

**Report of Findings of Fact and Conclusions of  
Law Concerning Complaint of Town of  
Woodside Ethics Code Violation  
By Dave Burow Against Nancy Reyering**

**Prepared for  
Town of Woodside**

**January 12, 2017**

**By: Thomas B. Brown  
Burke, Williams & Sorensen, LLP**



**REPORT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCERNING  
COMPLAINT OF TOWN OF WOODSIDE ETHICS CODE VIOLATION  
BY DAVE BUROW AGAINST NANCY REYERER**

**I. INTRODUCTION**

My office has been engaged to investigate a complaint made by Mr. Dave Burow that Ms. Nancy Reyerer violated several sections of the Town of Woodside's Ethics Code.<sup>1</sup> We have been further engaged to then prepare this report with findings of fact and conclusions of law.

Mr. Burow claims that Ms. Reyerer, a member of the Town's ASRB,<sup>2</sup> violated the Town's Ethics Code by sending an e-mail message dated May 2, 2016 to the Town's Planning Director, Jackie Young, with copies to the Chairperson and Vice Chairperson of the Town's Architectural and Site Review Board ("ASRB"), concerning a land use project for the property at 168 Bardet Road, Woodside, California.

**II. SUMMARY OF CHARGES AND DETERMINATIONS**

- A summary of the specific charges raised by Mr. Burow's complaint<sup>3</sup> and my determinations follows:

**Charge No. 1:** Did Ms. Reyerer violate Section 1 of the Ethics Code by suggesting that Town Councilmembers should be subject to a more strict set of building guidelines, thereby working against the common good?

**Determination:** No. Charge not sustained.

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<sup>1</sup> The Town's document entitled "A Handbook For Members of the Planning Commission, The Architectural and Site Review Board and the Citizen Advisory Committees" ("Handbook"), adopted and re-adopted by the Town Council, contains the Town's Ethics Code.

<sup>2</sup> The Town's Handbook describes the ASRB and its duties as follows:

The Architectural and Site Review Board (ASRB) reviews applications for site design, makes recommendations to the Planning Director regarding the approval or disapproval of applications to the Planning Director, and suggests modifications or imposes conditions in accordance with the standards set forth in the Woodside Municipal Code (Title 15, Chapter 153, beginning at Section 153.220). The Code charges the ASRB with ensuring that development preserves the rural character and natural beauty of the Town and complies with the requirements of the Municipal Code and the General Plan.

The ASRB consists of seven members appointed to staggered four-year terms by the Town Council. The regular meetings of the ASRB are held on the first and third Mondays of each month at 4:30 p.m. in Independence Hall, 2955 Woodside Road."

<sup>3</sup> This summary of Mr. Burow's charges reflect a distillation of Mr. Burow's complaint, as set forth in the correspondence constituting Mr. Burow's Complaint, including Mr. Burow's e-mail dated May 3, 2016 (10:14 a.m.); Mr. Burow's e-mail dated May 9, 2016 (10:32 p.m.); Mr. Burow's e-mails dated May 20, 2016 (12:19 p.m., 12:20 p.m.); and Mr. Burow's e-mail dated June 6, 2016 (Exh. B).

**Charge No. 2:** Did Ms. Reyerer violate Section 2 of the Ethics Code by suggesting that the ASRB should apply unequal treatment to Town Councilmembers whose private firms represent clients before the Town?

**Determination:** Yes. Charge sustained.

**Charge No. 3:** Did Ms. Reyerer violate Section 3(b) of the Ethics Code 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 on the project?

**Determination:** Yes. Charge sustained.

**Charge No. 4:** Did Ms. Reyerer violate Section 3(c) of the Ethics Code because of Ms. Reyerer's failure to attend more than four consecutive meetings of the ASRB without permission from the Town Council, and is she deemed to have resigned from the ASRB by virtue of her unexcused absences?

**Determination:** No. Charge not sustained.

**Charge No. 5:** Did Ms. Reyerer violate Section 5 of the Ethics Code by making a personal attack against a Councilmember by suggesting that Councilmember Mason's actions give the appearance that he is attempting to take advantage of his position as a Councilmember to gain special consideration for his private architectural client?

**Determination:** Yes. Charge sustained.

**Charge No. 6:** Did Ms. Reyerer violate Section 6 of the Ethics Code by attempting to improperly influence the ASRB decision-making process with respect to this project and reaching a conclusion about the project before hearing testimony at the public meeting?

**Determination:** Yes. Charge sustained.

**Charge No. 7:** Did Ms. Reyerer violate Section 7 of the Ethics Code 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?

**Determination:** No. Charge not sustained.

**Charge No. 8:** Did Ms. Reyering violate Section 10 of the Ethics Code by creating the appearance of a conflict of interest between Ms. Reyering's public duty as an ASRB member and her personal interests, based on her alleged personal disagreements with Councilmember Mason regarding (a) work he had previously done for Ms. Reyering while acting as her architect, and (b) his failure to endorse Ms. Reyering's candidacy in the 2015 Town Council election?

**Determination:** No. Charge not sustained.

**Charge No. 9:** Did Ms. Reyering violate Section 13 of the Ethics Code by failing to maintain a positive and constructive working environment for the Bardet Road project applicant and Mr. Mason's business.

**Determination:** Yes. Charge sustained.

### III. RELEVANT PROVISIONS OF THE TOWN'S ETHICS CODE

#### A. Code Provisions Invoked In Mr. Burow's Complaint

- Mr. Burow's complaint invokes Sections A.1., 2, 3(b), 3(c), 5, 6, 7, 10 and 13 of the Town's Ethics Code, which 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.
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.
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.

**B. Other Relevant Provisions of the Ethics Code**

- Several other provisions of the Town's Ethics Code are relevant to this investigation and report. They are as follows:

**1. Conflict of Interest**

As the Town's Code of Ethics and Conduct indicates, it is necessary for the Town's officers to diligently avoid any circumstance in which their personal and public interests or responsibilities could come into conflict, or in which Town officers could be tempted to use their positions for personal gain. The potential for conflicts of interest to occur between the public and personal interests of public officials is a concern that is embodied in State law as well.

In accordance with State Government Code section 87200, the Fair Political Practices Act, the members of the Town Council, Planning Commission, and key staff members and consultants must file Statements of Economic Interest upon assumption of office, on an annual basis and when leaving their elected or appointed positions or office. The proper forms are supplied by staff. In these statements, members must disclose all investments, business positions, sources of income, and interests in real property which could be materially affected by the decisions made by their commission. The completed statements are kept on file by the Town Clerk and are available for public inspection.

While the State requirement of filing Statements of Economic Interest does not apply to committee or ASRB members, on July 23, 2002, the Town Council adopted Resolution 2002-6347, which added the members of the ASRB to the Town's list of officials required to file Statements of Economic Interest with the Town Clerk. The Town Council has the discretion to require other appointed officials to file the Statements when it reviews the Town's Conflict of Interest Code in every even-numbered calendar year. The spirit of the state law, as well as the letter of the Town's Code of Ethics and Conduct, demands that members avoid any conflict between their personal or financial interests and their public duties.

When a member of the Town's advisory bodies has a financial interest in a matter that comes before the body upon which he or she serves, he or she must recuse him or herself from the body's discussion of and action upon that matter. The member must announce that he or she has such a conflict and physically leave the meeting room until the body has concluded its action on that matter. The Town Attorney will assist members in identifying what constitutes a "financial interest" under the Fair Political Practices Act.

It is important that Town officers scrupulously conform to all conflict of interest laws because violations will taint the fairness of the democratic process and may also subject the offending official to fines, criminal penalties, and forfeiture of office. If any questions arise in this area for board, commission, or committee members, the Town Attorney will be pleased to discuss them ahead of time to help prevent problems from developing.

## **2. Orientation for Members**

Shortly after appointment, each new member will be provided with a current copy of "A Handbook for Members of the Planning Commission, the Architectural and Site Review Board and the Citizen Advisory Committees" and will be encouraged to direct any questions to the Town Manager and/or other Town staff. Additionally, the Town Manager, Town Attorney, and other appropriate Town staff will provide periodic training sessions with each of the advisory bodies in order to reacquaint all members with Town goals, the responsibilities of appointment, current issues before the Town, and to highlight new rules, regulations, or laws that may impact the work of the advisory bodies and their individual members.

## **3. Meeting Attendance**

### **a. The Handbook's Attendance Provisions**

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. The Town Council's Committee Appointments Subcommittee will review attendance records once each calendar year to determine the need for removal

action. An advisory body may also report an attendance problem to the Town Council for its action. This policy as it applies to the Planning Commission and the ASRB is established in Council Resolution 1994-4936.

Town staff will track the attendance of members of the volunteer advisory committees. When a regular meeting is canceled for lack of a quorum, an absence will be counted for those members who: (1) did not respond to the Town's meeting confirmation e-mail; (2) responded that they would not attend; or (3) do not show up for a meeting for which the existence of a quorum was assumed.

**b. Resolution No. 1994-4936's Attendance Provision**

**ATTENDANCE STANDARD FOR MEMBERS OF THE TOWN COUNCIL,  
PLANNING COMMISSION, AND ARCHITECTURAL AND SITE REVIEW BOARD**

The following is the policy with respect to attendance:

Members who do not attend at least seventy-five (75) percent of all regular meetings held within a calendar year, or who miss four consecutive regular meetings, shall be deemed to have resigned from office. The Town Council will review attendance records once each calendar year to determine the need for removal action. Absences will be excused only for good cause, by the Town Council, and shall include a showing of extraordinary circumstances.

**4. Ralph M. Brown Act (California Government Code § 54950 et seq.)**

The Brown Act is a state law, first enacted in 1953, requiring that all local government business be conducted in open and public meetings, with the exception of a limited number of defined subjects that may be discussed in a Closed Session of a local government body. These exceptions generally apply only to the Town Council and not to the appointed advisory bodies. This requirement is based upon the belief that the people must remain informed about the activities of government in order that they may retain control over it. The Brown Act applies to all members of boards, commissions, and committees. Any time in which a majority of the members of a board, commission, or committee meet face-to-face or use intermediaries or technological devices (such as phone, fax, e-mail, or letters) to hear, discuss, or deliberate upon any public business, a "meeting" is taking place under the definition in the Brown Act. Such meetings must be open to the public and must be announced at least 72 hours ahead of time for a regular meeting and 24 hours ahead for a special meeting with a posted agenda indicating the time and place of the meeting and describing each item of business which is to be

discussed. No action may be taken at any meeting unless a quorum is present, which occurs when a majority of the members are in attendance. Action may be taken by the body only on items which properly appear on the meeting agenda. Finally, minutes of the proceedings must be taken for entry into the public record.

Copies of the Brown Act are distributed to the chair of each body and are available for examination at Town Hall. All members should be sure to understand this law. Staff will be happy to assist in interpreting its requirements and will provide members with summaries of any changes that the State legislature may make to the provisions of the Brown Act that may impact their advisory body's or their own activities.

#### **IV. MS. REYERING'S MAY 2, 2016 E-MAIL**

Mr. Burow's complaint is premised on one communication by Ms. Reyerer, namely, Ms. Reyerer's May 2, 2016 e-mail. That e-mail reads as follows:

From: Nancy Reyerer  
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 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.

Regards.

Nancy Reyering

Presentation 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

## **V. MR. BUROW'S COMPLAINT<sup>4</sup>**

Mr. Burow's complaint alleges that Ms. Reyering violated the following sections of the Town's Ethics Code by her distribution and submission of her May 2, 2016 e-mail to Jackie Young and members of the ASRB.

- 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) because of Ms. Reyering'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;

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<sup>4</sup> Again, I have summarized the charges on the basis of the correspondence constituting Mr. Burow's Complaint, including Mr. Burow's e-mail dated May 3, 2016 (10:14 a.m.); Mr. Burow's e-mail dated May 9, 2016 (10:32 p.m.); Mr. Burow's e-mails dated May 20, 2016 (12:19 p.m., 12:20 p.m.); and Mr. Burow's e-mail dated June 6, 2016 (Exh. B).

- 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.

## **VI. INVESTIGATION: DOCUMENT REVIEW AND WITNESS INTERVIEWS**

### **A. Documents Reviewed:**

I reviewed and considered the following documents in the course of my investigation:

- E-mail dated May 2, 2016 from Nancy Reyerer to Jackie Young, with copies to Thalia & Steve Lubin and Scott Larson, regarding "Today's agenda item: 168 Bardet Road" (Exh. A)
- The correspondence constituting Mr. Burow's Complaint, including: Burow e-mail dated May 3, 2016 (10:14 a.m.); Burow e-mail dated May 9, 2016 (10:32 p.m.); Burow e-mails dated May 20, 2016 (12:19 p.m., 12:20 p.m.); Burow e-mail dated June 6, 2016 (Exh. B)
- Mr. Joseph D. Petta's (counsel for Ms. Reyerer) letters dated July 28, 2016 (Exh. C) and August 10, 2016 (Exh. D)
- Documents provided by Mr. Petta with his July 28, 2016 letter, including:
  - E-mails between Jennifer Li and Nancy Reyerer dated February 29, 2016 and March 7, 2016 regarding Ms. Reyerer's absence from the ASRB's March 21, 2016 meeting (Exh. C-1)
  - E-mail from Bruce Carlsmith to Jennifer Li dated February 29, 2016 regarding his absence from the ASRB's March 21, 2016 meeting (Exh. C-2)

- E-mail from Nancy Reyerling to Jennifer Li dated March 7, 2016 regarding Ms. Reyerling's absence from the ASRB's March 7, 2016 meeting (Exh. C-3)
- E-mails between Jennifer Li and Nancy Reyerling dated March 22, 2016 and March 24, 2016 regarding Ms. Reyerling's absence from the ASRB's April 4, 2016 meeting (Exh. C-4)
- E-mails from Nancy Reyerling to Jackie Young dated March 24, 2016 regarding Ms. Reyerling's absence from the ASRB's April 2016 meetings (Exh. C-5)
- E-mails between Jennifer Li and Nancy Reyerling dated April 25, 2016 regarding Ms. Reyerling's absence from the ASRB's May 9, 2016 meeting (Exh. C-6)
- E-mail dated May 25, 2016 to Jennifer Li from Nancy Reyerling regarding Ms. Reyerling's absence from the ASRB's June 6, 2016 meeting (Exh. C-7)
- Documents provided by Mr. Petta with his August 10, 2016 letter, including:
  - *The Almanac* article, "Woodside: Ex-councilman sees himself as watchdog of architectural board," dated June 22, 2016 (Exh. D-1)
  - *The Almanac* article, "Woodside: Anonymous campaign blossoms for council seat, dated October 27, 2015 (Exh. D-2)
  - *The Almanac* article, "Woodside polls home owners on town's building-review process, dated August 10, 2016 (Exh. D-3)
  - E-mails from Ms. Reyerling to undisclosed recipient dated July 28, 2016 (2:07 p.m., 4:43 p.m.) regarding Planning Commissioner (Exh. D-4)
  - E-mails among Kevin Bryant, Bengt Henriksen and Net Fluet dated August 8, 2016(2:25 p.m., 2:51 p.m., 4:21 p.m.) regarding 170 Wildwood Way Review (Exh. D-5)
  - October 13, 2015 Town Council Meeting Minutes (Exh. D-6)

- E-mails dated October 13, 2015 between Jean Savaree and Nancy Reyerling regarding Mr. Burow's statements in public meetings (Exh. D-7)
- Documents provided by Mr. Petta and Ms. Reyerling at Ms. Reyerling's interview dated August 4, 2016 (Exh. E), including:
  - Letter to Thomas B. Brown dated July 28, 2016 from Suzanne Muller (Exh. E-1)
  - Letter from Barbara Wood (Exh. E-2)
  - Letter from Kit Colman dated July 29, 2016 (Exh. E-3)
  - Letter from Lennie Roberts dated July 30, 2016 (Exh. E-4)
  - Letter from Thalia Lubin dated July 31, 2016 (Exh. E-5)
  - Letter from Susan Lang dated July 31, 2016 (Exh. E-6)
  - Letter from Susan Crocker dated July 31, 2016 (Exh. E-7)
  - Letter from Jennifer Werbe dated August 1, 2016 (Exh. E-8)
  - Letter from Jason Mendelson dated August 1, 2016 (Exh. E-9)
  - Letter from Maggie Mah dated August 2, 2016 (Exh. E-10)
  - Letter from Marilyn Voelke dated August 2, 2016 (Exh. E-11)
  - Letter from Thomas M. Johnson dated August 3, 2016 (Exh. E-12)
  - Letter from Ron Romines dated August 3, 2016 (Exh. E-13)
  - Letter from Rob Flint (undated) (Exh. E-14)
  - Letter from Karen Rongey Conner (undated) (Exh. E-15)
  - 2009 Commendation from Lt. Governor Garamendi (Exh. E-16)

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- 2013 Woodside Environmental Champion Award (Exh. E-17)
- Nancy Reyering Resume/curriculum vitae (Exh. E-18)
- E-mail from Nancy Reyering to Peter Mason dated August 5, 2016 regarding “Council” (Exh. F)
- Town of Woodside “A Handbook For Members of the Planning Commission, The Architectural and Site Review Board and the Citizen Advisory Committees” (Exh. G)
- Staff reports and minutes for May 2, 2016 (Exh. H) and June 6, 2016 (Exh. I) ASRB meetings
- E-mail dated June 29, 2016 from Jean Savaree to Nancy Reyering regarding Ethics Code Violation Complaint (Exh. J)
- E-mail dated June 3, 2016 from Jean Savaree to Dave Burow regarding Ethics Complaint (Exh. K)
- E-mail dated February 5, 2015 from Kevin Bryant to Planning Commission and ASRB members (Exh. L)
- E-mail exchange dated January 7 and 8, 2015 among Kevin Bryant, Jean Savaree and Dave Burow regarding “Country Almanac Viewpoint Article” (Exh. M)
- E-mail from Jean Savaree to Nancy Reyering dated November 5, 2015 (post-election) regarding various rules and procedures applicable to Town decision makers, including parliamentary procedures, Brown Act and fair hearing rules (Exh. N)
- E-mail exchange among Peter Mason, Kevin Bryant, Jean Savaree, Bengt Henriksen and Nancy Reyering regarding the Menlo Country Club (Exh. O)
- E-mail exchange dated April 13, 15, 18, 20 & 21, 2014 among Jean Savaree, Jackie Young and Nancy Reyering regarding “Ex parte communications” (Exh. P)
- Letter to Kevin Bryant from Peter T. Mason dated May 10, 2016 (Exh. Q)
- Letter to Jean Savaree from Dave Burow dated December 6, 2016 (Exh. R)
- Letter to Jean Savaree from Mr. Petta dated December 9, 2016 (Exh. S)

- Letter to Jean Savaree from Mr. Petta dated December 22, 2016 (Exh. T)
- E-mail from Peter Mason to Jean Savaree regarding Withdrawal of Complaint dated May 27, 2016 (Exh. U)

**B. Witness Interviews:<sup>5</sup>**

- On June 22, 2016, I conducted a witness interview with the complainant, Mr. Dave Burow at the offices of the Town Attorney in San Carlos.
- On August 4, 2016, I conducted a witness interview with the subject of the complaint, Ms. Nancy Reyering. Ms. Reyering's attorney, Joseph D. Petta attended and participated at this interview, which was conducted at Mr. Petta's office in San Francisco.
- On August 12, 2016, I conducted a witness interview with Town Councilmember/168 Bardet Road project architect Peter Mason at the offices of the Town Attorney in San Carlos.
- On August 25, 2016, I conducted a witness interview with Woodside Town Manager Kevin Bryant at the offices of the Town Attorney in San Carlos.
- On September 29, 2016, I conducted a witness interview with ASRB member Thalia Lubin at the offices of the Town Attorney in San Carlos.
- On October 13, 2016, I conducted a witness interview with Woodside Planning Director Jackie Young at the Town Hall in Woodside.

**C. Meetings With Stakeholders To Read Preliminary Determinations:**

- On December 1, 2016, I met with Mr. Burow, Mayor Gordon and Town Attorney at the Town Attorney's offices in San Carlos. I read a summary of my preliminary

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<sup>5</sup> Ms. Reyering herself contacted at least two of the witnesses in this investigation after she had been informed of the complaint against her. On August 5, 2016, before I interviewed him, Ms. Reyering sent an e-mail to Mr. Mason regarding whether Ms. Reyering holds a "grudge" against Mr. Mason, one of the issues raised by Mr. Burow's complaint. In addition, Ms. Young stated during her interview that Ms. Reyering also called Ms. Young on at least two occasions before I was able to interview Ms. Young, and sent Ms. Young at least one e-mail, including a copy of her attorney's August 10 letter to me. In one call, Ms. Reyering also expressed to Ms. Young the claim in her attorney's August 10 letter that the manner by which I had conducted the interview of Ms. Reyering was inappropriate. Ms. Young stated during her interview that Ms. Reyering's contacts made her feel uncomfortable. I find that these contacts by Ms. Reyering were intended to, and did interfere with my investigation.

determinations to Mr. Burow, and invited him to submit any additional evidence and arguments he deemed appropriate.

- On December 15, 2016, I met with Ms. Reyerling, her husband, Ms. Reyerling's attorney, Joseph D. Petta, Mayor Gordon and Town Attorney at the Town Attorney's offices in San Carlos. I read a summary of my preliminary determinations to Ms. Reyerling, her attorney and her husband, and invited them to submit any additional evidence and arguments he deemed appropriate.

## **VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Presumption and Standard of Proof**

- This investigation proceeded on the presumption that Ms. Reyerling did not violate the Ethics Code. I attempted to determine whether the facts as presented supported the charges. I did not require Ms. Reyerling to establish that she did not violate the Ethics Code.
- In weighing the evidence that I reviewed and considered, I applied a "preponderance of the evidence" standard of proof. I 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. That is, I found a fact to have existed or to be true if I determined it was more likely than not that the fact existed or was true. Where noted below, I also drew reasonable inferences based on other evidence I reviewed and considered.
- Further, in determining whether the alleged conduct constitutes a violation of Town policy, I considered the totality of circumstances, the nature of the conduct, and the context in which the alleged conduct occurred.
- I 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.

### **B. General Findings**

- On May 2, 2016, Ms. Reyerling sent an e-mail to Town Planning Director Jackie Young, with copies to ASRB members Thalia Lubin and Scott Larson. The e-mail's subject was described by Ms. Reyerling as "Today's agenda item: 168 Bardet Road". The e-mail's

salutation was directed to Ms. Young, Ms. Lubin and the entire ASRB. Ms. Reyerer requested in her e-mail that it be provided to the ASRB as a “desk item,” and it was.

- A “desk item” refers to a communication received about a matter after the posting of the agenda and the distribution of the staff reports related to items on the agenda. Desk items are intended to be made available to the public.
- On May 3, 2016 and May 9, 2016, Mr. Burow sent two e-mails to Town Manager Kevin Bryant.
- Mr. Burow’s May 3, 2016 e-mail asserted that Ms. Reyerer’s May 2, 2016 e-mail violated several provisions of the Town’s Ethics Code.
- Mr. Burow’s May 9, 2016 e-mail asserted that Ms. Reyerer, by her unexcused absences from several ASRB meetings, violated the attendance requirements of the Town’s Ethics Code, and therefore should be deemed to have resigned from the ASRB.
- On June 3, 2016, Town Attorney Jean Savaree sent Mr. Burow an e-mail notifying him that his complaint would be investigated by my office, and requesting Mr. Burow to confirm and explain the scope and nature of his complaints against Ms. Reyerer.
- On June 6, 2016, Mr. Burow sent an e-mail responding to Town Attorney Savaree’s June 3, 2016 e-mail request by confirming and explaining the scope and nature of his complaints.
- Mr. Burow’s May 3, 2016 and May 9, 2016 e-mails to Mr. Bryant, with his June 6, 2016 e-mail to Ms. Savaree, comprise his complaint against Ms. Reyerer.
- Ms. Lubin told me during her interview that Ms. Reyerer did not use Ms. Lubin’s e-mail address for the May 2, 2016 e-mail, but instead used an e-mail address for Ms. Lubin’s husband, Steve. Ms. Lubin further stated that she generally did not receive e-mails via her husband’s e-mail address. That was corroborated by Ms. Young. Ms. Lubin stated that as a result of the misaddressing of the e-mail, she did not receive or see the May 2, 2016 e-mail until she saw it as a desk item at the May 2 ASRB meeting. Ms. Lubin further stated that she did not retrieve the e-mail from her husband’s e-mail inbox until after the meeting. I found Ms. Lubin’s statements in this regard to be credible.
- On May 2, 2016, and at all times relevant to this investigation, Ms. Reyerer was a member of the Town ASRB, and as such had received, was familiar with and was subject to the Town’s Ethics Code.

- On May 2, 2016, and at all times relevant to this investigation, Ms. Lubin and Mr. Larson were ASRB members.
- On May 2, 2016, and at all times relevant to this investigation, the ASRB was comprised of five members. Three members constituted a majority of the ASRB.
- On July 28, 2016, and on August 10, 2016, Mr. Joseph D. Petta, counsel for Ms. Reyerer, sent letters, as well as attachments, to me concerning my investigation of Mr. Burow's complaint.
- At the conclusion of my interviews with all of the witnesses identified above, I invited each witness to contact me with any additional information and documents he or she believed would be relevant or helpful to my investigation. In response to this invitation, Ms. Reyerer's attorney sent me his August 10, 2016 letter, with additional documents.
- As noted above, Ms. Reyerer contacted at least two of the witnesses in this investigation after she had been informed of the complaint against her. On August 5, 2016, before I interviewed him, Ms. Reyerer sent an e-mail to Mr. Mason regarding whether Ms. Reyerer holds a "grudge" against Mr. Mason, one of the issues raised by Mr. Burow's complaint. In addition, Ms. Young stated during her interview that Ms. Reyerer also called Ms. Young on at least two occasions before I was able to interview Ms. Young, and sent Ms. Young at least one e-mail, including a copy of her attorney's August 10 letter to me. In one call, Ms. Reyerer also expressed to Ms. Young the claim in her attorney's August 10 letter that the manner by which I had conducted the interview of Ms. Reyerer was inappropriate. Ms. Young stated during her interview that Ms. Reyerer's contacts made her feel uncomfortable.
- Under the Town Municipal Code, Ms. Reyerer and other ASRB members serve at the pleasure of the Town Council, and may be removed from the ASRB at any time.
- Under the Ethics Code, the Town Council has reserved to itself the authority to take certain, specified actions in response to ASRB members who violate the provisions of the Ethics Code.

**C. Findings And Conclusions Related To Complaint Of Violation Of Section 1 For Working Against Common Good: Charge Not Sustained.**

- Section A.1. of the Ethics Code (p. 18) requires Board members to "[r]epresent and work for the common good of the Town and its citizens."

- Neither Section 1 nor any other provision in the Ethics Code defines or explains what it means to “work for the common good”, or what the “common good” is.
- While, as I discuss below, Ms. Reyerer’s e-mail contains explicit and implicit statements that violate other sections of the Town’s Ethics Code, I cannot determine that her statements do not work for the common good. I further find that phrase “represent and work for the common good” to be so vague as to be impossible to apply in this instance.
- Ms. Reyerer’s May 2, 2016 e-mail did not violate Section 1 accordingly.

**D. Findings Related To Complaint Of Violation Of Section 2 For Unequal Treatment Of Mr. Mason and Mr. Mason’s Client: Charge Sustained.**

- Section A.2. of the Ethics Code (p. 18) requires Board members to “[p]rovide fair and equal treatment for all persons and matters coming before the Council, Commission, Board, or Town staff.”
- Section A.2. is consistent with the state and federal constitutional and statutory principle that applicants who appear before the Town are entitled to equal protection of the law. (See generally Continuing Education of the Bar (“CEB”), California Land Use, sections 19.32 et seq., p. 19-58 et seq.)
- It was generally known and understood among the Town’s boards and commissions, including the ASRB, prior to Ms. Reyerer’s May 2, 2016 e-mail, that consistent with state conflict of interest rules, Councilmembers’ firms are not legally precluded by Section 9 of the Ethics Code or other conflict of interest rules from representing clients before the Town’s boards and commissions, provided that the individual Councilmembers may not personally appear on behalf of private clients before any Town board or commission.
- Based on my interviews with Town Manager Bryant and Town Planning Director Young, Ms. Reyerer and the ASRB were or should have been aware that the same advice had been applied with respect to other projects involving Councilmembers Mason and Tanner, as well as ASRB member Lubin, prior to May 2, 2016.
- This understanding applies to Councilmember Mason and his architectural firm.
- Ms. Reyerer was aware, or should reasonably have been aware that, prior to her May 2, 2016 e-mail, Councilmember Mason’s firm properly could represent private architectural

clients before the ASRB, and that in doing so his firm's clients were entitled to have their projects judged by and under the same rules as any and all other project applicants.

- Ms. Reyering's May 2, 2016 e-mail nevertheless asserted that projects involving Councilmember Mason's firm "should not ask for exceptions," apparently because Mr. Mason, in his capacity as a Council member, may be involved in drafting certain of the Town's building regulations.
- Ms. Reyering was aware, or should reasonably have been aware that the Town's regulations allow all applicants and their architectural representatives to seek exceptions.
- Ms. Young stated in her interview that it is not the case that exceptions are only sought by and approved for Town Council members representing private clients. Rather, Ms. Young stated that exceptions are commonly sought and granted for project applicants generally.
- The Town Council, which is the only Town entity with authority to make such legislative policy decisions, did not undertake to include in the Town's regulations a provision imposing a higher or different standard on Town Council members whose firms represent private clients.
- The ASRB and its members are required to apply the regulations as written by the Town Council, not as they would like to see the regulations written.
- Ms. Reyering's e-mail also asserted that the Bardet Road project created "the potential appearance that [C]ouncil members are privileged when bringing projects before the ASRB."
- Having been aware prior to May 2, 2016 that the Town had consistently and correctly taken the position that a Councilmember does not violate the Ethics Code or conflict laws by allowing his or her firm to represent a private architectural client for projects such as the Bardet Road project, Ms. Reyering to be fair should have at least disclosed that in her May 2, 2016 e-mail comments.
- Ms. Reyering stated during her interview that she did not recall that the Town Attorney or staff had addressed the issue prior to May 2, 2016. In light of the other evidence I reviewed and considered, including the interviews of Ms. Lubin, Mr. Mason, Town Manager Bryant and Town Planning Director Young, I do not find Ms. Reyering's statement in this regard to be credible.

- Ms. Reyerer's attorney, Mr. Petta, argues in his August 10, 2016 letter, that one person, Marilyn Voelke, raised a similar concern at an October 13, 2015 Town Council meeting that Ms. Reyerer later raised in her May 2, 2016 e-mail.<sup>6</sup> He asserts that both the Town Attorney and Town Council both remained "silent" on what he asserts was an issue of public concern.
- Contrary to what Mr. Petta argues in his August 10, 2016 letter, it is unclear from the October 13, 2015 meeting minutes to which Mr. Petta refers that Ms. Voelke's comments raised the same issue Ms. Reyerer later raised in her May 2, 2016 e-mail.
- I also draw little or no significance from the fact that the minutes do not reflect a response to Ms. Voelke from either the Town Attorney or the Town Council. In my experience, it is not uncommon for a Council or attorney not to respond to each comment and point raised by the public during a Council meeting.
- I also find Mr. Petta's argument on this point to be inconsistent with the other evidence I reviewed and considered, as discussed above, to the effect that the ASRB members knew and understood prior to May 2, 2016 that Councilmembers' firms could properly represent private architectural clients before the Town.
- Ms. Reyerer tacitly if not expressly argues in her May 2, 2016 e-mail that Mr. Mason, his firm and his firm's clients should not be entitled to avail themselves of the same Town regulations available to all other applicants. Ms. Reyerer intended for the ASRB to consider her comments. Ms. Reyerer thereby intended to influence the ASRB.
- In doing so, Ms. Reyerer effectively applied a different, more rigorous standard for Mr. Mason, his firm and his firm's clients. She also advocated in her e-mail, at least tacitly, that other ASRB members do the same.
- Mr. Mason stated during his interview that he believes Ms. Reyerer's May 2, 2016 e-mail seeks to hold him, his firm and his firm's clients to a heightened standard that does not apply to the public generally. I agree.
- By her e-mail, Ms. Reyerer did not treat Mr. Mason, his firm and his firm's clients of "fair and equal treatment" within the meaning of Section 2.
- Ms. Reyerer's e-mail violated Section 2 accordingly.

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<sup>6</sup> Mr. Petta incorrectly refers to the document he provides as an exhibit as a "transcript." In fact, the document he provided was the minutes of the meeting. Meeting minutes are not actual transcripts.

**E. Findings And Conclusions Related To Complaint Of Violation Of Section 3(b) For Reaching And Sharing A Conclusion About The Bardet Road Project Without Hearing Testimony About The Project: Charge Sustained.**

- Section 3(b) of the Ethics Code (p. 18) requires ASRB members to “[f]aithfully 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.**” (Emphasis added.)
- Section 3(b) is consistent with settled due process and fair hearing principles governing decisions by city boards and commissions that are considered to be “adjudicative,” namely, where the board and commission members act as “judges” on an individual’s land use application. Examples of such adjudicative decisions are tentative subdivision maps, parcel maps, design review, variances and conditional use permits. When a board or commission—including the ASRB Bardet Road design review decision at issue here--makes such decisions, constitutional due process and statutory fair hearing principles apply. (See generally CEB, California Municipal Law Handbook, sections 10.409, 10.419, pp. 1117, 1120 (2015); see also *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021 (“*Woody’s*”); *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482 (“*Nasha*”).)
- These fair hearing rules prohibit decision makers, such as Ms. Reyerling and the ASRB here, from having actual bias or an appearance of bias in adjudicative matters that come before them for decision. While having advance knowledge of a matter generally does not establish such bias (CEB, California Municipal Law Handbook, sections 10.420, p. 1120), impermissible bias may be found where a member expresses definite opinions and positions about a project prior to the noticed public hearing, or provides assurances about a vote or outcome. (See, e.g., *Nasha*, 125 Cal.App.4th 470, 483 (Planning Commissioner’s pre-hearing expression of opposition to a project constituted disqualifying bias); *Woody’s*, 233 Cal.App.4th 1012, 1021 (Councilmember was deemed biased from hearing appeal by virtue of clear expression of opposition to Planning Commission decision).) In such circumstances, fair hearing and due process principles generally require the individual member to recuse him or herself from the decision, i.e., that he or she not participate in the decision making process.
- Ms. Reyerling had been advised about these rules on more than one occasion prior to May 2, 2016. For example, Mr. Bryant’s e-mail to the Planning Commission and ASRB dated February 5, 2015 addresses the issues in the context of a specific (Whisky Hill Road art cave) project.

- Similarly, the e-mail exchange from January 7 and 8, 2015 establishes Town staff advised Ms. Reyering specifically on the principle.
- While Ms. Reyering (because of her absences from the ASRB meetings at which the ASRB considered the project) did not vote on the Bardet Road project with the other ASRB members, she also did not recuse herself from participating in the ASRB decision when she submitted her e-mail comments for ASRB consideration. Nor did she state in her e-mail or otherwise that her comments were made in her capacity as a private citizen rather than as an ASRB member.
- For these reasons, Ms. Reyering's comments contained in her May 2 e-mail constituted participation as an ASRB member in the ASRB's decision making process.
- Ms. Reyering's e-mail was composed and sent to the ASRB before the project applicant and members of the public were afforded their opportunity to weigh in on the project. It contains negative conclusions about both the merits of the project and the propriety of the project applicants availing themselves of the same rights afforded other members of the public because that applicant chose to utilize the services of Councilmember Mason's firm.
- Ms. Reyering's comments constituted advocacy about the project before Ms. Reyering had heard any testimony from the applicant or the public.
- As noted above, Ms. Reyering stated during her interview that she intended by her e-mail to have other ASRB members consider her comments in acting on the Bardet Road application. She thus sought to influence the other ASRB members by her e-mail message.
- Although this finding is not in itself dispositive of this charge, I also find that the record (i.e., the minutes) of the May 2, 2016 and June 6, 2016 ASRB meetings supports the reasonable inference and finding that the other ASRB members did consider, and were influenced by, Ms. Reyering's comments.
- Despite stating that she intended for the ASRB members to consider her e-mail comments, Ms. Reyering nevertheless stated, inconsistently, that she did not try or intend to influence the ASRB members. I did not find her statement to be credible in this regard.

- Ms. Reyerer's May 2, 2016 e-mail participation at that stage in the ASRB proceedings and in the manner described was unfair to Mr. Mason, his firm and the Bardet Road applicant.<sup>7</sup>
- Ms. Reyerer's May 2, 2016 e-mail violated Section 3(b) accordingly.
- Ms. Reyerer and her attorney have argued, and have submitted the letter from Ms. Voelke dated August 2, 2016, to the effect that it was a common occurrence for the Town's board and commission members to submit their e-mail and other written comments as did Ms. Reyerer in her May 2, 2016 e-mail. However, the evidence submitted by Ms. Reyerer and her attorney does not support that argument. When questioned about that point, Ms. Young testified that, while such submittals "are not unheard of," it was not a common practice or occurrence. I find Ms. Reyerer's testimony and evidence in this regard to be not credible, while I find Ms. Young's to be credible. This is especially so given that Town staff had consistently advised and trained the Town's boards and commissions not to take and announce positions on specific land use projects outside and in advance of public hearings on those projects.
- I also find it to be irrelevant to my conclusions on the specific Ethics Code complaint here whether Ms. Voelke or other members of the Town's boards and commissions in the past may have offered their objections on one or more projects in a manner similar to Ms. Reyerer.

**F. Findings And Conclusions Related To Complaint Of Violation Of Section 3(c) For Unexcused Absences: Charge Not Sustained.**

- Section 3(c) requires Board members to "[f]aithfully perform all duties of their respective elected or appointed office, including: attending regular meetings, as defined in Resolution 1994-4936.
- Resolution 1994-4936 then provides:

Members who do not attend at least seventy-five (75) percent of all regular meetings held within a calendar year, or who miss four consecutive regular meetings, shall be deemed to have resigned from office. The Town Council will

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<sup>7</sup> Mr. Mason stated in his interview that he has information that Ms. Reyerer also discussed the Bardet Road application with Ms. Lubin prior to the May 2, 2016 ASRB meeting. During her interview, however, Ms. Lubin denied such discussions took place, and further explained that Ms. Reyerer could not talk to her on May 2, 2016 because her jaw had been wired and she was in severe pain that made talking extremely difficult. In light of the non-specific nature of Mr. Mason's information versus the specific information provided by Ms. Lubin, I find Ms. Lubin's testimony on this point to be credible, and discount that limited part of Mr. Mason's testimony.

review attendance records once each calendar year to determine the need for removal action. Absences will be excused only for good cause, by the Town Council, and shall include a showing of extraordinary circumstances.

- The ASRB held regular meetings on March 7, 2016, March 21, 2016, April 4, 2016, April 18, 2016, May 2, 2016 and June 6, 2016. The ASRB held a special meeting on May 9, 2016. The ASRB cancelled its regular meeting on May 16, 2016. At the May 2, 2016 and June 6, 2016 meetings, the ASRB considered the Bardet Road project.
- Ms. Reyering did not attend those six regular and one special ASRB meetings.
- The Town Council did not excuse Ms. Reyering from attending the meetings she missed.
- Ms. Reyering notified Town staff (and other ASRB members) of her absences from the March 7, March 21, April 4, April 18, May 2, May 9 and June 6 ASRB meetings by her e-mails dated February 29, 2016, March 7, 2016, March 24, 2016, April 25, 2016 and May 25, 2016.
- The Town's Ethics Code does not set forth a specific process for seeking Town Council excuse or permission for absences.
- The Town's practice appears to have been to address board member meeting absences, if at all, in the context of annual or bi-annual reviews designed to evaluate whether to re-appoint Board members. This apparent practice is consistent with Town Resolution No. 1994-4936.
- Bruce Carlsmith's e-mail to Jennifer Li dated February 29, 2016 regarding his absence from the ASRB's March 21, 2016 meeting suggests that Mr. Carlsmith, another ASRB member, understood the process for announcing an absence in the same or similar manner as Ms. Reyering.
- Ms. Voelke's August 2, 2016 letter supports a conclusion that she similarly understood that members of Town boards and commissions would not be scrutinized or required to seek formal excuse from the Town Council for absences for any reason, especially illness or medical need.

- Ms. Reyerer's absences from all but one of the ASRB meetings appear to have been caused by illness or other medical condition or need.<sup>8</sup>
- Ms. Reyerer's absence from the June 6, 2016 ASRB meeting was due to what her attorney characterizes without explanation as "unavoidable travel." Ms. Reyerer's May 25, 2016 e-mail to Jennifer Li explains this absence by saying she would be "returning from a trip on the Monday the 6<sup>th</sup> and don't believe my flight will allow me to make the ASRB meeting."
- Although Ms. Reyerer's attorney, Mr. Petta, argues that Ms. Reyerer's absences from the first several meetings were due to her surgery and post-surgery recovery, he does not explain specifically why or how Ms. Reyerer was able to review and comment on the Bardet Road application prior to the May 2, 2016 ASRB meeting. Nevertheless, I drew the reasonable inference that while Ms. Reyerer's recovery prevented her from attending the meeting, it did not completely incapacitate her such that she was unable to review and comment on that application.<sup>9</sup>
- Illness and other medical conditions or needs constitute valid bases for the Town Council to excuse members from meetings. When asked during their interviews, Mr. Burow and Councilmember Mason both concurred in that conclusion.
- Ms. Reyerer's last absence, on June 6, 2016, appears to have been due to another reason, namely, personal travel. Under Resolution 1994-4936, absences will be excused only for good cause, and shall include a showing of extraordinary circumstances.
- This charge against Ms. Reyerer is not sustained because all but one of Ms. Reyerer's absences were due to medical issues, and the Town's applicable regulations and past practices establish that the appropriate time to address any issues with Ms. Reyerer's attendance is during an annual or bi-annual review referred to in Resolution No. 1994-4936.

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<sup>8</sup> By his July 28 letter, Ms. Reyerer's attorney characterizes the condition and need as Ms. Reyerer's surgery and post-surgical convalescence. In addition, Ms. Lubin advised me that on May 2, 2016, Ms. Reyerer could not attend the ASRB meeting because she had had her jaw wired and was in severe pain.

<sup>9</sup> Nevertheless, as I discuss below, although I believe a reasonable inference supports her argument that she had a valid excuse for missing the May 2, 2016 meeting, principles of fairness prohibited Ms. Reyerer from participating in absentia as she did.

**G. Findings and Conclusions Related To Complaint Of Violation Of Section 5  
By Personally Attacking Councilmember Mason: Charge Sustained.**

- Section 5 of the Town of Woodside’s Ethics Code requires that board members “[r]efrain from abusive conduct,<sup>10</sup> 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.”
- The statements contained in Ms. Reyering’s May 2 e-mail, as they relate to Councilmember Mason, are as follows:

“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.” (Emphasis added.)

- Although Ms. Reyering did not expressly name Mr. Mason in her message, it is clear that Ms. Reyering was directing her comments at Mr. Mason, as Mr. Mason’s firm was the architect for the Bardet Road project which was the subject of Ms. Reyering’s e-mail.
- Ms. Reyering’s e-mail comments constitute both abusive conduct as well as a personal charge or verbal attack on the character, motives, ethics or morals of Mr. Mason.
- Reasonably read, Ms. Reyering’s statements constitute an attack or charge that Mr. Mason acted inappropriately and unethically by allowing his firm to represent the Bardet

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<sup>10</sup> Although this definition is not controlling here, in another context, Government Code section 12950.1 defines “abusive conduct” as “conduct ... that a reasonable person would find hostile, offensive, and unrelated to ... legitimate business interests.” Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating. Abusive conduct may also include the gratuitous sabotage or undermining of a person’s ... performance. There is no requirement that the abusive conduct be linked to a protected category, but the conduct must be such that a reasonable person would find threatening, intimidating, or humiliating, and conduct must be either pervasive or severe or egregious. (See also Cal. Code Regs. tit. 2, § 11024.)

Road applicants. Ms. Reyering's comments further imply that Mr. Mason was unethical by using his position as a Councilmember in an unfair manner, to seek personal advantage and/or professional advantage for his private clients. Doing so constituted a personal charge and a verbal attack on Mr. Mason's character, ethics and morals.

- This attack and charge contained in Ms. Reyering's May 2, 2016 e-mail further may be faulted as misleading in its failure to at least acknowledge that, as I have also found, Ms. Reyering and the ASRB had previously been aware that the Town's position prior to May 2, 2016 was that Mr. Mason's firm's representation of private architectural clients before the Town did not violate the Ethics Code or other conflict laws, that Mr. Mason's firm had the right to represent private architectural clients before the Town, and that his clients were entitled to have their projects judged according to all the same rules as all other project applicants. Ms. Lubin, Mr. Bryant and Ms. Young all confirmed this point in their interviews.
- Although she disagrees that an Ethics Code complaint is warranted, and further believes that Mr. Burow's complaint is motivated by personal animosity toward Ms. Reyering, Ms. Lubin told me during her interview that she agreed that, fairly read, Ms. Reyering's e-mail at the least suggested that Ms. Reyering thought Mr. Mason was acting improperly in seeking an exception for his client.
- The statements contained in Ms. Reyering's May 2, 2016 e-mail violated Section 5 accordingly.

**H. Findings And Conclusions Related To Complaint Of Violation Of Section 6 By Attempting To Improperly Influence The ASRB Decision-Making Process and Reaching A Conclusion Prior To The Public Meeting: Charge Sustained.**

- Section 6 of the Ethics Code requires that Board members “[m]aintain 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.”
- My findings and conclusions in Section E above (with respect to Mr. Burow's complaint under Section 3(b) of the Ethics Code) apply here with respect to Section 6 as well, and I incorporate them here by this reference.
- As with the charge under Section 3(b), Ms. Reyering's May 2, 2016 e-mail violated Section 6 because it reflects that Ms. Reyering improperly reached and shared her negative conclusions about the Bardet Road project and architect outside of a public meeting and before the ASRB had conducted a hearing on the project.

- As noted above, Ms. Reyerer intended that the ASRB members consider her comments. Ms. Lubin told me during her interview that she did consider them to some extent, along with her own thoughts and concerns about the project. In addition, the record of the ASRB meetings supports the reasonable inference that the other ASRB members did consider and were influenced by Ms. Reyerer's comments.
- I do not agree with Mr. Burow that by simply using the term "cursory review" in her e-mail, Ms. Reyerer intended to express that she had formed a final opinion or conclusion about the Bardet Road project based on only a superficial review of information. Instead, the context in which she used the term "cursory review" in her e-mail suggests otherwise. Moreover, by conveying her comments about the Bardet Road project in the manner she did, Ms. Reyerer made clear that she had undertaken more than a mere "cursory review" of the project, that she had formed firm and negative conclusions about the project and the project architect (Mr. Mason), and that she wanted the other ASRB members to consider her conclusions in deciding the matter before them.
- Ms. Reyerer's May 2, 2016 e-mail violated Section 6 accordingly.

**I. Findings And Conclusions Related To Complaint Of Violation Of Section 7 By Having A Communication Between Three Members Of The ASRB In Violation of the Brown Act: Charge Not Sustained.**

- Section 7 of the Ethics Code requires Board members to "[u]phold 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."
- The Brown Act, Government Code section 54952.2, defines the term "meeting" as follows:

"As used in this chapter, 'meeting' means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take

action on any item of business that is within the subject matter jurisdiction of the legislative body.”

- Ms. Reyering copied her May 2, 2016 e-mail to two other members of the ASRB, Ms. Lubin and Mr. Larson.
- Doing so did not violate the Brown Act.
- The Brown Act, specifically Government Code section 54952.2 prohibits the use of “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business.” The section does not require that the meeting result in an action, and includes the use of e-mails. (See generally CEB, California Municipal Law Handbook, section 2.13, p. 119 (2015).)
- The use of e-mails by a majority of board members to exchange facts, advance or clarify a member’s understanding of an issue, or advance the ultimate resolution of an issue regarding an agenda item violates section 54952.2. (84 Cal. Ops. Atty. Gen. 30 (2001).)
- The Ethics Code section on the Brown Act itself reiterates that the Brown Act prohibits use of e-mails to discuss or deliberate on any public business, not simply to take action. It provides (at p. 24):

“Any time in which a majority of the members of a board, commission, or committee meet face-to-face or use intermediaries or technological devices (**such as phone, fax, e-mail, or letters**) to hear, discuss, or deliberate upon any public business, a ‘meeting’ is taking place under the definition in the Brown Act.” (Emphasis added.)

- Town Staff had advised the ASRB members and Ms. Reyering prior to May 2, 2016 not to send e-mail messages to a majority of ASRB members because doing so would violate the Brown Act.
- In this instance, the May 2, 2016 e-mail did not constitute a prohibited meeting in violation of the Brown Act for several reasons.
- First, it was a one-way e-mail to which neither ASRB recipient was invited to or did respond. There was neither a series of messages nor a discussion or deliberation.
- Second, the e-mail was expressly intended as a public “desk item” communication, and thus was not intended to deprive the public of any information.

- Third, the e-mail was in any event mis-addressed to one of the ASRB member recipients, Ms. Lubin, such that she did not see or receive it in advance of the ASRB meeting.
- Ms. Reyerer did not violate Section 7 accordingly.
- I do not find, as Mr. Petta seems to argue, that a purely one-way e-mail to a majority of members can never constitute a Brown Act violation. Rather, such messages can in some instances either constitute or invite a violation. For that reason, and also because they can implicate fairness and due process principles, the Town Attorney and Town staff have consistently advised against such communications. Ms. Young and Ms. Lubin both confirmed this point during their interviews.

**J. Findings And Conclusions Related To Complaint Of Violation Of Section 10 By Creating The Appearance Of A Conflict Between Ms. Reyerer's Public Duty As An ASRB Member And Her Personal Disagreements With Councilmember Mason: Charge Not Sustained.**

- Section 10 of the Ethics Code requires that Board members “[a]void 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.”
- Like Sections 3 and 6, Section 10 is consistent with fair hearing and due process principles (as well as financial conflict standards).
- As noted above, fair hearing rules prohibit decision makers, such as Ms. Reyerer and the ASRB here, from having actual bias or an appearance of bias in adjudicative matters that come before them for decision.
- Impermissible bias may be found where a decision maker has personal animosity toward an applicant for a land use entitlement. (See, e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152.) In such circumstances, where there is evidence of such personal animosity, fair hearing and due process principles generally require the individual

member to recuse him or herself from the decision, i.e., not to participate in the decision making process.

- Mr. Mason and his firm provided architectural services for Ms. Reyerer.
- While Mr. Burow and Mr. Mason both told me that Mr. Mason and Ms. Reyerer had a disagreement about Ms. Reyerer's utilization of Mr. Mason's architectural services after Mr. Mason's and Ms. Reyerer's professional relationship had substantially ended, Mr. Mason denied that disagreement created any ongoing personal animosity between them.
- Mr. Mason did not support or endorse Ms. Reyerer's candidacy for the Town Council.
- Both Mr. Mason and Ms. Reyerer told me that Mr. Mason told Ms. Reyerer that his decision not to support or endorse Ms. Reyerer's candidacy was not unique to Ms. Reyerer, but instead was his normal practice not to support or endorse any Council candidates.
- I found no evidence to support the claim that Ms. Reyerer had personal animosity toward Mr. Mason such that she should have disqualified herself from any participation on Mr. Mason's firm's client's Bardet Road project.<sup>11</sup> Ms. Reyerer and her attorney both denied such animosity. In light of Mr. Mason's corroborating testimony, I find Ms. Reyerer to be credible on this point.
- The only evidence presented that Ms. Reyerer had personal animosity toward Mr. Mason was that presented by Mr. Burow. In light of Mr. Mason's and Ms. Reyerer's contrary statements, I do not find Mr. Burow's statement in this specific regard to be credible.<sup>12</sup>
- On December 6, 2016, after hearing my preliminary conclusions, Mr. Burow sent Ms. Savaree a letter, along with a letter from Mr. Mason dated May 10, 2016 by which Mr. Mason suggested that he did, in fact, believe Ms. Reyerer's e-mail was based on a

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<sup>11</sup> Although he did not emphasize this point during the interview, Mr. Mason suggested, by contrast, that he does have negative feelings toward Ms. Reyerer, based on the fact that he feels she has unfairly singled him and his firm out for unfair treatment in connection with the Bardet Road and other projects before the ASRB. The nature of the unfair treatment is discussed above, and is premised on Mr. Mason's belief (which I have sustained with respect to the Bardet Road project) that Ms. Reyerer holds him and his clients to a heightened standard that does not apply to other project applicants. Such negative feelings on the part of Mr. Mason toward Ms. Reyerer do not suggest a violation of Section 10 by Ms. Reyerer.

<sup>12</sup> While as noted above, Ms. Reyerer contacted Mr. Mason about this point after I interviewed her, and in so doing improperly sought to influence Mr. Mason's testimony and my investigation, it did not affect my findings and conclusion on this point.

personal “grudge” arising from the two incidents described in Mr. Burow’s complaint. These letters from Mr. Burow and Mr. Mason do not change my conclusion. This is because, as stated above, Mr. Mason expressly denied that there was such a “grudge” when I interviewed him in August.

- Ms. Reyerer’s e-mail did not violate Section 10 accordingly.

**K. Findings And Conclusions Related To Complaint Of Violation Of Section 13 By Failing To Maintain A Positive And Constructive Working Environment For The Bardet Road Project Applicant And Mr. Mason's Business: Charge Sustained.**

- Section 13 requires that Board members “[s]upport the maintenance of a positive and constructive work place environment for Town employees and for citizens and businesses dealing with the Town.”
- As discussed above, Ms. Reyerer’s e-mail was unfair to Mr. Mason and his firm’s Bardet Road project client. It sought to hold Mr. Mason and his architectural clients to a standard not imposed on any other architects and project applicants. As I have found above, reasonably read, Ms. Reyerer’s statements constitute an attack or charge that Mr. Mason acted inappropriately and unethically by allowing his firm to represent the Bardet Road applicants, and by further implying that Mr. Mason had acted in an unethical manner by using his position as a Councilmember in an unfair manner, to seek personal advantage and/or professional advantage for his private clients. Doing so constituted a personal charge and verbal attack on Mr. Mason’s character, ethics and morals.
- Plainly with respect to Mr. Mason, his firm and the Bardet Road clients, Ms. Reyerer’s e-mail does not “[s]upport the maintenance of a positive and constructive work place environment for citizens and businesses dealing with the Town.”
- Ms. Reyerer’s May 2, 2016 e-mail violated Section 13 accordingly.

**VIII. MS. REYERER’S ARGUMENTS IN DEFENSE AND RESPONSES THERETO**

Through her attorney’s two letters, Ms. Reyerer asserts several arguments as defenses to the charges against her. These arguments, and my responses, are as follows:

1. **Argument:** Ms. Reyerer asserts that she did not violate any provision of the Ethics Code because she simply asked in her e-mail that her comments be read into the record, and did not attempt to influence other ASRB members or recommend that they vote in any particular way.

**Response:** I have concluded otherwise, as discussed above. Ms. Reyerling intended that the ASRB members consider her comments, and the minutes and record of the meeting, as well as Mr. Mason's and Ms. Lubin's testimony, support the reasonable inference that the other ASRB members did consider, and were influenced by, Ms. Reyerling's comments.

2. **Argument:** Ms. Reyerling asserts that her comments do not reflect a conclusion about the project.

**Response:** I have concluded otherwise that Ms. Reyerling's comments reflect that she did form negative conclusions about the Bardet Road project and Mr. Mason's firm's representation of the applicant.

3. **Argument:** Ms. Reyerling asserts that even if her comments could be construed as a conclusion, her inability to vote made any such conclusion irrelevant.

**Response:** The fact that Ms. Reyerling did not vote on the project is irrelevant. She intended that the ASRB members consider her comments, and the minutes and record of the meeting, as well as Mr. Mason's and Ms. Lubin's testimony, support the reasonable inference that the other ASRB members did consider, and were influenced by, Ms. Reyerling's comments.

4. **Argument:** Ms. Reyerling asserts that she has a constitutional right of free speech to express her opinions on a project, and that the Ethics Code does not undertake to punish her exercise of that right.

**Response:** My investigation was limited to whether Ms. Reyerling's e-mail violated the Ethics Code. I have not been asked to determine whether any action or rule by the Town is for the purpose of penalizing or discouraging Ms. Reyerling's expression.

I note, however, that I have not been presented evidence that suggests such a thing. Rather, the evidence suggests that the complaint against Ms. Reyerling was premised on her inappropriate conduct in prejudging the project and attacking Mr. Mason.

The evidence also establishes that Town Staff sought on other occasions to provide advice and counsel to Ms. Reyerling, and not pursue formal charges against her, when members of the public complained that she had engaged in similar instances of improper behavior in violation of the Town's Ethics Code.

Finally, the Ethics Code clearly authorizes the Town Council, after appropriate investigation and hearing process, to impose sanctions for its violation. Settled law recognizes the Town Council's authority to enforce its Ethics Code and otherwise control the members of

the Town Council's advisory boards and commissions, including the ASRB. (See, e.g., *Lumpkin v. Brown*, 109 F.3d 1498 (9th Cir. 1997); *Besig v. Friend*, 460 F.Supp. 134 (N.D. Cal. 1978); see also generally 4 McQuillan Municipal Corporations, § 12.310 (3d. ed.).)

5. **Argument:** Ms. Reyerer asserts that she did not violate the Brown Act because her e-mail did not run afoul of the Act's intent that ASRB actions be taken openly and their deliberations be conducted openly.

**Response:** I agree, as discussed above.

6. **Argument:** Ms. Reyerer asserts that the interview I conducted with her was akin to an adversarial cross-examination.

**Response:** Interviews with all witnesses were conducted in the same manner, with the same tone and temperament for all witnesses. I conducted the investigation, and my interview of all witnesses, without preconceptions or conclusions. I did and do not consider Ms. Reyerer as an adversary, and did not treat her as one.

7. **Argument:** Ms. Reyerer asserts that the Town must presume no ethics violation has occurred and that Mr. Burow must prove any violation.

**Response:** The entire investigation, including Ms. Reyerer's interview, was conducted on the basis of the presumption that no violation had occurred, and that any factual evidence required to prove a violation must be established by a preponderance of evidence standard.

8. **Argument:** Ms. Reyerer asserts that Mr. Burow has "ulterior motives" in bringing his complaint against Ms. Reyerer, based on political and policy disagreements and animosity.

**Response:** Whether Mr. Burow had ulterior motives for his complaint against Ms. Reyerer was irrelevant to my investigation of whether Ms. Reyerer's e-mail violated the Ethics Code. The Town Council may determine otherwise. My investigation, including my interviews of Ms. Young, Mr. Burow, Ms. Reyerer, Mr. Mason and Ms. Lubin, did lead me to conclude that Mr. Burow and Ms. Reyerer have a history of disagreement over land use policy and process in the Town.

9. **Argument:** Ms. Reyerer asserts that other members of the ASRB and Planning Commission routinely sent other members their comments when they were to be absent from meetings; that Ms. Reyerer relied on this practice; and that Ms. Reyerer ought not be singled out for punishment. Ms. Reyerer asserts this is particularly true where the

Town Manager was aware of (and sought to stop) such exchanges, but did not initiate a formal Ethics Code investigation.

**Response:** My investigation proceeded on the assumption that whether other members of Town boards and commissions had in the past acted similarly to Ms. Reyerling was irrelevant to my investigation of whether Ms. Reyerling's e-mail violated the Ethics Code.

However, I was not provided credible information to support the assertion that the exchange of such e-mails was a common practice.<sup>13</sup> The Town Manager also stated that on numerous occasions, Staff attempted to have informal complaints against Town officials, including Ms. Reyerling, resolved informally without initiation of formal Ethics Code proceedings.

Staff recalls there have been only three instances in which formal Ethics Code proceedings have been initiated. In all three, although Staff suggested its normal practice of trying to have the complaints resolved informally, the complainants requested formal proceedings.

10. **Argument:** Ms. Reyerling asserts that other members of the ASRB and Planning Commission routinely notified their colleagues and Town staff when they would be absent from meetings, and never notified Town Council; that Ms. Reyerling relied on this practice; and that Ms. Reyerling ought not be singled out for punishment.

**Response:** I have not sustained the charge based on Ms. Reyerling's attendance record.

In addition, my investigation proceeded on the assumption that whether other members of Town boards and commissions had in the past acted similarly to Ms. Reyerling was irrelevant to my investigation of whether Ms. Reyerling's e-mail violated the Ethics Code. The Town Council may determine otherwise. In any event, I conclude there was no such routine or common practice, as noted above.

11. **Argument:** Ms. Reyerling asserts that the issue she raised in her e-mail was one of public concern that had been raised previously, most notably at a Town Council meeting dated October 13, 2015, and that neither the Town Council nor the Town Attorney undertook to respond to the issue. Ms. Reyerling further asserts that her e-mail comments

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<sup>13</sup> Although Ms. Reyerling's attorney provided selected e-mails that do not in my view support the conclusion that such exchanges are routine or common in the Town, the Town Planning Director and Town Manager both told me they routinely trained and cautioned Town board members to avoid doing so, something that Ms. Lubin corroborated. Ms. Young testified that while such messages "were not unheard of," they were not a common practice.

were especially important because the Ethics Code itself prohibits “even the appearance” of a conflict.

**Response:** The issue discussed at the October 13 meeting did not concern the specific issue here. The question raised at the October 13 meeting was whether Councilmember Mason and Mr. Tanner should participate on a Town subcommittee reviewing and recommending changes to the Town’s regulations, not whether Town Councilmembers’ firms may represent private clients on specific land use applications before the Town.

In fact, it was commonly understood prior to May 2, 2016, that while individual Town Council and Board members should not personally appear, Town Council, Planning Commission and Board members’ firms may legally represent private clients before the Town, consistent with regulations and advice by the Fair Political Practices Commission. I have concluded that given that advice, it was inappropriate for Ms. Reyerer to hold Mr. Mason, his firm and his clients to a higher standard that was not applied to all other firms and applicants.

**12. Argument:** Ms. Reyerer asserts that under the Brown Act, Government Code §54960, she has the right to sue the Town if it enforces sanctions against her expression of what she asserts is her constitutional right of expression of her concern.

**Response:** My investigation was limited to whether Ms. Reyerer’s e-mail violated the Ethics Code. I have not been asked to determine whether any action or rule by the Town is for the purpose of penalizing or discouraging Ms. Reyerer’s expression. I have not been presented evidence that suggests such a thing. The Town Council may determine otherwise.

I do note, however, that while the Brown Act (§54960) affords this general right to sue, it does not enlarge existing or create new rights of expression. (See Government Code §54954.3) Nor does §54960 undertake to diminish the well-established discretion of the Town Council to enforce its Ethics Code and otherwise control the members of the Town Council’s advisory boards and commissions, including the ASRB. (See, e.g., *Lumpkin v. Brown, supra*, 109 F.3d 1498; *Besig v. Friend, supra*, 460 F.Supp. 134; see also generally 4 McQuillan Municipal Corporations, *supra*, § 12.310.)

**13. Argument:** Ms. Reyerer asserts that when she raised concerns in October 2015 about Mr. Burow’s comments about ASRB members that Ms. Reyerer felt were inappropriate, the Town Attorney told her to simply convey her concerns to Mr. Burow, and did not initiate a formal Ethics Code investigation. Ms. Reyerer asserts that the Town’s response to Mr. Burow’s complaint in May 2016 reflects that the Town has created an appearance of selective prosecution against her alone.

**Response:** As discussed above, the Town Manager has stated that his practice has been, to the extent possible, to distinguish between situations where a person makes an informal complaint about the conduct of an official, on the one hand, and situations where a person insists on making a formal complaint under the Ethics Code. The rationale for this practice is to try to maintain some degree of cordiality among the volunteer members of the Town's boards and commissions, and to avoid the disruption and expense associated with formal complaints.

In addition, Town Staff has provided examples of informal complaints brought by members of the public involving claims of misconduct by Ms. Reyerling in which the informal complaints were responded to in the same manner as the Town Attorney responded to Ms. Reyerling's October 2015 concern.

I find Town Staff's explanation to be reasonable and credible in the absence of contrary evidence. Ms. Reyerling appears to have been treated fairly and in accordance with the Town's practice. Indeed, she has benefitted from, and been protected by the practice on several occasions.

14. **Argument:** Ms. Reyerling asserts that my interview questions and demeanor suggest a lack of impartiality.

**Response:** Interviews with all witnesses were conducted in the same manner, with the same tone and temperament for all witnesses. Ms. Reyerling was not treated as an adversary.

15. **Argument:** Ms. Reyerling believes her argument about my interview questions and demeanor is demonstrated particularly by my question whether she had taken medication that could affect her ability to respond.

**Response:** This question is a standard question asked of witnesses at the outset of an interview to establish their capacity to understand questions and provide coherent answers. (See generally *Dunne on Depositions in California*, Section 6:8.) I explained that reason to Ms. Reyerling personally when I asked the question.

16. **Argument:** Ms. Reyerling asserts that my asserted animosity toward her is also demonstrated by my line of questioning about whether Ms. Reyerling had any animosity with or for Councilmember Mason based on their previous business (architectural) relationship, or arising from Mr. Mason's decision not to endorse Ms. Reyerling's Council candidacy.

**Response:** This was one of the factual bases for Mr. Burow's complaint under Section 10 of the Ethics Code. It was an appropriate line of questioning accordingly. Mr. Mason was asked

similar questions, as described above. In any event, I have resolved the issue in Ms. Reyerling's favor, as discussed above.

17. **Argument:** Ms. Reyerling asserts that although my interview questions repeatedly implied that her e-mail "targeted" Mr. Mason for special treatment under the ASRB's design guidelines, she would never be and has never been punitive, capricious or personal in her observations or opinions as a Board member.

**Response:** I have concluded otherwise. Ms. Reyerling's e-mail did essentially single Mr. Mason out for treatment different to the standard and rules applicable to other applicants, and further did so in an abusive, attacking manner.

18. **Argument:** Ms. Reyerling asserts that I refused to answer her questions during her interview.

**Response:** I conducted all witness interviews in the same manner, and declined to answer witnesses' questions. I was engaged to ask, not answer questions, and to prepare this report.

19. **Argument:** Ms. Reyerling requests that I reconsider my conduct during the interview and ensure that the preconceptions I displayed do not prejudice my review of the evidence and formation of my conclusions.

**Response:** I formed no preconceptions prior to concluding all interviews and reviewing and considering all evidence and applicable code provisions and law. Accordingly, no preconceptions prejudiced my review and consideration of the evidence or the formation of my findings and conclusions.

20. **Argument:** Based on letters of support and commendations and awards received by Ms. Reyerling, which she and her attorney presented to me at her interview, many in the Woodside community (and beyond) view Ms. Reyerling as a dedicated, caring, competent, intelligent, well-informed, diligent and ethical community volunteer/advocate.

**Response:** I find these letters, commendations and awards to be persuasive evidence that Ms. Reyerling is viewed by her friends and supporters, and by many in the community, as possessing the attributes and qualities stated above. I further find, however, that most of the letters provide only general "character evidence," and do not attempt to address the specific issues presented by this complaint.

I also find, based on my review of other evidence, that others in the community view Ms. Reyerling in less than flattering terms with respect to her approach to both procedural

and substantive land use policy issues. Indeed, this fact is acknowledged by one of Ms. Reyerer's supporters, Mr. Romines, in his letter dated August 3, 2016 ("[S]he has her share of detractors"). Moreover, as noted above, the Town Manager and others have received several complaints about Ms. Reyerer's conduct over the years. These complaints have included complaints that Ms. Reyerer had acted inappropriately as an advocate, rather than as an impartial judge, about land use projects before the ASRB.

I further find that there exists a divide in the Woodside community with respect to the best approaches to the procedural and substantive land use policy questions that the Town confronts on an ongoing basis.

Ultimately, I find that the letters and awards, and how Ms. Reyerer is viewed in the community, are irrelevant to whether Ms. Reyerer violated the Ethics Code by her May 2, 2016 e-mail. The Town Council may, of course, consider the letters and awards as mitigation for any finding of a violation, and in determining whether and to what extent to impose any sanction.

#### **IX. NEXT STEPS UNDER THE TOWN'S ETHICS CODE**

- The Ethics Code provides in relevant part as follows with respect to the process for investigating and acting on charges that a Board member has violated the Ethics Code:

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. ... 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.

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 Mayor may determine whether additional investigation is warranted, and whether to adopt this report for presentation to the Town Council.
- If the Mayor determines that no further investigation is warranted, and to present this report, the report should be presented to the Town Council at a public meeting at which the Council should accept testimony from stakeholders (i.e., the complaining Party, Mr. Burow, the subject of the complaint, Ms. Reyering) and the public.
- After hearing such testimony, the Council should determine whether Ms. Reyering has violated the Ethics Code, and if so, whether to impose sanctions.

## **X. CONCLUSION**

Having completed my investigation of Mr. Burow's complaint against Ms. Reyering, I have concluded as follows:

**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.