

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JULY 12, 2007

1. 6:30 P.M. Commencement.

Present: Mayor Hunter; Mayor Pro Tempore Cahill; Council Member Durst; Council Member Skall; Council Member Strauss; Town Attorney Hadden Roth

2. Posting of Agenda.

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

3. Minutes-June 14th

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to approve the June Minutes as amended. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression- None

6. Report from Mayor Hunter.

Mayor Hunter announced that the Fourth of July celebration was a huge success. He then congratulated the Town's new Chief of Protocol Molly Gamble for organizing such a delightful event. He pointed out that four of the Town Council members rode in the parade in an electric car, which he felt was an appropriate vehicle. Also, he thanked Jennifer and Peter Daly of Top Productions for providing the entire setup for the picnic and bandstand, which the Town greatly appreciated.

Mayor Hunter indicated that the first addition of The Morning After did indeed go out the day after the June Council meeting before noon and the Town received an overwhelming number of responses and Council congratulated staff on a job well done.

Mayor Hunter noted that the new Ross Valley fee to fund flood control mitigation passed. The results were accepted and certified by the Marin County Board of Supervisors and will provide in the low \$40 million in the coming years to address flooding.

Mayor Hunter then announced that the August Town Council meeting has been cancelled.

7. Report from Committee Heads.

General Government - Council member Durst

- Marin Telecommunications Agency – No report

8. Report from Ross Property Owners Association- No report

9. Flood Control Report, including Town participation in a FEMA Community Rating System (CRS) application to reduce flood insurance premiums for residents.

Elise Semonian, Senior Planner, summarized the staff report and recommended that the Town participate in the FEMA Community Rating System (CRS) application to reduce flood insurance premiums for residents.

In regard to the process, Senior Planner Semonian explained that staff must send a letter to FEMA and complete the application process. Staff can send the letter through the Town Manager's authority, but desired Council's support.

Town Manager Broad added that staff time is involved, but staff believed it is worthwhile for residents.

Council Member Durst asked staff if the Town receives any credit. Senior Planner Semonian noted that the Town does not receive credit, but possibly in the future.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for comments.

Council agreed to participate in a FEMA CRS application to reduce flood insurance premiums for residents.

10. Town Council consideration of Resolution No. 1625 honoring Joan Ryan for receiving an Edgar A. Poe Award.

Mayor Hunter read Resolution No. 1625 into the record, honoring Joan Ryan for receiving an Edgar A. Poe Award.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for action.

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to adopt Resolution No. 1625, honoring Joan Ryan for receiving the Edgar A. Poe Award. Motion carried unanimously.

11. Town Council consideration of adoption of Resolution No. 1629 urging the Army Corps of Engineers to proceed with the planning phases for the section of the pending Federal Flood Control project in Ross known as Flood Zone 9, Unit 4 design.

Gary Broad, Town Manager, summarized the staff report and recommended that Council adopt Resolution No. 1629, urging the Army Corps of Engineers to proceed with the planning phases for the section of the pending federal flood control project in Ross known as Flood Zone 9, Unit 4 design.

Mayor Hunter opened the public hearing on this item.

Brian Salmen, Shady Lane resident, desired a brief summary of the resolution being considered by Council. Town Manager Broad read Resolution No. 1629 into the record in order to better inform the public.

There being no further public testimony on this matter, Mayor Hunter closed the public hearing and brought the matter back to Council for action.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to adopt Resolution No. 1629, urging the Army Corps of Engineers to proceed with the planning phases for the section of the pending federal flood control project in Ross known as Flood Zone 9, Unit 4 design. Motion carried unanimously.

12. Follow-up discussion of the five Town Council goals for 2007-2008 and the implementation of these goals.

Gary Broad, Town Manager, summarized the staff report and recommended that Council have a follow-up discussion of the five Town Council goals for 2007-2008 and the implementation of these goals, which included the following:

1. Work with other Ross Valley jurisdictions on a valley-wide approach to drainage, warning systems and emergency response
2. Expand emergency preparedness and increase readiness, response and safety.
3. Establish Ross Advisory Design Review Program.
4. Develop Downtown Area Plan
5. Conclude Fire Consolidation Exploration

Council Member Strauss asked why Ross Valley Fire Service is coming back. Town Manager Broad indicated that Ross Valley is interested in saving money. Ross Valley continues to want a two person engine company, so their cost to provide existing service would not increase. Staff noted that there would be a small savings as well as some service improvements. Mayor Hunter believed it is premature at this point because they must have a conversation and then report back findings.

Mayor Hunter opened the public hearing on this item.

Lesley Reidy, Ross resident, asked staff the date for the disaster preparedness event that occurs in front of the Post Office. Town Manager Broad indicated that it would occur in September.

There being no further public testimony on this item, Mayor Hunter closed the public hearing and brought the matter back to Council for comments.

Mayor Hunter directed staff to add this as a standing item on the agenda. Council and staff agreed.

13. Preliminary discussion of the framework for Ross Advisory Design Review as recommended in the new Town of Ross General Plan 2007-2025.

Gary Broad, Town Manager, summarized the staff report and recommended that Council conduct a preliminary discussion of the framework for the Ross Advisory Design Review as recommended in the new Town of Ross General Plan 2007-2025.

Mayor Pro Tempore Cahill asked staff if each of these volunteers from the community is subject to the Brown Act. Hadden Roth, Town Attorney, responded that the Brown Act only applies to Council and standing committees. Council Member Durst noted that Brown Act

applies to noticing the hearing and meeting requirements as well. Even if only advisory, it must be noticed since it is an ongoing committee. She further noted that the meeting that includes residents or is an ongoing committee is subject to the Brown Act.

Council Member Strauss suggested modifying the name RADR, which in his view did not seem informal and recommended "*Ross Design Advisory Group*." Council Member Durst agreed. She further noted that this is a collaborative process. Council Member Strauss desired an informal process.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for discussion and action.

Council Member Durst stated that the end product is the Town Council hearing and Council action must be pulled from that process in order to evaluate the items, and RADR provides that input. The purpose of RADR is to create the notion of fit in the community before the public process takes place. She added that applicants must understand what is a fit, excellence, enhancement, zoning and proper impacts, so those issues are brought forward prior to the public process and prior to the applicant receiving a staff report. If an individual on the RADR group discussed the matter with the applicant and neighbors, it could be valuable before it is forwarded to Council.

Mayor Hunter agreed with Council Member Strauss and desired a more informal process and an active list of volunteers. Project Planner Christine O'Rourke pointed out that there is a time savings in standardizing the process. The idea of being casual and informal is great to build that low-key feeling, which is positive and staff could review in more detail and bring back to Council.

Council Member Strauss noted that Novato has a technical advisory committee and they have an informal review and that is how he envisioned this process. He desired a much more informal collaborative effort and if the applicant invites neighbors then great, otherwise it will become very cumbersome and he wanted to take a step back and make it less cumbersome.

Council Member Durst envisioned teams of groups for projects with a team captain, which would be a group already in place as a way to have an advisory design review.

Mayor Pro Tempore Cahill believed an important purpose of RADR is to make it more cost effective to the applicant to come in during an informal setting and receive input.

Council Member Durst noted that many people fear the public presentation portion.

Mayor Hunter noted that there is consensus to make this as informal as possible. There is agreement with the objective, but the process should be lighter and less structured.

Town Manager Broad noted that RADR would offer early input and feedback in a relaxed setting conducive to dialogue and problem solving. Council Member Strauss did not want to make it a requirement that applicants talk to neighbors. He felt it should be an option as to

whether or not the applicant wants to consider neighbor input. Council Member Durst believed neighbor input is important in the process.

Mayor Pro Tempore Cahill agreed with Council Member Strauss that it should be at the applicant's discretion to invite neighbor input. He further believed neighbors could provide input, but it should not be a requirement.

Mayor Hunter and Council Members Durst and Skall felt neighbor input is important and must be included in the process. Council Members Cahill and Strauss felt it should be left to the discretion of the applicant.

Town Manager Broad suggested that staff work with Council Member Durst to bring back to Council some "big picture" choices on the whole system as well as include some items discussed tonight and then provide options to Council. Council agreed.

Town Manager Broad also would appreciate any thoughts Council might have in writing.

14. Town Council discussion of amending Ordinance No. 475, Restricting Smoking, to include additional regulation of secondhand smoke.

Christine O'Rourke, Project Planner, summarized the staff report and recommended that Council consider amending Ordinance No. 475, restricting smoking to include additional regulations of secondhand smoke in Ross.

Mayor Hunter asked staff about the setback law and how that is enforced. Project Planner O'Rourke noted that there currently are no communities that have a setback law in place and staff believed it would be difficult to enforce. Staff explained that one must be caught in the act and it is a difficult situation.

Mayor Hunter opened the public hearing on this item.

Peter Ausnit, a Glenwood Avenue resident, thanked Council for adding this item on the agenda and staff for sharing the staff report. He presented a petition to Council with 134 signatures of those opposed to secondhand smoke due to the toxins and that the Town should adopt an ordinance declaring secondhand smoke a public nuisance in order to provide residents with legal recourse to stop a neighbor from smoking on his or her property if the smoke drifts across the lot line and bothers the resident. He provided a study that stated 90% of Californians believe secondhand smoke is toxic and harmful. He also provided information about the tot lot law in regard to imposing more regulations, if so desired. The community and state understand that this is a harm and Ross has been regulating secondhand smoke since 1989, but has no protection for those in their homes. He believed harm to the health of the community should be considered a public nuisance. He then asked Council for a declaration to protect homeowners and anyone in Town in regard to secondhand smoke. He desired a friendly, informed discussion with his neighbor and nuisance reflects views of the community as well as state and science that it is a harm. He desired language that stated, "*secondhand smoke is a public nuisance*" in order to have the safety and protection in their home as provided at the Ross playgrounds and schools.

Town Attorney Roth noted that even if secondhand smoke is determined to be a public nuisance, it still must be proven.

Andy Shannon, Fernhill Avenue resident, supported the declaration to declare secondhand smoke a public nuisance. Secondhand smoke is an invasive act on one to another. The laws in place that restrict restaurants and bars do not apply to one's own home. It does merit consideration. There is precedent amongst many other towns and cities that have enacted similar ordinances. He fully supported and urged Council to declare secondhand smoke a public nuisance.

Tracy Austin, Glenwood Avenue resident, explained that soon after moving in last July, their neighbors were chronic smokers and she asked for them to refrain from smoking, which has not occurred. They smell smoke and must go inside, so they are not able to enjoy their own backyard. They have very small children and are three feet from a shared fence, so it is a chronic problem and she hoped to find some resolution to protect her family.

Elizabeth Emerson, Department of Health & Human Services, receives a number of complaints at Marin County from residents about drifting smoke. They are helping the City of Novato with this very issue. The County's program support cities in developing their ordinances. Novato is considering adopting the County's ordinance, but sent it back to staff to study whether or not to add a nuisance and disclosure component due to the overwhelming complaints about drifting smoke. She noted that further information could be found at: www.smokefreemarin.com. They are present to support Ross. Also, as Council proceeds with this matter, they are in a partnership with all cities and are present to help.

John Martin, Ross resident, believed garbage is one item deserving regulation and toxins is another. People have the right to destroy their own life, but not others. He wanted to know where they draw the line. The issue globally is to have a smoke free environment at some point. He is in favor of this ordinance. He further asked Council to take a leadership role on this issue.

Orna Meyer, Sir Francis Drake Blvd. resident, supported the measure. She believed it would be nice to have recourse and it would help to have some ordinance in place.

Sharon Baker, Ross resident, supported the ordinance and hoped the Town will be innovative and take the lead. It would be wise to take the lead and set new standards for others to follow.

Dian Kiser, California Clean Air Project (CCAP), discussed a statewide project and there is tons of activity going on in California. They are looking back, reviewing and working closely with realtors and rental housing association to make properties smoke free. She is present to offer support. Their website has a database that keeps track of all resolutions and would provide staff the information, but those interested can visit: www.ccap.etr.org.

Narinder Dhaliwal, Director, CCAP, discussed enforcement and their agency did a comprehensive research study on eight different cities on smoking in regard to outdoor dining and every city did not have an issue. Enforcement takes care of itself by signage and education. One city wrote two citations in 10 years. She believed it is self-enforcing along with planning and code enforcement officers. She further recommended that those interested visit their website.

Lesley Reidy, Ross resident, supported the ordinance and understands the problems of secondhand smoke. It is not overstated; it is a nuisance and urged Council's support.

Pam Granger, America Lung Association (ALA), supported the ordinance. Their mission is to prevent lung disease and promote lung health and they support all efforts to strengthen laws. The ALA was present to provide technical support to Dublin in declaring secondhand tobacco smoke to be a nuisance. They contacted Dublin to understand their issues and the Mayor and Vice Mayor indicated that there has not been a lot of activity associated with declaring secondhand tobacco smoke a nuisance. She noted that dialogue is the most powerful component to level the playing field and an ordinance would provide protection. She further noted that they receive calls from different cities desiring guidance and they are available to provide guidance and offer support.

Brian Salmen, Shady Lane resident, suggested that Council carefully consider declaring smoking in one's private property a public nuisance in regard to the implications. Without quantification, it is not a nuisance. He recommended that Council strongly consider this matter because declaring secondhand smoke a public nuisance might be a difficult situation in terms of defining.

There being no further public testimony on this item, Mayor Hunter closed the public hearing and brought the matter back to Council for discussion and action.

Council Member Durst agreed to tighten the ordinance to include outdoor public spaces, but is having a difficult time with any declaration that involves private residences. Smoking is legal in this country and wondered if some rules might be considered abomination of the fourth amendment. She could not support declaring secondhand smoke a public nuisance to create a leverage point for residents to use against another resident.

Mayor Pro Tempore Cahill asked staff if declaring secondhand smoke a public nuisance could be a constitutional violation. Town Attorney Roth asked, "*what constitutes secondhand smoke*," which must be defined.

Council Member Durst noted that they have wood fireplaces, outdoor terraces and outdoor fireplaces, is the Town going to regulate that behavior as well?

Mayor Pro Tempore Cahill stated that the current ordinance does not cover Ross Common, so if they enact Marin County's Ordinance would that cover Ross Common? Project Planner Christine O'Rourke responded in the affirmative. Staff noted that the Town could have a designated smoking area. Staff suggested tailoring the ordinance to the Town and the Council agreed.

Mayor Pro Tempore Cahill appreciated all Mr. Ausnit's efforts and believed the Marin County ordinance is what Ross should strongly consider. He is concerned about the "*nuisance*" part of it. He sympathizes with the issue, but is concerned about how to limit the public nuisance to just cigarette smoke and how is it different from barbeques. He favored the Marin County's ordinance until they can define "*cigarette smoke*."

Mayor Hunter agreed to adopt the Marin County's ordinance, but tailor it to Ross. Also, the notion of a public nuisance, if written correctly, could address the problem of secondhand

smoke. He believed language could be crafted to do so. Secondhand smoke should be declared a public nuisance. He added that it is impossible for a police officer to investigate secondhand smoke, but a public nuisance law can be written so that it does not impact barbecues and wood fires. Secondhand smoke drifting to neighboring properties into children's lungs should be addressed and the Town should take action.

Council Member Strauss supported the Marin County's ordinance, but it must be tightened up. He did not see how they could enforce smoking. He recommended putting the matter out for a vote by Ross residents. Mayor Pro Tempore Cahill noted that they are not banning smoking, but declaring it a public nuisance. Council Member Strauss believes he has a right to clean air, so he is not sure how to craft language in that regard.

Mayor Pro Tempore Cahill stated that if there is a way to clearly identify that secondhand smoke is a nuisance in an ordinance he would be in favor.

Mayor Hunter recommended that Council agree with Marin County's ordinance, but direct staff to work with willing advisors to develop a regulation tailored to tobacco smoke as a nuisance, which must be very specific. Town Attorney Roth stated that in a particular case, they must be able to make a factual showing. Council Member Durst noted that Council must consider that if someone did take civil action whether or not the Town would have to join in the lawsuit.

Mayor Hunter believes the advisors that have spoken tonight have been down this road and recommended allowing staff to work with those advisors on this matter.

Town Broad Manager clarified that he understood that in addition to adopting the Marin County's ordinance, the Town Council is interested in staff looking at an ordinance declaring secondhand smoke a public nuisance, if they feel they have the necessary legal justification and enforcement on that matter.

Project Planner O'Rourke stated that Council could order abatement or enforce penalties or enter into legal action and then just leave it to private citizens. Staff noted that the Town of Dublin defines secondhand smoke. Town Attorney Roth believed they must be careful to state what the harm is and then define that harm.

Ms. Emerson reported that there is no safe level of exposure to secondhand smoke. Also, smokers are not a protected class in California or in the U.S. Constitution. Smokers' addiction is deep and legal restrictions are the only way to stop smokers from exposing others.

Town Manager Broad agreed to develop a draft ordinance if staff believes the necessary documentation is available to craft such an ordinance. Council agreed.

15. Town Council consideration of adoption of Resolution No. 1630 Establishing Fees for Development, Subdivision, Environmental, Building and Public Works Applications and Residential Building Record Reports. The Town Council will also consider introduction of Ordinance No. 600 amending Title 15, Building and Construction, by amending Chapter 15.04, California Building Code, Section 15.04.0150(d), Section 107.3 Amended Fees, to increase investigation Fees.

Gary Broad, Town Manager, summarized the staff report and recommended that Council consider adoption of Resolution No. 1630, establishing fees for development, subdivision, environmental, building and public works applications and residential building record reports. Staff also asked Council to consider introduction of Ordinance No. 600, amending Title 15, building and construction, by amending Chapter 15.04, California Building Code, Section 15.04.0150(d), Section 107.3 amended fees, to increase investigation fees and schedule adoption for the September 2007 Council meeting.

Mayor Pro Tempore Cahill discussed the objection to the \$100 fee for changes during the building permit process and felt the three-tenths of 1% fee is sufficient to cover the cost. He would prefer to eliminate this \$100 addition because it would be a clerical addition, more bookkeeping and more problematic for staff to determine which revisions trigger the \$100 and which do not.

Town Manager Broad desired applicants to go through a more defined process to request changes even without the Town charging the additional fee.

Council Member Strauss suggested an hourly rate. Town Manager Broad explained that for major revisions, the Town charges a fee, but this only pertains to minor fees.

Council Member Strauss believed \$3 per sheet is very low. Town Manager Broad recommended stating “*at cost*.” Council agreed.

Town Manager Broad noted that the fees have been in place for four years and most are not being raised at this point, it is just a tweaking of a couple of specific costs.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for discussion and action.

Council Member Durst believed the resale inspection should be increased to \$500 rather than \$300. Town Manager Broad believed it is more important to receive the information, even if at a slight subsidy.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Durst seconded, to introduce Ordinance No. 600, amending Title 15, Building and Construction, by amending Chapter 15.04, California Building Code, Section 15.04.0150(d), Section 107.3 Amended Fees, to increase investigation fees. Motion carried unanimously.

Council Member Durst Moved and Council Member Strauss seconded, to adopt Resolution No. 1630, establishing fees for development, subdivision, environmental, building and public works applications and residential building record reports. Motion carried unanimously.

Town Manager Broad recommended that Items 16, 17, and 18 be discussed after Item No. 20 due to the number of individuals present to discuss that item. Council agreed.

19. Planning Application Consent Agenda.

a. 32 Ross Common, Commercial District Use Permit No. 1656

Brian Collins, Collins Law and Collins Real Estate (tenant) & Giovanna and Maurizio Rossetti (owners), 32 Ross Common, Suite 200, A.P. No. 73-272-06, C-L (Local Service Commercial). A law and real estate brokerage office use in a 728 square foot, second floor, tenant space. Proposed days and hours of operation are Monday through Friday 9:00 am to 5:00 pm, with 1 on-site employee and estimated client traffic of 2 people per day.

Brian Collins, applicant, desired the sign to remain as is, and presented photographs in that regard for the Council's consideration. Council concurred with the staff report.

Council Member Durst believed the proposed signage presented by Mr. Collins is in violation of the Town's Sign Ordinance.

Mayor Hunter asked for a motion.

Council Member Cahill moved and Council Member Durst seconded, to approve Consent Calendar Item "a" as presented by staff with findings and conditions in the staff report. Motion carried unanimously.

32 Ross Common, Brian Collins, Collins Law and Collins Real Estate. Local Service Commercial District Use Permit, File 1656

1. This project shall comply fully with the approved project description.
2. An after-the-fact use permit fee of \$300 shall be paid within 30 days.
3. A business license shall be obtained from the Town of Ross Building Department. Failure to keep current with Town of Ross business license requirements and business license taxes shall be cause for the revocation of this conditional use permit approval.
4. Any signage associated with this use is subject to the review and approval of the Planning Department prior to its installation. The existing sign shall be modified to eliminate the text between the graphic design and the address within 60 days.
5. 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.

b. 41 Sir Francis Drake Blvd, Variance and Design Review No. 1657

Melanie & Giam Giusti, 41 Sir Francis Drake Boulevard, A.P. No. 73-161-15, R-1:B-20 (Single Family Residence, 20,000 Square Foot Minimum Lot Size). Design review to

allow the construction of a new, 6 foot tall, solid wood fence in the front yard adjacent to Sir Francis Drake Boulevard. Variance for 8.75-foot tall arbor within the north side setback area (20 feet required, 8 feet proposed).

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Skull seconded, to approve Consent Calendar Item “b” as presented with findings and conditions. Motion carried unanimously.

Giusti, 41 Sir Francis Drake, Fence Design Review, File 1657

1. The fence shall be a natural or stained redwood and shall not be painted.
2. The lawn shall be setback further from the 42-inch diameter oak tree if required by the town arborist.
3. The Town Council reserves the right to require additional landscape screening for up to two (2) years from project final.
4. No encroachment permit is approved; it is the responsibility of the applicant to ensure that no work of any kind occurs within the right-of-way.
5. 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.
6. Failure to secure required building permits and/or begin construction by July 12, 2008 will cause the approval to lapse without further notice.
7. 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.
8. 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.
9. 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.

End of Planning Consent Agenda.

20. 8 Fernhill Avenue, Design Review No. 1583

P. Rupert and Sylvia Russell, 8 Fernhill Avenue, A.P. No. 73-051-17, R-1:B-10 (Single Family Residence, 10,000-Square-Foot Minimum). Design review to allow replacement of a buried 36-inch diameter pipe in the drainage channel at the rear yard of the site, within the guideline watercourse setback.

Elise Semonian, Senior Planner, summarized the staff report and recommended that Council approve the project with the following changes below subject to the findings and conditions:

1. Modification to the drainage plan to allow runoff to filter on site, rather than collecting and concentrating runoff to the culvert;
2. Modification of the channel opening so that the applicants have access and can be responsible for maintaining the channel and removing any debris that is caught in the opening, with a maintenance agreement submitted to the Town.

Matt Smeltzer, hydrologist retained by the applicant, reviewed the site, potential impacts and met with downstream and uphill neighbors to understand the flooding and nuisance on their properties. There is a culvert downstream that is only 24-inches wide that backs up water and makes water deeper on Frank Malin's side so that 60 to 70% of his backyard is under water during certain storm events. Frank Malin, 6 Fernhill, has a residence that was elevated in 1982. His site floods around the channel that runs through the yard. Bill Bradford, 10 Fernhill, has a flat lot and flooding is from headwaters from the 36 inch culvert on the Russell's site. Mr. Bradford expects flow to pass occasionally, but not extend to the garage as occurs now at the Bradford's home. The exact amount of flow is unknown. A 42-inch culvert would provide relief to Mr. Bradford, but would increase flows to Mr. Malin downstream. It is a dueling situation and he cannot make the call as to which property should endure increased flooding. With all that information, he recommended that status quo be preserved and that a 36-inch pipe be installed at 8 Fernhill. Some owners would prefer to see a larger pipe at 8 Fernhill to have some relief, but the whole network must be treated more comprehensively. The 24-inch pipe is about 100 feet long. He recommended restoring the status quo and if the ability to upgrade the system could occur that would be the preferred option. He added that an open channel is a feasible option at 8 Fernhill from an environmental and debris-blocking standpoint, which is superior to culverts. An open channel is a minimum cost of \$75,000 including landscaping. To replace the 24 inch culvert at 4 Fernhill could cost \$80,000 to \$90,000 at a minimum. The proposed solution to maintain the status quo will cost around \$15,000. If status quo alternative is recommended, they have not solved the flooding problem upstream. In his opinion, 6 and 8 Fernhill serve as a pond once the flow gets to a certain level. The ponds could be made narrower and constrained to the rear yard creek zones if each owner was to install an impermeable dam, such as a wood board, so water could not pass through the bottom of the rear yard fence or an earth berm.

Council Member Strauss desired a long-term solution and did not want to piecemeal this situation. He desired a swale to help with the overflow. Hydrologist Smeltzer believed a swale could not be executed until the 24-inched pipe is made larger in order not to impact Mr. Malin's property.

Mayor Hunter recommended adding a swale on top of the 24-inch pipe. Hydrologist Smeltzer believed it might be feasible.

Council Member Strauss asked about long-term solutions in regard to the status quo and installing 36-inch pipe. Hydrologist Smeltzer stated that any kind of culvert is not consistent with the vision of an open flowing creek, so debris is a concern. He recommended status quo until and if the 24-inch pipe can be upgraded.

Council Member Strauss asked about the entire drainage system and the impact from this project. Town Manager Broad noted that the 24 inch culver is on private property. Council Member Durst believed there is a culvert owned by MMWD or they have an easement or right-of-way. Senior Planner Semonian stated that water from Bolinas comes over to 6 Fernhill and there are several catch basins.

Council Member Strauss desired a study of that creek to know if an open stream is a viable solution. Hydrologist Smeltzer stated that an open pipe on 4 Fernhill would solve many problems. If 42-inch pipes were installed at 4 and 8 Fernhill, flooding would be eliminated and produce less depth, so major improvements would occur.

Council Member Strauss asked staff about laws on creating a situation to run water across an adjacent parcel with improvements. Town Attorney Roth noted that this area of law is not that clear. In terms of liability, if the status quo has changed and properties worsen there might be liability, but if the status quo is maintained, then there is no issue, but he must study the property before giving legal opinions.

Hydrologist Smeltzer stated that to replace the pipe and use a swale to remove the excess off of 6 and 10 Fernhill, it would not occur until the pipe on 4 Fernhill is addressed. The channel cannot be left in its current condition. Council Member Strauss recommended looking at 4 Fernhill to add a swale on top. He did not want to piecemeal this matter. He further stated to add a pipe without understanding the ramifications did not seem appropriate.

Mayor Hunter opened the public hearing on this item.

Eileen Chavez, Bolinas Ave. resident, never flooded until 1982. When 8 Fernhill added a pool a culvert was added to extend the property. To her knowledge culverts were not allowed in Ross. This is not a creek, but a runoff area. When the culvert was installed in the late 1970s she received more water up Fernhill and Bolinas, not enough to flood the house, but her backyard. She installed 12-inch deep gutters to protect her house. With more homes being built and more landscaping, with the slightest bit of dirt or debris in the culverts flooding occurs. She flooded in 2001 with 3-inches; and in 2003 with 8-inches inside her house, so every other year she is having more water in her house. She further believed additional culverts would just add to the flow and cause additional flooding.

Rupert Russell, applicant, has the greatest sympathy for his neighbors. He desired a solution that works for all. It is frustrating for him, since he thought he was doing a good thing by fixing what was broken. It was a 36-inch pipe and the bottom of the pipe was falling out. He was trying to help the situation and not trying to make life difficult. His interest is that problems of flooding be fixed, not make neighbors unhappy. He was impacted by the flood worse than anyone in the room. He is dealing every day with the struggle to just get back

into his house. He already has \$500,000 to \$700,000 in uninsured loss. He is taking on a lot of debt. He bought his home at the top of the market. People must understand that he was doing the best he can and wants to get back into his property and as close to the property that he bought. He pointed out that the Bradford's and the Malin's bought their properties fully aware of the situation. He was planning to put in a 36-inch pipe. He spent a tremendous amount of money on a survey, engineering reports, and a hydrologist. He does not have the ability to continue spending funds. He is willing to fix the problem, but there are various mitigations that others can do, but on him the burden is enormous. He will accommodate the neighbors. He will do what it takes, but would like to have his property back to the way it was, which had a buried pipe and that is not unreasonable in his view.

Mayor Hunter recognized what the Russell's had gone through as well as understands and appreciates all his efforts.

Roy Forester, contractor, did receive permission from the Town to replace the culvert. The 24-inch culvert downstream is a major part of the problem. There is little net effect on the Bradford side. The new pipe would handle higher velocity of water than the older pipe. If the channel behind Russell's property is restored, it will have a dramatic effect on the pool area. At the end of the 24-inch culvert, it meets a junction box and it has been referenced as a 42-inch pipe. It is 42-inches at its widest point, but 28-inches deep, so the net flow is similar to a 24-inch pipe. The Russell's need to get this project completed and replacement of the 36-inch storm drain will not have an overall effect. The 24-inch pipe is the issue. There were very large trees on 4 Fernhill, so they used a 24-inch culvert to avoid damaging the trees. He hoped the Russell's could move forward.

Mayor Pro Tempore Cahill asked the contractor to estimate the replacement of a 24-inch pipe either with a 36-inch pipe or a 42-inch pipe. He desired a range. Contractor Forester responded that \$80,000 to \$90,000 would be on the upper end of the scale without trees and landscaping.

Frank Malin, 6 Fernhill resident, is pleased and sorry that it has turned into a major water system discussion, which should not occur tonight. He confirmed that his site does serve as a "bathtub" because it is at a lower elevation than adjacent sites and water drains from both Bolinas and Fernhill to his site. He floods every winter. The 24-inch drain on 4 Fernhill is the problem. There must be more study about what lies on the other side of 4 Fernhill. Any increase flow upstream will make 6 Fernhill flood more. 4 Fernhill does not flood because it is sloped up higher. He appreciated Council's efforts on the entire flooding issue being scientific and proactive. He hoped Council's attention is restricted to 8 Fernhill and not the entire water system. He wanted the project to be completed within the next couple of months. He finds the situation as is acceptable and hoped the equation is left exactly the way it is.

Bill Bradford, 10 Fernhill resident, agreed this is a complex issue and feels strongly that it is irresponsible to embark on the status quo until all solutions have been explored. The hydrology reports provide insights. Also, the report and capacity are based on flow issues without attention to obstruction. The problem has been more about obstruction than about pure flow. The future will be different and adding a culvert that has a life expectancy of many decades, if not centuries, is not appropriate. Status quo is to say that they have a problem with 4 Fernhill that will continue to cause flooding and property damage. This is

unacceptable to go down this pathway without thoroughly exhausting all options. He is sympathetic to the Russell's, but desired all options explored.

Mr. Russell noted that 53 Bolinas has not experienced any problems of flooding and that should not be ignored.

Council Member Strauss believed this is a solution area wide and desired information from the engineer. Senior Planner Semonian responded that any pipe bigger than 36-inches will increase runoff and staff is unable to quantify the increase in water.

John Martin, Bolinas resident, believed the drainage ditch is a problem. He did not feel it is fair to stop the project and place a financial burden on the Russell's. They will go bankrupt if this does not get fixed properly. He agreed to solve the problem long-term, but not burden the Russell's.

There being no further public testimony on this matter, Mayor Hunter closed the public hearing and brought the matter back to Council for discussion and action.

Mayor Hunter recommended considering going with the status quo and calling for additional study and information on why the 24 inch pipe was installed downstream.

Council Member Strauss recommended talking with the Town's Engineer. Senior Planner Semonian responded that the Town Engineer agreed that status quo would prevent additional flow from the downhill neighbors. Also, adding an overflow swale across 8 Fernhill as a condition of approval could be required in order to accommodate any excess runoff. The overflow swale could be required after downstream improvements were made.

Mayor Pro Tempore Cahill believed to study the area it will take longer and this project must be fixed before the rainy season. It is unfortunate that they must piecemeal this process, but they do not have the time to do a proper system throughout. They must let the Russell's finish their project with the pipe and status quo.

Council Member Strauss believed the Public Works Department must be tightened up. Contractor Forester noted that time is money. Hydrologist Smeltzer has no assurance that the owner of 4 Fernhill will cooperate and that would delay the process.

Town Attorney Roth noted that the Town could contribute to private property in terms of public good, so the Town could make a contribution. The Town cannot impose on 4 Fernhill to make the change.

Mayor Hunter noted that there is a 36-inch pipe that runs about 50 feet that recreates what everyone inherited, so that just recreates the situation that needs study. If down the road they find the money to study and then fix the entire system then that could occur. He then asked the contractor the cost to fix later in terms of pulling out the pipe. Contractor Forester believed around \$20,000.

Council Member Durst noted that gathering information is difficult. There were no obvious solutions at that point based on the information provided. If they receive more information and complete a survey, then it is easier to develop a comprehensive solution then deem it

practicable to participate with residents to improve the entire network. Once information around the conditions of private properties is known to the Town, then they act from one end to the other end and do a much more comprehensive and global study.

Mayor Pro Tempore Cahill noted that there is a solution, but they must figure out how to fund the project.

Mayor Hunter asked for a motion.

Council Member Cahill moved and Council Skall Member seconded, to maintain the status quo, replacing the 36-inch pipe with the conditions and findings as indicated in the staff report; and adding that, at the option of the Town in the future, the Town may require the applicant to install an overflow swale above the culvert if the 24-inch pipe downstream is removed.

Motion carried unanimously.

Russell, 8 Fernhill, Design Review Application, File No. Var 1583

1. The Town reserves the right to require the applicant to install an overland flow channel to convey excess water when runoff conditions exceed the capacity of the culvert when the 24" pipe downstream is replaced with a larger culver or open channel.
2. The project shall be subject to all conditions of the September 14, 2006 Council approval.
3. The proposed project is located in or adjacent to a waterway with a defined bed and bank and probably falls under the jurisdiction of the United States Army Corps of Engineers (Section 404 permit) and also the California Regional Water Quality Control Board (Section 401 certification). The California Department of Fish & Game issues Streambed Alteration Agreements when activities would impact wetlands that are associated with rivers, streams and lakes. Prior to commencing work, the applicants are responsible for obtaining permits from the following agencies:
 - a. Streambed Alteration Agreement from the Department of Fish & Game (707) 944-5520. In general, work is only allowed between April and October, except for special circumstances.
 - b. Any necessary permit from the U.S. Army Corps of Engineers (415) 977-8451.
 - c. 401 Certificate from the Regional Water Quality Control Board-Marla Lafer (510) 622-2348.
4. The applicant shall submit a revised drainage plan to the Town that focuses on filtering runoff into the soil and conveying runoff slowly through vegetation and not directly into the culvert.
5. The applicant shall submit a revised culvert design that allows owners to access the culvert for maintenance, including removal of debris, and an agreement for maintenance of the culvert. Access may be accomplished on-site or with an easement agreement with upstream neighbor.
6. 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 any revisions.

7. As required by the floodplain management ordinance, the residence must have the required openings in the foundation walls to allow for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A MINIMUM OF TWO OPENINGS HAVING A TOTAL NET AREA OF NOT LESS THAN ONE SQUARE INCH FOR EVERY SQUARE FOOT OF ENCLOSED AREA SUBJECT TO FLOODING SHALL BE PROVIDED. THE BOTTOM OF ALL OPENINGS SHALL BE NO HIGHER THAN ONE FOOT ABOVE GRADE. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. (See FEMA Technical Bulletin 1-93 <http://www.fema.gov/pdf/fima/job2.pdf> for more information)
8. A FEMA elevation certificate shall be submitted to the Town prior to project final.
9. The Town Council reserves the right to require additional landscape screening for up to three (3) years from 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.

Council Member Skall recused himself from the Town Council meeting at 10:00pm.

16. **Town Council consideration of introduction of Ordinance No. 601 amending Title 15, Building and Construction, by amending chapter 15.50, Time Limits for Completion of Construction.**

Gary Broad, Town Manager, summarized the staff report and recommended that Council introduce Ordinance No. 601, amending Title 15, building and construction, by amending Chapter 15.50, time limits for completion of construction.

Mayor Pro Tempore Cahill asked staff if the language is retroactive. Town Manager Broad suggested stating, "*any property presently owing a construction completion penalty to the Town shall be subject to said penalty and interest 30 days following the effective date of this ordinance.*" Mayor Pro Tempore Cahill recommended stating, "*30 days after a subsequent letter.*" Council and staff agreed.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for action.

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to waive the reading and introduce Ordinance No. 601, amending Title 15, Building and

Construction, by amending Chapter 15.50, Time Limits for Completion of Construction. Motion carried unanimously. Skall absent.

17. Follow-up discussion on after-the-fact construction.

Gary Broad, Town Manager, summarized the staff report and recommended meeting with a subcommittee of a couple of Council members to receive feedback and/or written comments. Staff noted that it could be reviewed under general government or public works. Council agreed to send it to Public Works Subcommittee. Town Manager Broad agreed to schedule a meeting to discuss which items on the list are worth pursuing.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for discussion

Council Member Durst noted that these after-the-fact applications put Council between a rock and a hard place due to resale of property. There has to be some way to inform the public that if they build a structure or finish off a room they must come before the Town first. Town Manager Broad agreed to look at resale inspection, so taking that information and putting it back on the present owner in some form in terms of tightening down the responsibility to become the burden of the present owner.

Mayor Pro Tempore Cahill added in the property assessment section to have the owner and contractor certify in writing the actual project cost at the end of the job and before the final. Council and staff agreed.

18. Town Council consideration of introduction of Ordinance No. 598, amending Title 2, Administration and Personnel, by adding Section 2.05, Town Manager.

Gary Broad, Town Manager, summarized the staff report and recommended that Council introduce Ordinance No. 598, amending Title 2, administration and personnel, by adding Section 2.05, Town Manager.

Mayor Hunter opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public hearing and brought the matter back to Council for discussion and action.

Council Member Strauss suggested modifying "he/she" to state, "Town Manager." Council and staff agreed.

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to waive the reading and introduce Ordinance No. 598, amending Title 2, administration and personnel, by adding Section 2.05, Town Manager. Motion carried unanimously. Skall absent.

21. Correspondence - None

22. Other Business - None

23. Adjournment.

July 12, 2007 Minutes

By order of Mayor Hunter, the meeting adjourned at 10:32 p.m.

R. Scott Hunter, Mayor

ATTEST:

Gary Broad, Town Manager