



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**June 15, 2005**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Conwell called the meeting to order at 7:06 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

**PRESENT:** James R. Janz  
Charles E. Marsala  
Alan B. Carlson  
William R. Conwell  
Kathy McKeithen

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

3. **PRESENTATIONS**

Town-Wide Historical Inventory by Laura Jones

Laura Jones, Historical Consultant and Stanford University Archeologist, introduced her associate, Julie Cane, who would be performing most of the archival work related to the artifact inventory. Ms. Jones reviewed the process by which artifacts would be identified, documented, and evaluated and responded to Council's questions.

William Grindley, Atherton, requested to be part of the community volunteers who would assist in the process.

Mr. Rasmussen, Atherton, requested to be part of the community volunteers who would assist in the process.

Mayor Conwell presented a Certificate of Appreciation to Bob Jenkins for his service on the Audit Committee.

Council Member McKeithen thanked everyone who worked on the successful Measure “W” campaign.

#### **4. COUNCIL REPORTS**

- Council Member Janz said a design contract had been awarded for the Menlo-Atherton High School’s Performing Arts Center and noted no one from the Atherton City Council was asked to participate on the design jury. Mayor Conwell and City Manager Jim Robinson were trying to establish better communications with the school. As a result of meetings with the San Mateo County representatives of the Caltrain Joint Powers Board, weekend service for the Atherton Station had been reinstated in the new schedule effective August 1, 2005. The Transportation Authority approved \$3.95 million in funds for the design and construction to make Atherton a non-holdout station. The proposed shuttle program would operate Monday through Friday for 6 hours a day, 3 hours in the morning and 3 hours in the evening. Both Redwood City and Menlo Park were discussed as shuttle destinations. On June 6, 2005, Mike Scanlon, Director of Caltrain and SamTrans; Transit Authority staff; and Supervisor Jerry Hill invited representatives from various cities on the Peninsula and the San Mateo County Economic Development Authority to discuss the concept of marketing the Peninsula as a separate entity from Silicon Valley/San Jose and San Francisco.
- Vice Mayor Marsala was concerned regarding the impacts of the new Performing Arts Center at Menlo-Atherton High School. City Manager Jim Robinson spoke to the Superintendent of the Sequoia Union High School District who said the process would take 2-1/2 years from design to finish and indicated a willingness for Atherton to be a participant in the process. Deputy Town Planner Lisa Costa Sanders said the recommendation from the General Plan Committee was that special events at school facilities continue to be exempt from the Special Events Ordinance and that guidelines be established to require a Special Events permit when a non-school event occurred outside of the guidelines. Vice Mayor Marsala noted the Tennis Committee was holding a fundraiser mixer Thursday, June 23, 2005. He thanked Marion Oster, Bob Huber, and Phil Lively for the success of Measure W. He participated in the DARE Program Graduation for Sacred Heart School where 40-50 students received their certificates. Vice Mayor Marsala presented the State of Town Address for the Atherton Civic Interest League (ACIL) and recorded it for the cable channel. He noted Los Altos Hills would be dedicating its new Town Hall the next evening.
- Council Member Carlson added his appreciation to all those who contributed to the success of Measure W.
- Council Member McKeithen was pleased to announce Phase I of the Upper Atherton Channel work would begin at the end of summer. She also participated in the DARE Program Graduation. She noted the Transportation Committee meeting was scheduled for July 12, 2005, and a Finance Committee meeting would be scheduled in the near future.

- **Mayor Conwell attended the final meeting of the San Mateo County Criminal Justice Commission where it was decided that the annual awards dinner would still be held in the fall. The San Francisco Airport Roundtable meeting was scheduled for June 21, 2005. Area mayors, as well as members of the FAA, were convening to discuss the ongoing issue of airplane noise. Mayor Conwell and Police Chief Bob Brennan attended the Excellence in Education Awards for Menlo Park School District. Additionally, he spoke to students at Los Lomitas School. Mayor Conwell attended a Red Cross breakfast where Masters of Ceremonies David Louey and Helen Houseman recognized local heroes.**

## **PUBLIC COMMENTS**

**Bob Huber, Atherton, spoke regarding train service to PacBell Park.**

**Gregory Conlon, Atherton, Caltrain Corridor Subcommittee Member, submitted a letter to Council and spoke regarding potential safety issues with the high-speed trains. He suggested installation of quad gates, added fencing, and a warning sign at Fair Oaks.**

**City Manager Jim Robinson asked Public Works Director Duncan Jones to review whether extra signage was necessary and stated the Town was currently pursuing the possibility/feasibility of installing quad gates and enforcing a quiet zone.**

**Council Member Janz said the Caltrain Corridor Subcommittee was looking into quad gates and a quiet zone. Implementing a quiet zone was dependent upon the Federal Railway Administration finalizing its rules, hopefully in July. Further discussion centered on possible application to the Transportation Authority for separate funding for the projects and/or for a consultant to represent the Town's interests.**

**Bob Huber, Atherton, spoke regarding parking for the Performing Arts Center at Menlo-Atherton High School.**

**Bob Jenkins, Atherton, suggested the Council recognize Marion Oster, Phil Lively, and Bob Huber for their work on Measure W. He noted Selby Lane School was awarded the Harvard Club of San Francisco Distinguished Secondary Educator Award. Additionally, the International Baccalaureate program was funded for the next two years.**

## **STAFF REPORTS**

- **City Attorney Marc Hynes reported out of Closed Session as follows:**

**CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6**

**Agency Negotiator: James H. Robinson, City Manager**

**Employee Organization: Atherton Police Officers Association (APOA)**



**PLAN IN THE STRATEGIC PARK AND RECREATION PLAN (Direction from the City Council Meeting of April 20, 2005)**

**Received the report of Park and Recreation Commission action of June 1, 2005, recommendation to incorporate the Landscape Master Plan as an element of the Strategic Park and Recreation Plan.**

**14. AWARDED CONTRACT – SELBY LANE RECONSTRUCTION PROJECT, PROJECT NO. 04-004**

**Awarded the contract to the low bidder, Interstate Grading & Paving, Inc., for a total authorization of \$1,471,383.65 as determined by the June 14, 2005, bids.**

**15. APPROVED AN AGREEMENT WITH THE CITY OF MENLO PARK FOR THE RESURFACING OF LAUREL STREET FOR AN ESTIMATED AMOUNT OF \$19,321, WITH A 10% CONTINGENCY OF \$1,932, FOR A TOTAL AUTHORIZATION OF \$21,253**

**Approved an agreement with the City of Menlo Park for the overlay of the Atherton portion of Laurel Street.**

**16. APPROVED PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE UPPER ATHERTON CHANNEL REPAIR PROJECT, PHASE 1, PROJECT NO. 04-007**

**Approved the plans and specifications and authorized advertisement for bids for the Upper Atherton Channel Repair Project, Phase 1, Project No. 04-007.**

**17. ADOPTED A RESOLUTION RECOMMENDING THAT THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT IMPOSE CHARGES FOR FUNDING THE 2005/06 COUNTYWIDE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PROGRAM**

**Adopted Resolution No. 05-37 recommending that the San Mateo County Flood Control District impose charges for funding the Fiscal Year 2005/06 Countywide National Pollution Discharge Elimination System (NPDES) General Program.**

**18. CONTRACT WITH STATE FRANCHISE TAX BOARD FOR SHARING INFORMATION FOR BUSINESS LICENSE PURPOSES**

**Authorized the City Manager to execute an agreement with the State of California Franchise Tax Board to provide information related to business entities operating within the Town of Atherton.**

**19. AWARDED THE CONTRACT FOR THE 2005 TREE MAINTENANCE PROJECT, PROJECT NO. 04-006**

**Awarded the contract for the 2005 Tree Maintenance Project, Project No. 04-006, to The Professional Tree Care Co., the low bidder on the June 10, 2005, bids, for 279.66 crew hours at a crew rate of \$118.00, for a total contract of \$33,000.**

**20. AGREEMENT WITH VERIZON WIRELESS TO PROVIDE TOWN STAFF CELLULAR PHONE SERVICES**

**Authorized the City Manager to enter into an agreement with Verizon Wireless for Town cellular phone services.**

**PUBLIC HEARINGS (Items 21 - 23)**

**21. ADOPTION OF A RESOLUTION ADOPTING THE FY 2005-06 OPERATING AND CAPITAL BUDGET**

**Finance Director John Johns presented the staff report. The passage of Measure W would allow the Town to maintain the current level of services, maintain and slightly improve the Town's infrastructure, and prevent spending down the limited reserves. Estimates for revenues were based on recurring revenues and was a conservative approach. Estimates for payroll expenses were based upon an understanding of each department's staffing requirements. Non-payroll expenses were based upon consultation and review with the operating departments and the City Manager. Finance Director Johns responded to Council questions.**

**In response to Vice Mayor Marsala, Finance Director Johns said ERAF reimbursements amounted to \$159,000 in May as a result of the county controller's audit of 2004-2005 activity. An additional \$159,000 was expected in November.**

**In response to Council Member McKeithen, City Manager Jim Robinson said events at Holbrook-Palmer Park were monitored. The Park and Recreation Commission reviewed fees during the annual review of the Park Strategic Plan. Some fees were increased two years ago; however, the Town needed to stay competitive.**

**Regarding Intergovernmental Revenues, Finance Director Johns explained the \$30,000 Federal School Resource Officer Grant was being used to defray the cost of deploying school resource officers to schools for which reimbursement was not received. The grant was in the final year and was not available for renewal. An increase in other revenues resulted in the reduction of \$14,000. Council Member McKeithen suggested the Sequoia Union High School District should be asked to contribute more for the school resource officer. Police Chief Bob Brennan said he was in negotiations with the district at the present time.**

**Finance Director Johns clarified legal fees were charged on a prorata basis to all departments. Exceptional charges above the retainer and related to building would be charged as such.**

**Regarding cost of living increases, Finance Director Johns clarified the current labor agreements provided for parity with other governmental agencies. The budget assumed adjustments would be made to maintain parity. An estimate of the additional expense was at the 70<sup>th</sup> percentile. He agreed to alter the terminology to indicate salary adjustments as a result of labor negotiations.**

**After discussion regarding theft at construction sites, City Manager Robinson said the cost to install a device to catch persons in the act would be allocated to the Building Department rather than the Police Department. The use of the equipment would be broadened beyond residential construction sites.**

**City Manager Robinson clarified \$237,000 was to reduce the visibility and impact of the Corporation Yard at Holbrook-Palmer Park and upgrades to the Pavilion and other Town facilities. The Capital Improvement Plan provided information on funding sources for recommended appropriations for projects.**

**Finance Director Johns clarified the reserve fund was recommended to remain at \$3.7 million which included the additional \$200,000 set aside two years ago from the parcel tax. The money could be returned at any time if necessary. Over the next three years, the draw on the parcel tax to sustain current operations would remain the same. A recommended increase would not occur until Fiscal Year 2008.**

**Council Member Carlson was pleased with the budget and pleased with the use of the parcel tax. He believed, however, the budgeting process should not start with the assumption of what was spent/budgeted from last year and adjusted by 2-1/2%. He encouraged staff to go back to a zero-based budget by having departments justify their programs.**

**City Manager Robinson described the Town's budget as a zero-based budget minus \$1.8 million. With the passage of Measure W, the Town was able to continue to allow the parcel tax revenues to fund 10% of operating expenditures and 40% of capital expenditures. The Council would need to cautiously look at the greatest need in the community relative to capital improvements as well as operating expenses.**

**Mayor Conwell opened the public hearing. No one came forward to speak, and Mayor Conwell closed the public hearing.**

**MOTION - to adopt Resolution No. 05-38 adopting the Recommended Fiscal Year 2005-06 Operating and Capital Budget.**

**M/S Janz/McKeithen**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**



**25. APPROVAL OF JOINT POWERS AGREEMENT WITH PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE**

**Christine Maley-Grubl, Director of the Peninsula Traffic Congestion Relief Alliance, was pleased the Town was considering becoming a member of the JPA. Additionally, Council was asked to appoint one Council Member as a representative and one as an alternate. The agreement was called a restatement because minor changes had been made and all the member cities were being asked to re-sign. Ms. Grubl said the agency was five years old and did not receive funding from its members at the present time. Funding came from the San Mateo County Transportation Authority and the City/County Association of Governments.**

**Mayor Conwell recommended joining the Peninsula Traffic Congestion Relief Alliance for one year.**

**MOTION - to approve the First Amendment and Restatement of Joint Powers Agreement establishing the Peninsula Traffic Congestion Relief Alliance; adopt Resolution No. 05-42 approving the agreement; appoint Council Member Carlson to serve on the Alliance Board; and appoint Council Member McKeithen as the alternate.**

**M/S Conwell/Janz Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

**Mayor Conwell called for a brief recess at 9:32 p.m. The meeting was reconvened at 10:42 p.m.**

**26. ADOPTION OF RESOLUTION DECLARING THE RESULTS OF THE SPECIAL MUNICIPAL ELECTION HELD ON JUNE 7, 2005**

**Assistant to the City Manager/Acting City Clerk Linda Kelly presented a brief staff report. The San Mateo County Registrar of Voters completed the counting of the official canvass on Monday, June 19, 2005, and provided the official election results that were handed out that evening. The resolution before Council would adopt the official results that Measure W was approved by a two-thirds vote of the electorate.**

**Vice Mayor Marsala thanked Mayor Conwell for his work on the passage of Measure W.**

**MOTION - to adopt Resolution No. 05-41 declaring the results of the Special Municipal Election for Measure "W," adopted by the voters on June 7, 2005.**

**M/S McKeithen/Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

**The following is hereby entered into the official record per California Elections Code Section 10264.**

**RESOLUTION 05-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
DECLARING "MEASURE W" APPROVED BY A TWO-THIRDS VOTE  
AT A SPECIAL ELECTION HELD JUNE 7, 2005**

**WHEREAS**, a Special Municipal Election was held in the Town of Atherton on Tuesday, June 7, 2005; and

**WHEREAS**, the conduct of said election was duly delegated to the Chief Elections Officer of the County of San Mateo; and

**WHEREAS**, notice of the election was given in the time, form and manner as provided by law; voting precincts were properly established; election officers were appointed and in all respects the election was held and conducted and the votes were cast, received, and canvassed and the returns made and declared in the time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

**WHEREAS**, the Chief Elections Officer has now certified the results of said election, and said results are truly reflected in the Certificate of Chief Elections Officer dated June 13, 2005, a full, true and correct copy of which is attached hereto as Attachment "A" and by this reference incorporated herein.

**NOW, THEREFORE**, the City Council of the Town of Atherton, California, does hereby resolve, declare, determine and order as follows:

Section 1. The total number of ballots cast in the precincts was 2,219.

Section 2. The measure voted upon at the election was as follows:

Measure W

"Shall an ordinance renewing the current Town of Atherton Parcel Tax which provides funding for Town general purposes such as, but not limited to, police and public safety services and capital improvement projects be adopted?"

Yes \_\_\_\_\_ No \_\_\_\_\_

Section 3. The number of votes cast at each precinct and the number of votes cast in the Town for and against the measure were as listed in Attachment "A".

Section 4. The City Council does declare and determine that as a result of the election, Measure W received the necessary two-thirds (2/3rds) "yes" votes of the ballots cast in the election,

which was required for passage, and thus the measure carried and shall be deemed adopted and ratified, and shall be effective ten (10) days from adoption of this Resolution.

Section 5. The City Clerk shall enter on the records of the City Council of the Town a statement of the result of the election showing: (1) the total number of ballots cast in the Town; (2) the measure voted upon; (3) the number of votes given at each precinct for and against the measure; and (4) the total number of votes for and against each measure.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 15th day of June, 2005, by the following vote:*

<i>AYES:</i>	<i>5</i>	<i>COUNCILMEMBERS: Janz, Marsala, Carlson, Conwell, McKeithen</i>
<i>NOES:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>
<i>ABSENT:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>
<i>ABSTAIN:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>

/s/ William R. Conwell, Mayor  
William R. Conwell, Mayor  
Town of Atherton

ATTEST:

/s/ Linda Kelly  
Linda Kelly  
Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes  
Marc G. Hynes  
City Attorney

The number of votes given at each precinct for and against each measure:

Precinct	Ballots Cast	Measure W - Yes	Measure W - No
01 0	278	220	58
02 0	569	459	110
04 0	377	286	91
05 0	260	199	61
06 0	232	193	39
07 0	503	419	84

The number of votes given in the city for and against each measure:

Precinct	Ballots Cast	Measure W - Yes	Measure W - No
GRAND TOTALS	2219	1776	443
ABSENTEES	1611	1337	274
VOTING PRECINCTS	608	439	169

**27. 50 ASHFIELD ROAD -- CITY ATTORNEY REPORT CONSIDERATION OF FURTHER DIRECTION TO STAFF**

City Attorney Marc Hynes presented the staff report. Council was previously provided a report dated June 2, 2005, regarding three Certificates of Compliance issued for three lots commonly referred to as 50 Ashfield Road. An additional three lots on Maple Avenue backed the lots, and one individual owned all six lots in the 1930s. By deed, in conveying the three Ashfield lots, a piece was added to each lot at the expense of the lots on Maple Avenue. Over time, the property at 50 Ashfield Road was used for one single-family dwelling. In 2005, BK Developments purchased the three lots and requested Certificates of Compliance from the Town, a device available under the Subdivision Map Act that allowed someone who owned property which might have been divided in violation of the Subdivision Map Act or a local ordinance to receive a declaration from the agency which had control of the property that the property did in fact comply with the Subdivision Map Act. City Attorney Hynes concluded that in the 1930s, the property owner did violate the Subdivision Map Act. Further violations occurred in 1989 when Mountain South Development first put a Deed of Trust on the Ashfield lots and later attempted to execute Quit Claim Deeds giving the portions back from the Ashfield lots to the lots on Maple. The Town had controls in its Municipal Code, Title 16, Subdivision Ordinance, and controls in the Title 17, Zoning Ordinance. Certificates of Compliance related to issues under the Subdivision Map Act where, under certain circumstances, conditions could be imposed. The Town's Building Official determined there were no conditions under the Town's Subdivision Ordinance that could be imposed. Consequently, Certificates of Compliance with no conditions were issued. City Attorney Hynes concluded the action was appropriate and complied with the Town's Subdivision Ordinance and the

**Subdivision Map Act. Regarding any action the Town took in 1989, the Town was obligated to issue a Certificate of Compliance if someone requested one unless a public health or safety threat existed, and none was determined. The three Certificates of Compliance resolved issues related to subdivision of the property, and the Town's zoning regulations would control development on the property.**

**In response to Council Member Carlson, City Attorney Hynes said Mr. Quinlan's rebuttal stated the Certificate of Compliances were issued in error because the property did not comply and a Certificate of Compliance with conditions should have been issued. City Attorney Hynes said none of the conditions existing under the Town's Subdivision Ordinance or Subdivision Map Act applied to the property.**

**Discussion centered on what legal course of action the Council could take: 1) take no action (the 90-day statute of limitations to pursue a legal challenge was over, action occurred on January 27, 2005); 2) revoke the certificates (the property owner would have 90 days to take legal action); or 3) approve the action of the Building Official (the 90-day statute of limitations would not be reinstated).**

**Council Member McKeithen was troubled that an Exception Review before the Planning Commission had not taken place; yet, heritage trees had been removed and the existing home demolished. Many other requirements had not been met, and she was concerned that staff was not following the Town's processes. She had concerns regarding the various dates and timelines regarding the history of the property.**

**City Attorney Hynes clarified the 2005 action was based upon a 1991 Attorney General opinion regarding a subdivision problem and stated what the Subdivision Map Act prohibited, what the exemptions were, and how data was analyzed. The local ordinances were provided to show that since the Town's inception, the Town desired that Atherton be a large-lot community. The first subdivision ordinance decreed that every lot would be at least one acre in size. In 1927, the ordinance was amended to exempt those lots that were not one-acre in size but were created by a validly recorded map. A 1907 subdivision map validly created the six lots. In 1933, when the little pieces were added to the Ashfield lots, a Subdivision Map Act violation occurred. Additionally, no specific language existed in the deed to merge the lots. In 2005, the Certificates of Compliance were issued to correct the record.**

**Paul Quinlan, 49 Maple Avenue, Atherton, spoke regarding the actual manner in which the Building Official issued the Certificates of Compliance. According to Mr. Quinlan, they were issued under Subsection A of the Subdivision Map Act. The sole requirement of the section was compliance with the Subdivision Map Act.**

**Ernie Kirshner, 41 Ashfield Road, Atherton, was concerned that Town processes were not followed and neighbors were not kept informed.**

**James Vera, 65 Ashfield Road, Atherton, was disappointed and disturbed to find the tree and house were demolished without notification to neighbors.**

**Julie Quinlan, 49 Maple Avenue, Atherton, was not sure the 90-day statute of limitation applied because the proper entity had to make the actionable decision. She could not find a corresponding position. Case law indicated that a ministerial act was void if done incorrectly.**

**Amy Torre, 57 Maple Avenue, Atherton, was concerned that a wrong decision was made. She asked Council to refer the issue to the Planning Commission.**

**Darren Torre, 57 Maple, Atherton, asked the City Council refer the issue to the Planning Commission.**

**Alice Hanson, Los Gatos, asked the City Council to refer the issue to the Planning Commission.**

**After a lengthy discussion and clarifications, Council Member Carlson said the neighbors were upset that the house was torn down and concerned a heritage tree was removed without having any input; however, neither issue was part of the process for issuing Certificates of Compliance. Regardless of whether the City Council upheld or invalidated the Certificates of Compliance, the property had to go through the Exception Review process at the Planning Commission based on the Town's Zoning Ordinance. The Planning Commission could impose greater conditions than what the Certificates of Compliance process could impose, neighbors would receive notice, and neighbors would have the opportunity to appear and to recommend conditions be imposed to ensure the development of the property conformed to the character of the neighborhood. All parties concerned would have the ability to appeal the decision of the Planning Commission to the City Council. The City Council would then be responsible for imposing the final conditions on the property.**

**Mr. Quinlan believed the developer was trying to have things both ways and he needed to make a choice. In order to avoid current zoning rules and build three homes, he needed to comply with the 1907 map and make the lots smaller.**

**City Attorney Hynes disagreed. The developer owned all the property as described in the 1933 deed. He also owned the three lots because of the Subdivision Map Act. When the property was foreclosed, the foreclosure action confirmed that the property included the little pieces of land added to the three lots. The Town could not under any set of procedures force the owner of that land to give away any land.**

**Discussion continued regarding whether any benefit would result in overturning the Building Official's decision to issue the Certificates of Compliance.**

**Mayor Conwell said the Council had a responsibility to provide service to its citizens which was counterbalanced by what was legal and fair to the developer or property owner. He believed the Building Official acted within legal parameters.**

**No action taken.**

**28. PUBLIC COMMENTS**

**There were no public comments.**

**29. ADJOURNMENT**

**Mayor Conwell adjourned the meeting at 12:00 a.m.**

**Respectfully submitted,**

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**Linda Kelly, Acting City Clerk**

**Minutes Prepared By:**

**Kathi Hamilton**