

## REGULAR MEETING of the ROSS TOWN COUNCIL SPECIAL MEETING DATE OF TUESDAY, JANUARY 9, 2007

**1. 6:05 P.M.**

Present: Mayor Strauss, Mayor Pro Tempore Hunter, Council Member Cahill, Council Member Durst, Council Member Hunter, Council Member Skall.

**2. Posting of Agenda.**

The Town Manager reported that the agenda was posted according to government code.

**3. Minutes – December 14, 2006 and December 27, 2006**

There was consensus to approve the minutes of the December 14<sup>th</sup> and 27<sup>th</sup> meetings, with minor corrections.

**4. Demands.**

The demands were met.

**5. Open Time for Public Expression.**

There were no public comments.

**6. Report from Mayor Rick Strauss.**

Mayor Strauss reported that the Lagunitas Bridge was on schedule for engineering work and said he hoped the Town could order green police cars in the future.

**7. Report from Committee Heads.**

Council Member Hunter reported on the progress of the general plan, stating a two-hour meeting had been held that morning to review a draft of the general plan. They expect to have a final draft on January 24, 2007 and once comments were received they hoped to be able to present it on March 1, 2007 to the Council. He noted the process involved 10 volunteers working on the plan over a two and a half year period, and he acknowledged their hard work.

Council Member Hunter reported that fire consolidation continued to move forward. He said a meeting would occur on Thursday regarding government and budget issues and they hoped to have a report back from the consultant in February.

On a personal note, Council Member Hunter gave accolades to the Fire Department after responding to assist his father at his property.

Mayor Strauss said he had no official report, but noted the Council would soon be discussing re-assignment of committees and priorities.

**8. Report from Ross Property Owners Association.**

Diane Rudden gave the following report: 1) their annual meeting was scheduled for February 5th where new officers would be voted in; 2) banners created by children were being put up seasonally around downtown thanks to Wendy McPhee, and she hoped to have them put up

again for the 4th of July; 3) they would be offering a CPR class in February or March; and 4) she thanked the Council for recognizing long-term town staff members.

**9. Flood Control Report.**

Mayor Strauss said on December 19, 2006 the Board of Supervisors accepted the annexation of Fairfax and San Anselmo to Flood Zone 9. On February 1st, the elected officials would be meeting at the County for a preview of the meeting at Drake High School on February 10, 2007. On February 20, 2007, County supervisors will be asked to approve a recommendation for a fee methodology, which incorporates a comment period of 45 days. He noted this would come to the Town of Ross in a future election.

**10. Introduction of Employee Appreciation program and Presentation of Awards to Town Employees**

Town Manager Gary Broad reported that this year the Town and members of the community would have the opportunity to acknowledge the Town's long term employees, recognize them and publicly thank them for their services. In future years, they would recognize employees at five-year intervals and acknowledge them with certificates of appreciation and a small gift.

He acknowledged employees who have served the Town for more than five years and presented them with a certificate of appreciation and a gift: Bob Besgrove (12 years), Tim Grasser (8 years), Simone Jamotte (12 years), Mel Jarjoura (7 years), Robert Maccario (14 years), Jake Peterson (14 years), Jim Popken (6 years), Jim Reis (29 years), Bruce Selfridge (25 years), Bob Tucker (21 years), and Tom Vallee (23 years). The audience applauded the staff members for their years of service.

**10. Informational presentation on Measure A, renewal of the Ross School District parcel tax, which supports Ross School programs, and is on the March 6, 2007 ballot for voter renewal.**

Stephanie Robinson, introduced herself and gave a presentation about the Ross School District parcel tax renewal. She discussed it as a critical fund for maintaining excellence at Ross School, that it would provide 10% of the Ross School operating budget, the fixed amount was currently \$609 levied on improved land and increases by 3% each year. There is an exemption available for seniors 65 and over, and the current term expires in June 2007.

On March 6, 2007 voters would be asked to renew the tax for another 8 year term with no increase to the amount of tax, no increase in the annual escalator, no change in the term of the tax, and no change in senior exemption. She said the parcel tax revenue goes toward funding teacher salaries, supports small class sizes, the library, fine arts, learning lab, Spanish for K through 8, technology and equipment. Without it, class sizes would be increased and many programs would be cut back or eliminated.

She noted that the Ross School District has had a parcel tax since 1989 and it has been renewed twice.

She presented funding sources, subtracting out last year's flood cost, and said over half comes from the state, with remaining funds coming from the school foundation, PTA, parcel tax and federal and other aid. She said students have ranked in the top 2% of Marin County on the

state's STAR test, ranked 10 out of 10 on the API, compared the tax with other school districts and their escalators, and noted that high-quality schools were essential for maintaining property values and were good for the community.

The tax needed to pass by a 2/3 vote and she asked for everyone's support. For more information, individuals could visit [www.rossschoolbears.com](http://www.rossschoolbears.com). She reported there would be informational coffees held at the Ginsburg's home at 50 Shady Lane, or people could send e-mails to [rossparceltaxinfo@yahoo.com](mailto:rossparceltaxinfo@yahoo.com) or contact the committee.

**12. Town Council consideration of Resolution No. 1616 encouraging the installation of floodgates on buildings in the Town's commercial district and providing financial support to business owners and/or building owners installing floodgates.**

Town Manager Gary Broad reported the installation of floodgates was an idea that staff and the Council had discussed earlier in the year closer to the New Year's Eve flood and something Mayor Strauss had encouraged the staff to investigate.

He said floodgates offered a very low cost opportunity to protect properties from flooding and reduced or eliminated damage. He said the technology was simple-- wood placed within supports to keep water and debris from entering into a doorway during a flood event. He noted that Comforts Restaurant in San Anselmo had floodgates installed and had incurred much less flood damage because of them.

He reported that he and Mayor Strauss met with Michael Yandle about their interest of having businesses investigate the gates, and Mr. Yandle was interested in them for his business. However, he noted there had not been a major effort by other merchants or building owners to install them.

Town Manager Broad indicated that John Levinsohn, who owns property in the commercial district, has been looking into floodgates for his tenants' spaces. They also talked about ways to take a proactive role to encourage greater installation in the commercial area and have come up with the recommendation of a program where the Town would pay for up to half of the cost for an installation. He felt this was feasible to do and said floodgates for a typical doorway cost \$600. Staff proposed for the Town to match the cost up to a maximum of \$350. Mr. Broad said if every doorway were to be done, the cost to the Town would be less than \$16,000, and he felt it was money well spent.

Mr. Broad said they also looked at the value of having this done and there was a public interest in the program, which would preserve and protect the downtown, and the resolution clearly articulates that the money would serve a public purpose. He said the only requirements were that the owner install the gates, provide the Town with receipts of labor and materials, paint the channels to match the background color of the building and sign a hold harmless agreement which would indemnify the Town. He felt the program was easily achieved by a business or owner and he asked for Council support of the resolution.

Diane Rudden asked if the gates would be wood or could they be made of other materials, and Mayor Strauss confirmed they could be made of materials other than wood. Ms. Rudden

discussed her flood experience and the installation of floodgates and noted how easy they were to install and how well they worked.

Council Member Cahill confirmed there was nothing in the resolution that limited the gates to being made of wood or metal.

John Levinsohn, said he looked into the gates during their repair process, felt the idea has become a mini-industry, said some designs had been provided and several contractors were in the process of installing them. He hoped that in the next 10 days he could provide a demonstration of his gate installation and felt that owners and tenants should be convinced of their necessity.

Council Member Durst confirmed that both tenants and property owners could choose to install them. Mr. Broad also reported the program would be publicized to downtown businesses and building owners once the Council approved the resolution.

Council Member Cahill recommended putting a time limit on the process in order to encourage individuals to install them before the end of 2007, and Mr. Broad suggested adding to the last paragraph of the resolution, "installation must occur by October 15, 2007."

**ACTION: It was M/S/C (Cahill/Strauss) to adopt Resolution No. 1616 encouraging the installation of floodgates on buildings in the Town's commercial district and provide financial support to business owners and/or building owners installing floodgates; and that amendment be made to the resolution to indicate that the floodgates must be installed prior to October 15, 2007. Vote: 5-0.**

**13. Town Council adoption of Ordinance No. 597 amending Municipal Code Section 9.04, Picketing Prohibited in Residential Areas.**

Chief Barry Heying noted that Ordinance 597 was introduced last month by the Council and establishes Sections 9.04.230, 9.04.240, and 9.04.250. All three sections serve to prohibit and provide a penalty for picketing in residential areas, particularly in front of a dwelling unit. He said the amendment comes as a result of an incident last fall where he and several residents were forced to endure an unruly labor organization after failed contract talks. Individuals picketed causing a general disturbance, and police found little they could do to stop it legally. He conferred with the Town Attorney and said the ordinance would restrict picketing while still protecting the civil rights of all involved.

The public hearing was opened, and there were no public comments.

**ACTION: It was M/S/C (Hunter/Cahill) to waive the reading and adopt Ordinance No. 597 amending Municipal Code Section 9.04, Picketing Prohibited in Residential Areas. Vote: 5-0.**

**14. Town Council introduction of Ordinance No. 599 amending Municipal Code Section 9.20.010, Unnecessary Noise, adding public roadways, sidewalks, paths and public right-of-way regulations.**

Chief Barry Heying reported the desire to amend the Town's noise regulations contained in Municipal Code Section 9.20.010. He said the section currently focused on noises which come from a particular source in any dwelling or property within the Town caused by the property owner, but that it failed to address similar noises on public property, namely roadways, sidewalks, paths, and public right-of-ways. He conferred with Town Attorney, language was developed to address noise and he read the additional language and entire section proposed for Council consideration.

Chief Heying said he felt the revised language would address picketers who wished to draw attention to themselves by creating disturbances, said police had reported occurrences on multiple occasions over the last year, and felt the language strengthened the ordinance and benefited the Town.

Council Member Durst questioned whether the ordinance addressed specific narrow public right-of-ways, and Town Attorney Hadden Roth said it addressed public right-of-ways and he felt the ordinance would balance the rights of individuals and would limit extreme noise. He said the Town would enforce the ordinance and discussed potential legal actions if violations occurred.

Council Member Cahill questioned whether the language, in general, was sustained and Town Attorney Roth felt the basic premise was for unusual noise and out of the ordinary noise for several locations. He said they had not researched how other cities had handled the problem or whether similar language was incorporated into their municipal codes. Mr. Broad said staff was regulating noise complaints on private property and he did not feel the additional language was a big leap to regulate on public land. He felt the same protection should be enforced on a right-of-way.

Council Member Durst confirmed with Mr. Broad that Ross Common was a good location for such protests rather than in residential neighborhood areas and staff noted that they had purposely excluded that area from the revised ordinance language, with the exception of the public right-of-way. He noted that the ordinance had been amended in the past to address leaf-blowing, construction noise, and noise from gas powered machinery, but that staff could provide further research after the ordinance's introduction, if requested.

Mayor Strauss requested the Town Attorney research other municipality's noise ordinance language. The Council was in general support of the proposed ordinance language. Mr. Broad confirmed with the Council that staff had received only a favorable comment on the matter in writing from those who were picketed.

**ACTION:** It was M/S/C (Strauss/Skall) to introduce Ordinance 599 amending Municipal Code Section 9.20.010, Unnecessary Noise, adding public roadways, sidewalks, paths and public right-of-way regulations. Vote: 5-0.

15. Town Council adoption of Resolution No. 1618 denying the appeal of Jim and Tori Owens, 200.5 Lagunitas Road, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction.

Town Manager Gary Broad reported that the Council considered the appeal at its November 2006 meeting and he recommended at the time that the action be formalized with a resolution. He stated the resolution outlines what was discussed in the staff report and the Council's prior decision to deny the appeal by a 4-1 vote, with Council Member Skall not supporting the denial.

Mr. Broad noted Resolution No. 1618 would re-affirm the Council's November action in voting 4-1 to deny the appeal.

Council Member Cahill questioned whether resolutions would be processed for all appeals in the future, and Mr. Broad and Town Attorney Roth discussed the need for resolutions in cases where there may be litigation, incorporation as an administrative record and in possibilities where there the Town may face challenge.

There was no public comment.

**ACTION:** It was M/S/C (Durst/Hunter) to adopt Resolution No. 1618 denying the appeal of Jim and Tori Owens, 200.5 Lagunitas Road, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction. Vote: 4-1 (Skall voting no).

16. Town Council review of the use permit for the Lagunitas Country Club, 205 Lagunitas Road, A.P. Nos. 73-211-31 and 73-221-01 as required by their use permit conditions of approval.

Council Member Cahill recused himself from participating on the matter due to his membership at the Lagunitas Country Club and stepped down from the dais.

Town Manager Gary Broad said the Town Council approved a use permit for the Lagunitas Country Club in 1997, provided minutes of the approval, noting 16 conditions of approval. He said condition 16 stipulates the Council will review the use permit every two years, that it may revoke or modify the use permit consistent with the Town Municipal Code, and that tonight's hearing was being held as a required review.

Mr. Broad attached a letter the Town received from Mr. Weisel expressing concerns with compliance of conditions and said today he distributed a letter sent by Daniel Barry, on behalf of Mr. and Mrs. Gabrielsen, which similarly expresses concern with the Club's compliance with the same four conditions of approval.

Mr. Broad said the only point he was aware of complaints being raised was when the Council considered the June 9, 2005 use permit amendment request, and said tonight the Council could hear from the public regarding concerns and allegations of noncompliance as well as from the Country Club regarding their operation. He said the Council then has the opportunity to decide

whether any follow-up action was needed, or whether it was possible to have no additional action until next review.

Thom Weisel, Upper Road felt noise had been a constant problem for him and his adjacent neighbors, said every Wednesday night parties are held and noise escalates. He felt the club had violated numerous amplified music uses, reported that a wedding was held in October where he contacted the police because the event went from 5:00 p.m. to 11:00 p.m., with constant, loud noise. He said he felt events under the rental program were excessive and did not comply with contract regulations and felt the operation was questionable, given its location in a quiet, residential neighborhood.

Debra Quick, attorney with Morgan Lewis, said many difficulties of neighbors were linked to the club's desire to maximize its rentals to third parties. She felt there was a loss of control in how the facility operated during event rentals, questioned rental program rules and restrictions, said neighbors originally struggled with the 1997 use permit conditions, noted there was only one other review in the last 10 years, questioned the appropriateness of holding such events at the club, requested the club present a history of the commercial rental program as well as their rental contract to determine whether or not it maxed out the types and occurrences of events, and felt it was legitimate for neighbors to know what was allowed and what was not allowed. She requested the club respond and address the issues or the Council continue the item in order to constructively move forward.

Beach Kuhl, President, Lagunitas Country Club, assured the Council that it was his and the club's policy to adhere strictly to the regulations and conditions. Regarding the issues raised, he said the use permit allows rentals to outside groups, said they permit members to rent and sponsor events in this instance, and they require the member to be in attendance and be fully responsible for the event. At every event, one of their staff members is present and he was not aware of any October rental with amplified music. He did not recall whether the rental contract spelled out provisions for music and was not aware of any violations. He suggested that at any time any neighbor believed there was a violation of the use permit conditions, they should contact him immediately. He also noted they have no schedule of programs, but could provide information about past or future events that were scheduled.

Mayor Strauss recommended the Town Manager review the rental contract.

Mr. Kuhl noted they have held Wednesday night barbeques where people cook outside and socialize, they do not continue late into the evenings and there is no music allowed, and felt that any outstanding issues could be worked out with Mr. Weisel.

Mayor Strauss felt the problem could be worked out between all parties involved and wanted to ensure the club abided by the use permit conditions.

Council Member Hunter disclosed that he had held a birthday party at the club, said he was not a member; however, his friend who sponsored the event was a member and was present, as well as a manager of the club all evening. He felt the contract was very stringent, said only acoustical music was allowed and must stop by 10:30 p.m., and he felt that as a citizen the club took their

use permit seriously. He acknowledged the need for staff to review the club's contract and record of the previous year's rental events, noted Mr. Kuhl's willingness to take calls on a timely basis, and he felt this would be a good solution. He was in favor of renewing the use permit with the caveat that the items be presented to Town Manager Broad and the club president's number be available.

Council Member Durst noted that condition 1 allows for barbecues in the summer and confirmed they were held between June and September every week, that they typically end around 9:30 p.m., and that they have been held since 1917. She noted she was the one descending vote when the club requested an amendment in June, she found the club to be very quiet, and agreed a copy of their rental contract and history of events should be provided.

Town Manager Broad agreed the contract should be consistent with use permit conditions, said he would determine whether it included enough language for those renting the facility and agreed to review the club's history of previous year's rentals. If there were questions relating to the record, he agreed to contact the president and noted staff would hold a bi-annual review again in January 2009.

Mr. Kuhl offered to make his telephone number available for complaints and encouraged people to send him an e-mail if they experience issues they believe there were violations of the use permit.

**ACTION:** It was M/S/C (Hunter/Skall) to 1) consider the use permit review obligation completed as long as the Lagunitas Country Club provides a copy of their rental agreement to the Town within 30 days, 2) to provide a record of past year's rentals, 3) if there are questions the president of the club would make himself available; and 4) neighbors are requested to send email to the Town Manager and contact Mr. Kuhl, the president of the club. Vote: 4-0-1 (Cahill recused.)

**17. Planning Application Consent Agenda.**

Mayor Strauss noted all items would be considered in one motion and confirmed there were no public comments. Council Member Durst requested removal of Item 17.a. from the Consent Agenda.

**ACTION:** It was M/S/C (Cahill/Skall) to remove Item 17a. and approve the Planning Application Consent Agenda Items b, c, d, e, and f, with conditions in the staff report. Vote: 5-0.

- b. 123 Bolinas Avenue, Barwood Design Review No. 1628  
Hal and Barbara Barwood, 123 Bolinas Avenue, A.P. No. 73-041-05, R-1 (Single Family Residence, 5,000 Square Foot Minimum Lot Size). Review of landscape plan associated with design review application to allow the construction of a new, 5 foot tall, partially-open, wood fence along the front property line on Bolinas Avenue and along the east side property line adjacent to the public right-of-way.



**ACTION:** It was M/S/C (Cahill/Skall) to approve the following planning application consent agenda item “b” with the findings and conditions in the staff report. Vote: 5-0.

***Conditions, 123 Bolinas Avenue, Barwood Design Review No. 1628***

1. At least half of the proposed nandina domestica shall be of a non-dwarf variety to provide year round screening of the fence, or the applicant shall modify the plan to incorporate additional non-dwarf Nandina domestica or other plants that will provide, taller, year round screening of the fence. Landscaping shall be installed as shown on the approved landscape plan after fence construction and shall be maintained in front of the fence area.
2. No encroachment permit is hereby approved; it is the responsibility of the applicant to ensure that no work of any kind occurs within the right-of-way.
3. The project owners and contractors shall be responsible for maintaining Town roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
4. Failure to secure required building permits and/or begin construction by January 9, 2007 will cause the approval to lapse without further notice.
5. This project shall comply with the following recommendations to the satisfaction of the Department of Public Safety: 1.) a street number must be posted (minimum 4 inches on contrasting background); 2.) all brush impinging on the access roadway must be cleared; 3.) the roadway must have a vertical clearance of at least 14 feet; 4.) all dead or dying flammable materials must be cleared and removed from the property per R.M.C. Chapter 12.12; and 5.) a local alarm is required; and 6. ) a Knox Lock box is required if gated.
6. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
7. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense, however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

- c. **7 Walters Road, Narbutas, Extension of Time of Variance No. 1574**  
Kes Narbutas, 7 Walters Road, A.P. No. 72-222-02, R-1:B-A (Single Family Residential, One Acre Minimum Lot Size). A one-year time extension to January 12, 2008, for a variance and design review application approved on January 12, 2006, to allow the construction of a 381 square foot addition to the northern elevation of the existing residence within the north side yard setback (25 feet

required, 23 feet proposed) including a new study and an enlarged kitchen, breakfast room, and entry. 155 linear feet of new retaining walls with a maximum height of 8 feet are additionally proposed.

Lot area	23,827 square feet	
Existing Floor Area Ratio	14.1%	
Proposed Floor Area Ratio	15.7%	(15% permitted)
Existing Lot Coverage	14.3%	
Proposed Lot Coverage	15.9%	(15% permitted)

**ACTION:** It was M/S/C (Cahill/Skall) to approve the following consent agenda item “c” with the findings and conditions in the staff report. Vote: 5-0.

***Conditions, 7 Walters Road, Narbutas Extension of Time, No. 1574***

1. Except as specifically amended here, all conditions of this project’s January 12, 2006, approval shall remain in full force and effect.
2. Failure to secure required building permits and begin construction by January 12, 2008, will cause this approval to lapse without further notice.
3. The applicant and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicant and/or owners of any such claim, action, or proceeding, tendering the defense to the applicant and/or owners. The Town shall assist in the defense, however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney’s fees and costs and participates in the defense in good faith.

- d. **81 Sir Francis Drake, Sherley, Extension of Time of Variance No. 1576**  
Harold and Carol Sherley, 81 Sir Francis Drake Boulevard, A.P. No. 73-052-32, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum). A one-year time extension to February 9, 2008, for a variance and design review application approved on February 9, 2006, to allow an existing two story residence to be raised 5 feet, resulting in a new maximum building height of 27 feet within the north side yard setback (15 feet required, 3 feet proposed.)

Lot area	7,876 square feet	
Existing Floor Area Ratio	30.9%	
Proposed Floor Area Ratio	30.9%	(20% permitted)
Existing Lot Coverage	21.3%	
Proposed Lot Coverage	21.3%	(20% permitted)

*The existing residence is nonconforming in setbacks.*

**ACTION:** It was M/S/C (Cahill/Skall) to approve the following consent agenda item “d” with the findings and conditions in the staff report. Vote: 5-0.

***Conditions, 81 Sir Francis Drake, Sherley, Extension of Time of Variance No. 1576***

1. Except as specifically amended here, all conditions of this project’s February 9, 2006 approval shall remain in full force and effect.
2. Failure to secure required building permits and begin construction by February 9, 2008 will cause this approval to lapse without further notice.
3. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense, however, nothing contained in this contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney’s fees and costs and participates in the defense in good faith.

**e. 177 Lagunitas Road, McReynolds Variance and Design Review No. 1625**

Zach and Alexandra McReynolds, 177 Lagunitas Road, A.P. No. 73-231-02, R-1:B-6 (Single Family Residence, 6,000 Square Foot Minimum Lot Size). Variance and design review to allow the following modifications to the residence: 1.) 68 square foot lower level family room addition with a 15-foot ceiling height within the rear setback (40 feet required, 35 feet proposed) to be constructed by removing the enclosed 120 square foot second floor porch and extending into the rear yard; 2.) 28 square foot, second floor, master bedroom addition, including a new dormer; and 3.) new 9-foot tall arbor over side entry gate within the rear setback (40 feet required, 24 feet proposed).

Lot area	11,266 square feet	
Existing Floor Area Ratio	36.2%	
Proposed Floor Area Ratio	36.0%	(20% permitted)
Existing Lot Coverage	23%	
Proposed Lot Coverage	24.1%	(20% permitted)

*The existing residence is nonconforming in setbacks.*

**ACTION:** It was M/S/C (Cahill/Skall) to approve the following consent agenda item “e” with the findings and conditions in the staff report. Vote: 5-0.

***Conditions, 177 Lagunitas Road, McReynolds Variance and Design Review No. 1625***

1. Any landscaping damaged during construction shall be replaced prior to project final.
2. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) The property must be cleared of all dead or dying flammable materials; and 3.) A local alarm system is required.

3. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
4. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
5. **No changes from the approved plans shall be permitted without prior Town Planner approval.** Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to the issuance of any building permits or prior to any modification.
6. **Failure to secure required building permits and/or begin construction by January 9, 2008 will cause the approval to lapse without further notice.**
7. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
8. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
9. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
10. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

- f. **20 Upper West Road, Ploos Van Amstel, Design Review No. 1631**  
Marlou and Hans Ploos Van Amstel, 20 Upper Road West, A.P. No. 73-321-02, R-1:B-5A (Single Family Residence, Five-Acre Minimum Lot Size). Design review to allow the following: 1.) 1,284 square foot lower level addition; 2.) 772 square foot attached garage; 3.) covered entrance and 50 square foot foyer; 4.) 237 square foot extension of the main level deck, and stairs from the deck to the lower level; and 5) 116 linear feet of new retaining walls associated with new front yard landscaping. A tree removal permit is also requested to remove a 9-inch diameter oak within the front setback.

Lot area	50,250 square feet
Existing Floor Area Ratio	7.1%

Proposed Floor Area Ratio	11.8%	(15% permitted)
Existing Lot Coverage	6.3%	
Proposed Lot Coverage	8.5%	(15% permitted)

The property is nonconforming in covered parking (2 spaces required, 0 provided).

**ACTION:** It was M/S/C (Cahill/Skall) to approve the following consent agenda item “f” with the findings and conditions in the staff report. Vote: 5-0.

***Conditions, 20 Upper West Road, Ploos Van Amstel, Design Review No. 1631***

1. A construction and traffic management plan shall be submitted for the review and approval of the Director of Public Works prior to the issuance of a building permit.
2. A detailed landscape plan focused on screening the property from the uphill residence shall be submitted for the review and approval of the Planning Department prior to project final. The submitted landscape plan shall make use of native species to the greatest extent possible.
3. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
4. All windows must substantially resemble real wood true divided light windows and are subject to Planning Department approval prior to the issuance of a building permit.
5. Prior to the issuance of a building permit, the applicants shall submit a tree protection plan drafted by a certified arborist for the review and approval of the Planning Department and Town Arborist. The submitted plan must be based upon a review of final construction-level plans and should focus on the protection of all on-site trees during construction. The tree protection plan shall include specific provisions acceptable to both the Planning Department and the Town Arborist for independent on-site monitoring of the following nine conditions:
  - a. Before the start of any clearing, excavation, construction, or other work on the site, or the issuance of a building permit, every significant and/or protected tree shall be securely fenced-off at the non-intrusion zone, or other limit as may be delineated in the required tree protection plan. Such fences shall remain continuously in place for the duration of the work undertaken in connection with the development.
  - b. If the proposed development, including any site work, will encroach upon the non-intrusion zone of a significant and/or protected tree, special measures shall be utilized, as approved by the project arborist, to allow the roots to obtain necessary oxygen, water, and nutrients.
  - c. Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist is required. Trenches shall be consolidated to service as many units as possible.
  - d. Concrete or asphalt paving shall not be placed over the root zones of significant and/or protected trees, unless otherwise permitted by the project arborist.
  - e. Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.

- f. Compaction of the soil within the non-intrusion zone of significant and/or protected trees shall be avoided.
  - g. Any excavation, cutting, or filling of the existing ground surface within the non-intrusion zone shall be minimized and subject to such conditions as the project arborist may impose. Retaining walls shall likewise be designed, sited, and constructed to minimize their impact on significant and/or protected trees.
  - h. Oil, gas, chemicals, or other substances that may be harmful to trees shall not be stored or dumped within the non-intrusion zone of any significant and/or protected tree, or at any other location on the site from which such substances might enter the non-intrusion zone of a significant and/or protected tree.
  - i. In no case shall construction materials or debris be stored within the non-intrusion zone of a significant and/or protected tree.
6. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
  7. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward. No lighting is permitted within the cupola.
  8. This project shall comply with the following requirements of the Department of Public Safety: 1.) sprinklers are required in new main house and garage additions; 2.) the access roadway must be increased to 14 feet to provide adequate space for fire or rescue operations; 3.) all brush impinging on the access roadway must be cleared; 4.) the roadway must have a vertical clearance of 14 feet; 5.) a street number must be posted {minimum four inches on a contrasting background}; 6.) a Knox lock box is required; 7.) all dead or dying flammable material must be cleared and removed from the property in compliance with RMC Chapter 12.12; and 8.) a 24-hour monitored alarm system is required.
  9. The applicants shall pay required Town fees of \$3 for every cubic yard of off-haul resulting from this project. Final off-haul amounts shall be calculated by the project civil engineer with calculations submitted to the Director of Public Works prior to the issuance of a building permit.
  10. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
  11. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
  12. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
  13. Failure to secure required building permits and/or begin construction by January 9, 2008 will cause the approval to lapse without further notice.

14. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
15. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

*Discussion of Removed Consent Item*

- a. **18 Southwood Avenue, Foster, Variance and Design Review No. 1610**  
Nan and Rob Foster, 18 Southwood Avenue, A.P. No. 73-151-03, R-1:B-20 (Single Family Residence, 20,000 Square Foot Minimum Lot Size). Consideration of conditions of approval to mitigate impacts of carport demolition and new garage construction approved December 14, 2006.

Council Member Durst noted her dissenting vote at the previous Council meeting and said she could not make any findings to allow the building so close into the setback. She acknowledged staff's excellent work with conditions that provide for mitigations, however, she did not feel the garage should be placed in its current location. Mayor Strauss concurred.

**ACTION: It was M/S/C (Hunter/Skall) to approve Variance and Design Review No. 1610 subject to the following additional conditions. Vote: 3-2 (Durst and Strauss voting no).**

*Additional Conditions, 18 Southwood Avenue, Foster, No. 1610*

In addition to the conditions of approval required on December 14, 2006, for this project, the following minimum measures shall be taken to protect the creek and trees during demolition and construction:

1. An on-site preconstruction meeting shall be held with staff, the property owners, their consulting arborist, and contractor to review the conditions of approval for the project. The meeting shall be scheduled prior to commencement of work on the project.
2. A drainage plan shall be submitted with the building permit. Drainage shall not be dispersed directly into the creek or within the root area of the large oak tree behind the residence.
3. A construction management plan shall be submitted for review and approval by staff prior to issuance of a building permit that details the tree and creek protection measures. The construction management plan shall be incorporated into the building permit plans. The plan should include details on material storage areas and parking areas.
4. All work that could affect the creek (such as demolition of the carport and foundation work associated with the garage) should be completed when there is no water in the creek. If there is any water in the creek, the applicants shall implement Best

- Management Practices (BMPs), in accordance with the Marin County Stormwater Pollution Prevention Program (MCSTOPPP) Standards to prevent any construction debris, sediment, or pollutants from the construction site from entering the creek channel, (e.g., silt fences installed at the top of the creek bank).
5. To prevent pollutants from entering the creek, all fuels, lubricants and chemicals shall be stored away from the creek and drainage areas.
  6. Prior to issuance of a building permit, the applicant shall provide the planning department with tree protection plan prepared by an arborist for review and approval by the Town arborist and evidence that an arborist has been retained to implement and monitor the tree protection plan.
  7. The arborist shall be an International Society of Arboriculture (ISA) Certified Arborist or an American Society of Consulting Arborists (ASCA) Registered Member.
  8. The arborist shall review the construction and drainage plans and establish tree protection zones. The arborist shall specify precautions to be taken (such as fencing and wrapping trunks) to limit access to the tree protection zones to protect the trunks of the trees and critical root zone throughout the demolition and construction period.
  9. The site should be inspected by the arborist prior to construction to document the health of the trees and to confirm any required tree protection measures are in place. Written evidence shall be provided to the Town Planner to indicate this inspection has taken place and the results of the inspection.
  10. Any damage to trees due to demolition or construction activities shall be reported to the arborist within 6 hours so that remedial action can be taken as recommended by the arborist.
  11. Heavy equipment use and storage of equipment and materials should be limited around the trees and roots. Storage of materials, equipment and heavy equipment use near or in the tree protection zones shall be on ground protected by mulch and possibly plywood in a manner and an area specified by the arborist.
  12. Underground trenching and pier drilling shall avoid the major support and absorbing tree roots of the trees. All trenching, tunneling or other excavation within the tree protection zones shall be done pneumatically or by hand under the supervision of the project arborist.
  13. The project arborist shall specify how any roots encountered should be cut and protected.
  14. Any pruning shall be done to specifications of the project arborist.
  15. The arborist shall periodically monitor the trees and protective measures during construction and written evidence of this monitoring shall be provided to the Town Planner.
  16. The arborist shall perform a final inspection to document the condition of the protected trees and to specify any pest, disease or other health care necessary to preserve the protected trees. The applicant shall perform any recommended preservation measures. Written evidence of this final inspection and the results shall be provided to the Town Planner prior to project final.
  17. Any new plantings within the tree protection zone should be designed to be compatible with the cultural requirements of the protected trees (such as irrigation and nitrogen application).
  18. **Correspondence.**  
There was no correspondence.



**19. Other Business.**

Council Member Durst noted receipt of correspondence from Alice Fredericks, Town of Tiburon regarding housing needs, an e-mail from Mary Herr regarding ABAG housing allocation methodologies, and a letter from Patty Garbarino of Marin Sanitary Service regarding a \$5,000 donation given to the County's Housing Authority.

Town Manager Broad noted staff was aware of each matter and has discussed whether the funds would be provided to the Town for its workforce housing project. Council Member Durst requested staff contact Supervisor Adams.

**20. Adjournment.**

By order of the mayor, the meeting adjourned at 7:30 P.M.

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Richard Strauss, Mayor

ATTEST:

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Gary Broad, Town Manager