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The Almanac

Atherton to refund some road-impact fees

by **Dave Boyce**
Almanac Staff

Residents of Atherton have little to cheer about in considering the town government's straitened financial condition, but for residents who engaged in major home construction projects during the two years when the town had an elevated road-impact fee, partial refunds of those fees might be a reason to smile.

The Atherton City Council voted 4-1 Wednesday (July 21) to refund 40 percent of the town's road-impact fee to anyone who paid it between Aug. 17, 2007, and Sept. 18, 2009.

Between those dates, the fee was 40 percent higher than it had been and, as such, Councilman Charles Marsala told his colleagues, was not consistent with such fees in other Bay Area communities.

Affected residents and/or building professionals will have to apply for a refund from a pool of \$427,000.

Go to [[is.gd this link](#)] and turn to Page 130 for an overview of the refunding procedure.

The road-impact fee is charged to developers and contractors to be used for repairing the roads their heavy equipment damages during construction projects. Many cities charge the fee, but a type of road-impact fee was successfully challenged in court recently, opening the door for broader legal challenges and making some cities nervous about charging the fee in the future.

The newly approved plan is a modified version of one approved in February. Under that plan, the refund would have gone to anyone who paid the fee from July 2006 to mid-September 2009, when the fee was rescinded.

Under this compromise plan, proposed earlier by Mr. Marsala but not accepted by the council majority, the refund will be limited to the additional money paid by builders as a result of the fee hike imposed in August 2007. Builders who paid fees from July 2006 to Aug. 17, 2007, will get no refund.

Any issue that affects Atherton's finances is important because the town is "fast approaching a fiscal emergency with a cumulative deficit over the next four years of \$4.889 million," said Alain Enthoven, a member of the town's Finance Committee and an emeritus professor in Stanford University's business school, in a July 15 letter to the council.

In opposing the refunds, Councilman Jim Dobbie said that he is against any refunding. "When you see the damage done to the roads, it's exponential," he said, referring to the impact of a 10,000-pound truck as compared with that of five 2,000-pound cars.

Councilwoman Elizabeth Lewis agreed to the 40 percent figure, but said she considers the fee a disincentive to developers. "Real estate is our business in our town," she said in an apparent reference to the absence of sales tax revenues from retail businesses, of which there are none in Atherton.

Ms. Lewis said she would prefer that the town make do with property and parcel tax revenues.

Mr. Dobbie disagreed. "I don't think the road impact fee is going to make one whit of difference to development here," he said.

Ms. Lewis responded with a single word: "Lawsuits."

Indeed, Menlo Park-based Pacific Peninsula Group has already filed a claim -- the first step to a lawsuit -- for \$300,000 over Atherton's road impact fees, Town Attorney Wynne Furth told The Almanac.

While there is now about \$1.5 million in the road impact fee fund, the money for the refunds will come from an undesignated reserve of the general fund, a 3-2 majority decided, with Mayor Kathy McKeithen and Councilman Jim Dobbie in opposition. Such a fund

transfer would correct a use of \$432,713 in fee revenues to improve the town's corporation yard, a project not related to road impacts, according to a staff report.

Money collected through fees is restricted by law to uses directly related to the purpose of the fee, Mr. Marsala said in an interview. Using the money for other purposes can re-characterize the fee as a tax, which must be approved by voters, and could expose the town to lawsuits, he said.

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