, common good): Charge not sustained.

Charge No. 2 (Section 2, fair/equal treatment): Charge sustained.

Charge No. 3 (Section 3(b), forming conclusion w/o testimony): Charge sustained.

Charge No. 4 (Section 3(c), unexcused absences): Charge not sustained.

Charge No. 5 (Section 5, personal attack): Charge sustained.

Charge No. 6 (Section 6, improper influence on decision): Charge sustained.

Charge No. 7 (Section 7, Brown Act): Charge not sustained.

Charge No. 8 (Section 10, personal animosity/appearance of a conflict of interest):

Charge not sustained.

Charge No. 9 (Section 13, positive working environment): Charge sustained. (See Attachment 3, Report dated January 12, 2017.)

Presentation of Investigator Brown's Report

The Ethics Code Section (B)3 provides that investigative reports "shall be presented to the Town Council at a public meeting of the Council. The Town Council will accept testimony on the matter and determine whether a violation of the Code has occurred."

Section (B)4 of the Ethics Code further provides:

The Town Council may impose sanctions on elected or appointed officials when it determines that a violation of the Code has occurred, including reprimand, formal censure, or, in the case of members of commissions, boards, or committees, removal from office. If the Town Council determines that a member of its body has violated the Code and that such violation may warrant the official's removal

from office, it may refer the issue to the San Mateo County Grand Jury, as provided for in Government Code Section 3060.

The Town Council scheduled this matter for public hearing on January 25, 2017, as required by the Town's Ethics Code. While Mr. Burow indicated that he was available and would attend on that date, Ms. Reyerer, through her attorney, indicated that neither she nor her attorney was available on that date. Given Ms. Reyerer's unavailability, the hearing was postponed. Both Mr. Burow and Ms. Reyerer were requested to provide dates during the weeks of January 23 and January 30, 2017, for a rescheduled hearing. Mr. Burow responded, but to date, Ms. Reyerer and her attorney have not responded to the request for alternative dates. Instead, Ms. Reyerer provided the Town with an email on February 4, 2017, indicating that she would not apply for reappointment to the ASRB and Open Space Committee. (Attachment 2, February 4, 2017 email entitled "Resignation" from Nancy Reyerer to Mayor Livermore)

Given Ms. Reyerer's resignation from the ASRB and Open Space Committee, it is my recommendation that the Council take no further action on the investigator's report. I make this recommendation for two reasons. First, in order to have a meaningful review of the alleged violations, the Ethics Code anticipates that both parties will participate in the public review of the report. Input of both parties is critically important because the Council is tasked at that hearing with reviewing the report, listening to testimony offered so that it can "determine whether a violation of the Code has occurred."

That meaningful review cannot occur without both Mr. Burow's and Ms. Reyerer's participation and, as noted above, neither Ms. Reyerer nor her attorney responded to the Town's request for dates on which they would make themselves available for the hearing.

Second, if the Council were to hold a public hearing, the purpose would, as discussed above, be to determine whether or not the Town Council agrees with the recommendations made by the investigator. If not, the Council would then determine that no violation had occurred and the matter would be closed. If, on the other hand, the Council were to determine that the Ethics Code had been violated, the Town Council would be required to determine what sanction should be imposed; reprimand, formal censure or removal from office. Ms. Reyerer chose to resign from both the ASRB and Open Space Committee with these charges pending rather than participate in the public hearing process and so even if the Town Council were to determine that a violation had occurred, and sanctions were appropriate, those sanctions would be imposed on an individual who is no longer a member of the ASRB.

While her decision not to participate in the process leaves open the question of what the Town Council would have ultimately determined, it is Ms. Reyerer's prerogative not to participate in a public hearing. The Town Council could not compel her attendance at a hearing. Were

she still a member of the ASRB, I would recommend to the Town Council that we proceed with the hearing, but doing so after she has resigned serves no constructive purpose. I believe it is time to put an end to this divisive process by acknowledging Ms. Reyering's resignation, thanking her for her years of service and moving forward with the Town's business in a positive and constructive manner. The first step in this process would be to determine that no further action be taken on this ethics complaint. I ask that the Council support this request.

Second, we have learned that the process now required in the Town's Ethics Code for processing complaints is expensive, cumbersome and can ultimately be thwarted if one or more of the parties involved refuses to engage in the hearing process.

Because of this, I ask that the Town Council, during my tenure as Mayor, reexamine the Ethics Code hearing and enforcement procedure to explore ways in which we can improve it should complaints be filed in the future. I also ask the Town Council to make a statement that compliance with the Brown Act, Conflicts of Interest and ethical decision making is critically important for all elected and appointed officials in Woodside. To translate this statement into action, I ask that during my tenure as Mayor, we also emphasize the importance of training for all our elected and appointed officials so they fully understand their obligations to comply with the Brown Act, the Political Reform Act and the highest ethical standards when conducting the Town's business.

As noted by British Prime Minister Benjamin Disraeli, "All power is a trust and we are accountable for its exercise." With this thought in mind, I make these recommendations in the hope that all of the Town's citizens, elected and appointed officials will put political agendas aside and work together in a respectful and collaborative way to provide the best service to the citizens of this community.

Attachments:

1. Resolution 2017-
2. Resignation email form Nancy Reyering to Mayor Livermore dated February 4, 2017
3. Report of Findings of Fact and Conclusions of Law Concerning Complaint of Town of Woodside Ethics Code Violation By Dave Burow Against Nancy Reyering and Appendix of Documents

RESOLUTION NO. 2017 -

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WOODSIDE CLOSING INVESTIGATION INTO CODE OF ETHICS AND CONDUCT COMPLAINT

WHEREAS, in May 2016, the Town received a complaint from Dave Burow alleging violations of the Town's Code of Ethics and Conduct (Ethics Code) by ASRB Member Nancy Reyrering; and

WHEREAS, the allegations were investigated as required by the Ethics Code and a report regarding the allegations was prepared and provided to the Town on January 12, 2017; and

WHEREAS, Mr. Burow, Ms. Reyrering and the Town Council has received and reviewed the report; and

WHEREAS, the Town Council scheduled a meeting to consider the investigator's report on January 25, 2017, as required by the Ethics Code; and

WHEREAS, Ms. Reyrering indicated she was not available for hearing on that date; and

WHEREAS, due to Ms. Reyrering's unavailability, the Town Council continued the hearing with a request that Ms. Reyrering and Mr. Burow provide alternate dates for hearing; and

WHEREAS, Mr. Burow provided alternate dates for a hearing, but Ms. Reyrering has failed to provide alternate dates for a public hearing at which the Town Council would have determined whether or not a violation of the Town's Ethics Code had occurred, choosing instead to resign from the ASRB and Open Space Committee.

NOW, THEREFORE BE IT RESOLVED, that the Town Council of the Town of Woodside, given Ms. Reyrering's resignation from the ASRB and Open Space Committee, directs that the investigation into this Ethics Code complaint be closed and no further action be taken on this complaint.

* * * * *

Passed and adopted by the Town Council of the Town of Woodside, California, at a meeting thereof held on the 14th of February, 2017, by the following vote of members thereof:

- AYES, and in favor thereof, Councilmembers:
NOES, Councilmembers:
ABSENT, Councilmembers:
ABSTAIN, Councilmembers:

Mayor of the Town of Woodside

ATTEST:

Clerk of the Town of Woodside

EXHIBIT I

EXHIBIT I

RESOLUTION NO. 2016 - 7089

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WOODSIDE
AMENDING THE TOWN'S CODE OF ETHICS AND CONDUCT FOR TOWN COUNCILMEMBERS,
APPOINTED OFFICIALS AND TOWN EMPLOYEES**

WHEREAS, on May 10, 1994, the Woodside Town Council adopted a Code of Ethics and Conduct for Town Councilmembers, appointed officials, and Town employees; and

WHEREAS, the Town Council reaffirmed and amended the Code of Ethics and Conduct on December 11, 2001 by adoption of Resolution No. 2001-6309 and on July 23, 2002 by adoption of Resolution No. 2002-6348; and

WHEREAS, the Town Council has determined that an additional refinement to the Code, specifically that if members of the ASRB also serve on other Town advisory bodies, they are required to recuse from participation in the advisory body's review of any project that will subsequently come before the ASRB for review, is required to strengthen and clarify its intent; and

WHEREAS, the Town Council of the Town of Woodside continues to believe that the proper operation of a democratic government requires that:

1. All public officials and employees be independent and impartial in their judgment and actions;
2. Public office not be used for personal gain;
3. The public should be able to have confidence in the integrity of its government and public officials;
4. Public deliberations and actions should be conducted in an atmosphere free from personal animosity and hostility;
5. All public officials and employees should abide by and uphold all local ordinances, rules, and regulations; and

WHEREAS, the Town Council finds and determines that the Town's Code of Ethics and Conduct for Councilmembers, Appointed Officials, and employees of the Town furthers the purposes hereinabove set forth; and

WHEREAS, the Town Council strongly endorses the underlying principles and tenets of the Ralph M. Brown Act and the Fair Political Practices Act of the State of California and feels that the promulgation of local policies that reflect the spirit and intent of these laws is a desirable action.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town

of Woodside that it hereby amends and reaffirms the **CODE OF ETHICS AND CONDUCT** for each Councilmember and all appointed officials and employees of the Town of Woodside:

CODE OF ETHICS AND CONDUCT

A. Each Councilmember, Appointed Official, and Town employee has a duty to:

1. Represent and work for the common good of the Town and its citizens.
2. Provide fair and equal treatment for all persons and matters coming before the Council, Commission, Board, or Town staff.
3. Faithfully perform all duties of their respective elected or appointed office, including: (a) understanding the roles and responsibilities of the body or position to which elected or appointed; (b) becoming thoroughly knowledgeable about items of business before voting or developing a conclusion or recommendation; and (c) attending regular meetings, as defined in Resolution 1994-4936.
4. Listen courteously and attentively to all public discussions and avoid interrupting other speakers, except as may be permitted by established Rules of Order.
5. Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics, or morals of members of the Town Council, other appointed officials, Town employees, or members of the public.
6. Maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence the decision-making process or decisions.
7. Uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decision made or action taken, but also to participate in and witness the deliberations, which shape public policy.
8. Refrain from disclosing confidential information concerning the property, government, or affairs of the Town, whether it be provided in a closed session or not, unless the Town Council authorizes such disclosure by majority vote. Confidential information shall not be used to advance financial or other personal interests. Confidential information means all information, whether transmitted orally or in writing, which is of such a nature that it is not, at that time, a matter of public record or public knowledge, including those items described in the California Public Records Act (Government Code Section 6254), items from closed sessions under the Brown Act

(Government Code Section 54950 et seq), and items subject to the attorney-client privilege.

9. Behave in a manner in keeping with the role of steward of the public interest. Specifically, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the Town, nor shall members of boards, commissions, and other advisory boards appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies, except for limited exceptions, as provided for in Fair Political Practices Commission Regulation 18702.4.

10. Avoid even the appearance of conflict between public duties and personal interests and activities in all Town public forums. A conflict or the appearance of a conflict exists in a matter before an official for consideration or determination if the public official: (1) has a material financial or material personal interest in the outcome or (2) has a personal or organizational responsibility or relationship in an entity or organization that will be affected by the outcome, including an association as owner, member, partner, officer, employee, broker or stockholder.

11. Disqualify him/herself from participating in the deliberation and decision-making process in all matters where a conflict or the appearance of a conflict exists, as defined in tenet 10. This does not preclude, however, the right of any individual official to participate in the deliberations as a member of the general public. In order to avoid conflicts or the appearance of conflicts, the Town Council adopted Resolution No. 2003-6376 which prohibits Planning Commissioners from holding a voting membership on any of the Town's other advisory bodies. In addition, the Town Council adopted Resolution No. 2016 - 7089 which provides that if members of the ASRB also serve on other Town advisory bodies, they are required to recuse from participation in the advisory body's review of any project that will subsequently come before the ASRB for review.

12. Refrain from using his/her position to unduly influence the deliberations or outcomes of official proceedings, both during and outside of those proceedings, of bodies of which he/she is not a member because of the value of the independent advice of boards, commissions and other advisory bodies to the public decision-making process.

13. Support the maintenance of a positive and constructive work place environment for Town employees and for citizens and businesses dealing with the Town. Members of the Town Council, Planning Commission, the Architectural and Site Review Board, and other advisory bodies shall recognize their special role in dealings with Town employees and must in no way create the perception of

inappropriate direction to staff. Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's supervisor. Negative comments about staff performance should only be made to the Town Manager through private conversation or correspondence.

14. Refrain from accepting gifts, favors, or promises of future benefits, which might compromise or tend to impair independence of judgment or action.

15. Refrain from appearing as a compensated representative at any time before the Town Council, Commission, Board, or Town staff in connection with any case or other matter with which he/she personally participated while an official or employee of the Town for twelve (12) months following the date of separation from elected or appointed office or from Town employment.

B. Compliance with and enforcement of the Code of Ethics and Conduct shall be ensured as follows:

1. The Woodside Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the Woodside Town Council, the Planning Commission, the Architectural and Site Review Board, all volunteer committees, and all employees of the Town. Each individual covered by the Code has the primary responsibility to ensure that he or she understands and meets these standards and complies with all tenets of the Code, so that the public can continue to have full confidence in the integrity of Town government.

2. When a Councilmember or other appointed or elected official has doubt as to the applicability of a provision of the Code to a particular situation, he/she may apply to the Town Council for an advisory opinion and be guided by that opinion when given. The Councilmember or other appointed or elected official shall have the opportunity to present his or her interpretations of the facts at issue and of the applicable provisions of the Code before such advisory decision is made.

3. Members of the Town Council shall intervene when actions of elected and appointed officials that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. The member who is made aware of the alleged violation shall report the complaint to the Mayor, who shall investigate the allegation and shall provide a report of his/her findings to the involved elected or appointed official. If the Mayor is the subject of the complaint, the Mayor Pro Tem shall be responsible for completing the required investigation and report. The report shall be presented to the Town Council at a public meeting of the Council. The Town Council will accept testimony on the matter and determine whether a violation of the Code has occurred.

4. The Town Council may impose sanctions on elected or appointed officials when it determines that a violation of the Code has occurred, including reprimand, formal censure, or, in the case of members of commissions, boards, or committees, removal from office. If the Town Council determines that a member of its body has violated the Code and that such violation may warrant the official's removal from office, it may refer the issue to the San Mateo County Grand Jury, as provided for in Government Code Section 3060.


5. The Town Manager shall provide advice on the applicability of the Code to those Town employees who are subject to the Town Manager's appointment and removal authority, as defined in Woodside Municipal Code section 30.20 (C). The Town Manager shall investigate alleged violations of the Code when they involve those same employees. The Town Manager shall utilize the Town's Personnel Policies and Rules in the conduct of the investigation and in the application of appropriate discipline where an allegation is found to have occurred.

* * * * *

PASSED AND ADOPTED by the Town Council of the Town of Woodside, California, at a meeting thereof held on March 22, 2016, by the following vote of the members thereof:

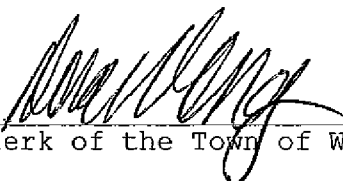
AYES, and in favor thereof, Councilmembers: Kasten, Livermore, Shaw, Tanner, Yost and Mayor Gordon.

NOES, Councilmembers: None
ABSENT, Councilmembers: Mason
ABSTAIN, Councilmembers: None



Mayor of the Town of Woodside

ATTEST:



Clerk of the Town of Woodside