

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JANUARY 10, 2008

1. **6:30 P.M. Commencement.**

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

2. **Open time for matters pertaining to the closed session in agenda item 3.**

3. **Closed Session – Conference with Legal Counsel – Anticipated litigation.
Significant exposure to litigation pursuant to Subsection (b) of Section 54956.9.
One case.**

4. **OPEN SESSION. Council will return to open session and announce action taken, if any. No action to report.**

5. **Posting of Agenda.**

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

6. **Minutes-December**

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve the December 13th Minutes as amended. Motion carried 3-2. Strauss and Skall abstained.

7. **Demands.**

The demands were met.

8. **Open Time for Public Expression- None**

9. **Report from Mayor Hunter.**

Mayor Hunter discussed storm response and appreciated Public Safety, Public Works and Administration Departments being ready well in advance to handle whatever Mother Nature delivered. As the water rose in the creek, extra personnel reported for duty, warning calls and emails were out and the sirens sounded. Fortunately, the creek crested at just under 17 feet, three feet below the flooding stage. It was very reassuring to the citizens to see some of the Town's emergency response put to action. He then sincerely thanked Town staff for their efforts.

Also, the Town of Ross and the other 10 Marin municipalities plus the County of Marin were successful in their application for a \$75,000 Climate Protection/Capacity-Building grant from the Bay Area Air Quality Management District Climate Protection Grant Program. The goal of

this partnership is to reduce greenhouse gas emissions and create sustainable communities. The partnership with other Marin jurisdictions will enable their region to better share ideas, collaborate on joint projects when applicable, and coordinate policies and programs.

In regard to the Town Election, the Mayor indicated that serving on the Town Council is a great public service and the next election for Town Council will be June 3, 2008. Three seats will be up for election. Papers can be pulled any time between February 11th and March 12th.

10. Report from Committee Heads.

Council Member Durst reported that at last night's MTA meeting, MTA paid tribute to Dan Hillmer of Larkspur for his 12 years of dedicated service as a MTA director and chair. Mr. Hillmer is stepping down as Larkspur's representative and is being replaced by Larry Chu. Mr. Hillmer was the primary engine that drove the franchise agreement with Comcast even in the face of the State legislature's subsequent passage of AB 2987 creating the State telecommunications franchise. By being so persistent, they are assured the many advantages that their local franchise has given all MTA entities. She then extended her public appreciation of Dan Hillmer and congratulations on a job well done. Also, last night MTA directors elected Andy Berman of Mill Valley and Jonathan Leone of Sausalito as Chair and Vice Chair respectively for 2008.

Council Member Durst added that in December a draft strategic plan was presented, which established the following goals for MTA:

1. The MTA will become the chief coordination and policy-making body related to telecommunication matter in Marin.
2. Continued help in developing, expanding and supporting PEG access.
3. MTA continues to perform cable franchise and telecommunications administration.

11. Report from Ross Property Owners Association.

Wendy McPhee, RPOA representative, appreciated Ross Town staff as well in regard to the storm response. Also, RPOA wanted to be clear as to where citizens go during a disaster. Chief Heying has not established one particular site. It is a dynamic process. They do have a number of sites available, if needed, that are large capacity sites in Town. Chief Heying stated that it is dangerous to identify one particular site, so the plan is to make announcements through various methods such as health and notification systems as well as email.

Ms. McPhee received comments from last months meeting regarding social drinking and there is a strong feeling that it must be addressed in regard to a social host ordinance. Mayor Hunter noted that it is on the February agenda.

Ms. McPhee discussed page 12 of the General Plan regarding environmental aspects of outdoor fireplaces, and since funds are available to study greenhouse gas emissions, to consider aspects of outdoor fireplaces as well.

12. Flood Control Report.

Mayor Pro Tempore Cahill attended the December meeting held at the County with representatives of the County of Marin and towns in the Corte Madera creek watershed. Updates were provided in regard to the lawsuits that challenged the flood control fee. Despite

the lawsuit, planning work continues and preparation for the actual flood control work. He will provide more information in regard to the scope in the next month or two.

Council Member Strauss attended a Flood Zone 9 meeting on December 12th and the design work is moving forward, but contracts with the County and federal government must be worked out. Once that matter is worked out, a scoping session will occur between the fish ladder and the bridge to complete the project. Also, there was a valve replaced at Phoenix Lake that will allow control to the gate. He further noted there are required regulations and the reason why it takes so long to get the process moving, but they are pushing forward on the conceptual design for the bridge.

13. Employee Appreciation Program and presentation of awards to Town employees Rick Addicks, Robert Maccario, Steve Nelson, Jake Peterson and Jim Reis.

Town Manager Broad presented employee appreciation awards to Engineer Rick Addicks of the Fire Department; Officer Steve Nelson; Street Superintendent Robert Maccario; Fire Department Captain Jake Peterson; and Sergeant Jim Reis on behalf of the Town for their dedicated work throughout the years.

14. Update from Chief of Protocol Molly Gamble on September 20, 2008 Town Centennial celebration.

This matter was continued to the February Town Council meeting.

15a. Town Council discussion of Lagunitas Road Bridge design.

Town Manager Broad introduced David Anderson, a consultant from URS, who is working on the Lagunitas Road Bridge design.

Public Works Director Jarjoura explained that Caltrans has criteria for a minimum acceptable standard for a bridge. He presented several illustrations to the Council for their consideration. It is not a fixed width number and the Council can provide direction to the consultant as to what the Council wanted to see in the configuration of the bridge. Right now it is 20 foot curb-to-curb plus 4 feet. He presented different perspectives to have either a 5-foot path or an 8-foot path. Staff felt if both sides provided an 8-foot bike lane, then only a 5-foot sidewalk is needed. The alternative is both sides outside the bridge to provide 5 or 4-foot path. Several iterations were provided to the Council for their review. They want direction from Council in regard to what concept or a mixture of all the illustrations to draw a rendering of the bridge.

Town Manager Broad stated that the downtown design group liked the concept of keeping the width as close to what is present now and liked the idea of a single outside walkway.

David Anderson explained that the narrower width now is a traffic-calming device, but there is some requirements attached to the federal funding. The narrower width is the reason it was federally funded and they would want to see it wider to some extent. The standard is 12-foot lane with a 4-foot shoulder on both sides, which is 16 feet curb-to-curb. That criteria is based on safety, but he believed there is some negotiations and the emphasis on making the bridge similar to what is present now. He then presented architectural drawings and asked Council for direction in regard to one sidewalk or two. He also provided an aerial photograph showing Alternatives 1 and 2. Alternative 1 is a sidewalk on both sides and Alternative 2 is a sidewalk on

January 10, 2008 Minutes

the south side only. He presented the Council with a typical section for their consideration. The other option is that they will participate in a bridge narrower than standard, but they can use money from the program for a bridge that is in the programs eyes too narrow, but then it would be off the program and not be eligible for any future funds.

Council Member Strauss asked about 12-foot drive lanes with 3-foot bike lane on one side and a 6-inch curb that would be 28 feet wide plus a 5'-8' sidewalk. He asked if 38 feet would qualify under the criteria and satisfy the Federal requirements and the Town's requirement for a pedestrian walkway and drive lanes. Consultant Anderson responded that 8 feet is needed for a pedestrian pathway. Also, a barrier is needed in between vehicles and pedestrians. Council Member Strauss then provided a sketch for the consultant to review. Consultant Anderson believed it is negotiable.

Mayor Hunter asked if they had 3 feet on either side with the stone type design and then a walkway off to the side. Council Member Strauss agreed and believed possibly 5 feet. He thought the pathway had to be connected to the bridge to receive federal funds. Consultant Anderson stated that it would be hard to eliminate the shoulder entirely.

Council Member Durst asked if the top section is respecting the historical portion and still able to receive the federal money. Consultant Anderson noted that a standard bike lane is 4 feet, but it is simply a shoulder. For an urban collector, generally, they want to match the approach roadway, which varies. Sidewalks on both sides would be paid for out of the program because in essence sidewalks lead up to the bridge on both sides. The typical section shows the existing bridge that is being raised and provided 3.5 feet of flood grade, raising the deck about 1.5 feet. They eliminate one support and that will be the driving force. The Town Hall is a historical site and the character should not be affected. Under the sidewalk would leave pre-cast openings that they can hide undergrounding of cable wires. Without a sidewalk, utilities could not be hidden. He added that it is easier with a sidewalk and the architect likes the symmetry of the two sidewalks.

Council Member Strauss noted that no one liked the 43-foot wide bridge. They desired one pathway on the other side (east side). He believed a designer could easily come up with some way to screen or hide the utilities. Consultant Anderson noted that they could add a barrier to hide utilities. He made a case for the two sidewalks and Caltrans would participate.

Council Member Strauss appreciated the narrower calming effect and desired a narrower bridge as opposed to going wider. As narrower as possible would be best due to the close proximity to the school and Post Office. He believed calming traffic is desired and the Council agreed.

Consultant Anderson noted that there would be no impact to Sylvan Lane. The transition would start half way back and conform on Sylvan. The roadway is crowned and the sidewalk would be revealed very gradually. Council Member Strauss asked if it would help if the traffic flow to the Post Office were reversed. Consultant Anderson agreed the transition would be easier. Also, they have just maintained the same centerline and the 11-foot and 3-foot is probably negotiable.

Mayor Hunter opened the public hearing on this item.

January 10, 2008 Minutes

Brian Salmen, Shady Lane resident, assumed all of this is premised on 5,400 cubic feet per second flow. Consultant Anderson agreed, but that is negotiable as well. It depends on flood control improvements that occur upstream or downstream. They are shooting for that number. Council Member Strauss noted that 5,400 square feet is an important number that has been established. That is very critical. Consultant Anderson pointed out that hydrology analysis will determine how high and shallow the bridge can be.

Council Member Strauss asked about the schedule in regard to the design process. Consultant Anderson is hoping for the summer of 2008, but that will not occur. He believed 2009 is more realistic. They did geo-tech borings, survey and started environmental work. JRP is doing research on the bridge. A lot is contingent on hydrologic and funding sources. Also, Caltrans and the federal government must agree.

Council Member Strauss asked if the design is moving forward or in limbo until contracts are signed. Consultant Anderson noted that they are in limbo. Council Member Strauss asked the consultant to come back next month and for the architect to sketch the preferred design and present it at the February meeting along with a schedule for when construction documents are ready for bid.

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

The Council desired the narrower width design for its traffic calming and due to the close proximity of the school and Post Office, so traffic should travel through slowly.

Mayor Hunter then announced that this is a discussion item only and no action is required.

15b. Town Council discussion of installation of parking barrier on Laurel Grove at Canyon Road.

Town Manager Broad summarized the staff report and recommended that the Council consider installation of a parking barrier on Laurel Grove at Canyon Road and listen to comments from the public, and if Council feels there is a problem to come back with a solution and allow the broader neighborhood to be part of the discussion.

Mayor Hunter opened the public hearing on this item.

Liz Welsh, Laurel Grove resident, expressed concern for this problem that continues to get worse. She has contacted staff and believed the rock barriers will be a solution. Garbage and other construction debris is left. It is an open calling ground for any contractor. It is a dumping ground for Kentfield and San Anselmo. She desired huge boulders scattered throughout in order to keep the huge 18-wheelers out. She is fed up with this issue and it must be addressed because it has been occurring for years. The “*noparking*” signs are not working and more must be done. It is not fair to residents on Laurel Grove.

Mike Welsh, Laurel Grove resident, expressed the same concerns and pointed out that the area is not a dumping ground and safety is a concern. Heavy equipment is parking in the area on a regular basis and safety to children is an issue. This property is being used as a free storage area.

January 10, 2008 Minutes

It must be addressed whether parking barriers are placed or removal of unclaimed property left on public ground can occur.

Paul Bohan, Laurel Grove resident, expressed concern for the storage of equipment as well. He also expressed concern for children's safety from all the equipment. This is a free storage yard for construction companies large equipment, which is not appropriate and it constitutes a nuisance and a hazard when children are playing on the equipment. He believed large boulders that blended in with the natural environment would be a sensible suggestion to address the issue.

The owner of 77 Laurel Grove resident expressed the same concerns for the equipment and debris being stored on Laurel Grove. She believed the boulder idea could work to help mitigate the issue. She then asked the Town Council to give serious consideration to this matter.

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

Mayor Hunter directed staff to investigate the situation. Town Manager Broad responded in the affirmative.

Council Member Durst clarified that the objection is to the larger construction vehicles and staging yard and they would like to maintain parking for a vehicle (car) overflow parking for a party. She suggested intensely planting trees. The Council agreed and felt that is a wonderful idea.

Council Member Strauss asked Chief Heying if tickets have been issued. Chief Heying indicated that a handful of tickets have been issued. The Council directed staff to review the matter.

Mayor Pro Tempore Cahill recommended modifying the code to address this issue. Town Manager Broad noted that it is very limiting. They must create a different approach to make it a civil penalty and legal guidance is needed. Staff agreed to investigate.

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

a. Flood damage reduction/warning and emergency response

Mayor Pro Tempore Cahill believed the Mayor provided a great report earlier about different responses and warning systems. Also, the Town has a link to the County's website that shows the level of creek and it identifies it at least every 5 to 10 minutes. On Friday, the creek increased about 1-foot per hour. The County's website is a great way to stay informed on the status of the creek. He concurred with the Mayor that the Town staff was terrific, but he welcomed constructive criticism from citizens to improve the process. He further believed the Town has made terrific progress and last Friday's storm allowed them to know that the process is working very well.

b. Increase resident readiness, response and recover

Council Member Skull reported that they had three residents before they even began thinking about this and at the December Get Ready meeting 18 people were in attendance and more

people are getting involved. At the last meeting, they were working on creative ways to improve resident readiness and working with Chief Heying and Town Manager Broad to increase knowledge on being prepared and having supplies on hand.

c. Advisory design review

Council Member Durst reported that last month Council approved Resolution No. 1639 creating an Advisory Design Review Group (ADR). In the week following, Town Manager Broad sent an email request for residents interested in serving on the ADR group to contact staff. Since this announcement went out during the holiday season, they would like to extend the period of invitation and send out a revised announcement next week. They hope to have a slate of candidates for appointment by Council next month.

Of the inquiries received, several requested some clarification of job responsibilities. They are seeking five Ross residents, four with professional design backgrounds in architecture, landscape design or other comparable fields, one non-design professional resident as well as two alternate non-design professional residents to server on ADR for two years. The Council will initially select from the group of five a person who will serve as chair for one year.

The ADR group will meet once per month at Ross Town Hall at a regularly scheduled day and time established by the group. The quorum has been set at three, so absences are allowed. Once this initial ADR group is appointed, Town Manager Broad and Council Member Durst will work with ADR to create a design rubric specific to Ross. The rubric will set the tone and focus for ADR meetings. ADR group has been created to help members of the community with some of the hurdles inherent to any remodel or building design. This is advisory so there is none of the pressure of having to make decisions. It is a service in that it gives applicants a real 360-degree view of a project prior to coming to the Council. A Planning Department representative will be present at meetings to take notes as well. If anyone is interested in serving on the ADR group, they should contact Town Manager Broad.

d. Downtown area plan

Council Member Strauss reported that ideas would be drawn and then a visioning session will occur. He recommended updating the Council at the February meeting in regard to roundabouts and parking. Town Manager Broad noted that some material was provided to the Council and a detailed discussion would be good to draw it up along with ideas would be great. They are tentatively targeting the February meeting. Staff agreed to distribute information to the Council.

e. Conclude fire consolidation

Mayor Hunter reported that since the December meeting there has been a couple of meetings with staff and the consultant working with Larkspur. They are working through different issues such as two workforces on the same standing for social security and folding in the MOU's into one. They are making great progress. He further noted that the meeting scheduled for January 7th has been cancelled and will be rescheduled soon.

17. **Town Council consideration of Resolution No. 1636 requesting the Marin County Board of Supervisors to consolidate with the Statewide Primary Election and Municipal Election conducted on June 3, 2008, and requesting Election Services of the County Clerk.**

January 10, 2008 Minutes

Town Manager Broad summarized the staff report and recommended that the Council consider Resolution No. 1636, requesting the Marin County Board of Supervisors to consolidate with the statewide primary election and municipal election conducted on June 3, 2008, and requesting election services of the County Clerk.

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

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to adopt Resolution No. 1636, requesting the Marin County Board of Supervisors to consolidate with the Statewide Primary Election and Municipal Election conducted on June 3, 2008, and requesting Election Services of the County Clerk. Motion carried unanimously.

18. Town Council consideration of Resolution No. 1637 proposing adoption by voters of Ordinance No. 605 authorizing a Municipal Services Tax and Increase in the Town's Appropriation Limit.

Town Manager Broad summarized the staff report and recommended that the Council consider Resolution No. 1637 proposing adoption by voters of Ordinance No. 605 authorizing a municipal services tax and increase in the Town's appropriation limit.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to adopt Resolution No. 1637 proposing adoption by voters of Ordinance No. 605, authorizing a Municipal Services Tax and Increase in the Town's Appropriation Limit. Motion carried unanimously.

19. Council consideration of Resolution No. 1640 granting Marin Sanitary Service a 3.46% rate increase for 2008, effective January 1, 2008.

Town Manager Broad summarized the staff report and recommended that the Council consider Resolution No. 1640, granting Marin Sanitary Service a 3.46% rate increase for 2008, effective January 1, 2008.

Marin Sanitary representative provided a brief update. In regard to dual cart delivery, that has been completed. They had 25 other dual sort carts delivered last month as the smaller phase. This year they became the first independent garbage company in the State to join the registry. They have a 4,100 metric cubic tons of carbon and recycling activities offset to the tune of 88,000 cubic metric tons. It is the equivalent of taking 17,000 cars off the highway. They are moving toward a 75% goal. 8939 passed, which required 50% diversion rate. The waste study is paper coming out of multi-family units and desired more outreach to recycle as well as food waste and establish a food waste diversion program starting with commercial. They do not want to contribute to greenhouse gas emissions. They were approached by PG&E and received \$25,000

January 10, 2008 Minutes

grant to establish a business plan to get methane off. They are proud to institute the new 20-gallon can that usually effects older population or those living in a single situation. Most jurisdictions have 60% usage and Ross is 40% usage of the 32-gallon can. She then thanked Ross for their continued loyalty.

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

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to adopt Resolution No. 1640, granting Marin Sanitary Service a 3.46% rate increase for 2008, effective January 1, 2008. Motion carried unanimously.

Mayor Pro Tempore Cahill commended Marin Sanitary on a great job. The Council concurred.

20. **Town Council consideration of introduction of Ordinance No. 604 proposing text amendments to the Ross Municipal Code including deletion of Chapter 15.22 (Antennas) and various modifications to Title 18 (Zoning) to eliminate obsolete regulations, clarify existing policies and regulations, and to implement recommendations of the Housing Element.**

Senior Planner Semonian summarized the staff report and recommended that the Council consider introducing Ordinance No. 604, proposing text amendments to the Ross Municipal Code including deletion of Chapter 15.22 (Antennas) and various modifications to Title 18 (Zoning) to eliminate obsolete regulations, clarify existing policies and regulations, and to implement recommendations of the Housing Element.

Mayor Hunter asked staff how other projects that have been built were measured. Town Manager Broad noted that former Town Engineer Dave Bracken was very flexible if parcels were unusual and multiple lines were drawn to find an average slope. Staff has tried to be very practical and fair on calculating lot slope. Staff would direct the applicant and engineers to work with the Town Engineer on slope and then staff accepted the Town Engineer's calculation on the parcels. Basically this standardizes the method.

Mayor Pro Tempore Cahill discussed fence regulations and the current condition without this change is that Council reviews fences on a case-by-case basis. He noted that Council often approves tall, solid, fences on Sir Francis Drake for privacy and believed other circumstances in Town may be similar. He thinks there could be circumstances at certain properties where security and privacy could be impacted by not having a solid gate, not necessarily on Sir Francis Drake, and preferred not to have it codified on the code and have it handled on a case-by-case basis.

Mayor Hunter stated that the practice has been 50% transparent. Town Manager Broad noted that it is a guideline and it can be approved without total adherence. It is really included more than any other reason because most gates are approved at least 50% open, and if spelled out in black and white it would save applicants time and money.

January 10, 2008 Minutes

Mayor Pro Tempore Cahill thinks there are legitimate concerns for property owners in terms of security and privacy that must be considered when looking at this particular issue.

Council Member Skall believed it must be open for interpretation. Town Manager Broad recommended adding the word, “*generally*” or delete the proposed design guideline language for fences.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to waive the reading and introduce Ordinance No. 604, proposing text amendments to the Ross Municipal Code including deletion of Chapter 15.22 (Antennas) and various modifications to Title 18 (Zoning) to eliminate obsolete regulations, clarify existing policies and regulations, and to implement recommendations of the Housing Element with the deletion of the modifications proposed to the design guidelines for fences.

21. Town Council consideration of the appeal of John Shalavi, 122 Winding Way, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction, and adoption of Resolution 1635.

Town Manager Broad summarized the staff report and recommended that the Council accept the appeal of John Shalavi, 122 Winding Way, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, time limits for completion of construction, and adoption of Resolution No. 1635.

John Shalavi, Winding Way resident, is present to answer any questions of the Council.

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

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to accept the appeal of John Shalavi, 122 Winding Way, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction, and adoption of Resolution No. 1635. Motion carried unanimously.

Town Attorney Hadden Roth excused himself from the Town Council meeting at 8:41 pm.

22. 81 Sir Francis Drake, Variance and Design Review No. 1673
Harold and Carol Sherley, 81 Sir Francis Drake Boulevard, A.P. No. 73-052-32, R-1:B10 (Single Family Residence, 10,000 Square Foot Minimum). Demolition permit to allow demolition of the existing 2,370 square foot residence. Variance and design review to allow construction of a new 2,199 square foot residence and 250 square foot, attached,

January 10, 2008 Minutes

one-car garage with a maximum ridge height of 28.75 feet. Variances are requested to locate the residence within the north side yard setback (15 feet required, 3 feet proposed) and south side yard setback (15 feet required, 13 feet proposed) and a patio within the rear yard setback (40 feet required, 21 feet proposed). Design review is also requested for a 5.5-foot tall solid wood gate and stucco wall and 6 foot tall columns at the front property line. The residence includes a 250 square foot deck, elevated 5 feet above grade, and a second floor balcony on the rear elevation and within the side yard setbacks (15 feet required, 8 feet proposed).

The applicant requests a vehicular easement across the Town-owned site adjacent to the property.

Lot area	6,821 square feet
Existing Floor Area Ratio	34.7%
Proposed Floor Area Ratio	35.9% (20% permitted)
Existing Lot Coverage	30.5%
Proposed Lot Coverage	28.5% (20% permitted)

The existing residence is nonconforming in floor area, lot coverage, sideyard setbacks and covered parking (one required).

Senior Planner Semonian summarized the staff report and recommended that the Council approve the project as proposed subject to the findings and conditions.

Council Member Strauss desired the dimension between the street curb and the gate. Senior Planner Semonian responded that it is about 40 feet, a large distance.

Jared Polsky, architect, was very encouraged at the last meeting after hearing positive comments. He thanked staff for being so helpful during this entire process. They are proposing a simple contemporary home with a finished floor above the flood plain. They are providing a one-car garage. They increased the setback to the north. This is a handsome home and will be an improvement to the site. He then presented colors and materials board to the Council for their consideration and is present to answer any questions.

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

Council Member Strauss talked about approving projects in the flood plain and wanted to make sure of the fact that the applicant is aware that they are building in a flood plain. Council Member Strauss wanted the Town to be held harmless for approving a residence that may be subject to flooding. Mayor Hunter suggested adding language that the applicant understands and that the Town is held harmless. Senior Planner Semonian was in favor of adding a condition subject to legal counsel finding it acceptable.

Mayor Hunter asked for a motion.

Council Member Strauss moved to approve the project as proposed by staff with the findings and conditions, adding a condition of approval that the Town Attorney review language that by granting this right to build in the flood plain that the applicant will hold the Town harmless.

Mayor Pro Tempore Cahill suggested stating, *“that the applicant acknowledges that they are in a flood plain and agree to hold the Town harmless subject to Town Attorney review.”*

Bob Anderson, attorney/representing applicant, did not believe the language is specific enough. He objected to a condition of approval that require them to hold the Town harmless from everything without time to consider the condition. He did not think it would be effective.

Council Member Durst believed this is an issue being discussed after-the-fact and recommended that the Council stick with staff's findings and conditions and the project should be approved based on what they know now.

Mayor Pro Tempore Cahill noted that the lawsuits are not based on Town approval of project design, but other alleged items.

Council Member Durst pointed out that Condition Nos. 13,14 and 15 address the flooding issues. Council Member Strauss withdrew his previous motion.

Mayor Pro Tempore Cahill agreed it is inappropriate at this time, but asked staff to investigate the terms and conditions going forward in regard to a hold harmless for flood hazard areas.

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to approve the project proposed with the findings and conditions outlined by staff. Motion carried unanimously.

Conditions of Approval for 81 Sir Francis Drake Boulevard, File 1673

The project shall comply with the following conditions of approval, which shall be reproduced on the first page of the building permit plans:

1. The Town Council will grant a non-exclusive easement to permit residents of this site to use the existing driveway within the Town-owned lot. The applicant shall work with staff to draft an agreement, which is similar in terms and form to the easement agreement between the Town and 79 Sir Francis Drake Boulevard. All costs associated with the agreement shall be paid by the applicant.
2. The project shall comply with the approved plans. A licensed land surveyor shall string the location of the foundation and the location of any new fencing. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the finished floor elevation of the residence complies with the approved plans after the finished floor is constructed. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the roof height complies with the approved plans after framing.
3. The applicants shall submit an arborist report that details the health of the 54” diameter elm tree to the south of the proposed residence as well as any other tree protected by

- Ross regulations and measures that must be taken before, during and after construction to protect and preserve the tree(s). A pier and grade beam foundation is suggested. The project arborist shall review construction level drawings (including foundation plans, any proposed trenching for utilities, etc.) to prepare the tree protection plan.
4. The attic storage above the garage shall only be used as storage or mechanical area. No sheetrock is permitted in the space. The area must have a maximum ceiling height of 6.5 feet, measured from the roof framing to the attic floor. Access may only be from a pull down stair or ladder and not by the elevator or stairs. Electrical work is limited to a single light fixture and no outlets or other wiring except those dedicated to mechanical equipment. No heating or cooling is permitted in the attic storage area.
 5. **EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.** Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
 6. Applicants shall recycle at least 50% of construction and demolition debris. If mixed debris boxes are used, the applicants shall inform the waste hauler of this condition prior to debris box pick up to ensure the box will be brought to the recycling area. Receipts that demonstrate the material was recycled must be submitted to the planning department prior to project final.
 7. A construction management plan shall be submitted prior to issuance of a building permit showing work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans.
 8. Grading is prohibited between October 15 and April 15. Staff is authorized to make an exception to this condition if the applicant can demonstrate to staff's satisfaction that best management practices will be implemented, an erosion control plan is submitted, and independent monitoring will be conducted to prevent sediment runoff and erosion at the site.
 9. The applicants shall submit appropriate air quality permits to the building department prior to demolition of the existing structure.
 10. A drainage plan shall be submitted with the building permit application for review and approval by staff. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The drainage from the residence shall be dispersed on site.
 11. Except as otherwise noted in these conditions, landscaping shall be installed in conformance with the approved landscape plan prior to project final. Prior to project final, the applicants shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
 12. The following precautions shall be taken to prevent accidental discovery of archaeological materials during construction:
 1. If archaeological remains are uncovered, work at the place of discovery shall be halted immediately until a qualified archaeologist can evaluate the finds. Prehistoric archaeological site indicators include: obsidian and chert flakes and chipped stone tools; grinding and mashing implements (e.g. slabs and handstones, and mortars and pestles); bedrock outcrops and boulders with

mortar cups; and locally darkened midden soils. Midden soils may contain a combination of any of the previously listed items with the possible addition of bone and shell remains, and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations and discrete trash deposits (e.g. wells, privy pits, dumps).

2. If human remains are encountered, excavation or disturbance of the location must be halted in the vicinity of the find, and the Marin County Coroner shall be contacted at (415) 499-6043.
13. Plans submitted for a building permit shall detail 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 I-93 <http://www.fema.gov/pdf/fima/job2.pdf> for more information)
14. Flood resistant materials shall be used below the finished floor. All structural and non-structural building materials at or below the base flood elevation must be flood resistant. A flood-resistant material is defined as any building material capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Flood-resistant materials must be used for all building elements subject to exposure to floodwaters, including floor joists, insulation, and ductwork. The elevator and any building utility systems within the crawlspace or in the garage must be elevated above the base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the base flood elevation or sealed from floodwaters. (See FEMA Technical Bulletins 2-93 and 11-01 at <http://www.fema.gov/> for more information)
15. A FEMA elevation certificate shall be submitted to the Town prior to project final.
16. Any exterior lighting not shown on the approved plans shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
17. 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.
18. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) A street number must be posted {minimum 4 inches on

- contrasting background}; 2.) All dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; 3.) A 24 hour monitored alarm is required; and 4.) sprinklers are required.
19. 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.
 20. 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.
 21. Failure to secure required building permits and/or begin construction by December 13, 2008 will cause the approval to lapse without further notice.
 22. 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.
 23. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 24. 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.
23. **11 Olive Avenue, Variance No. 1676**
Jonathon and Donna Goldman, 11 Olive Avenue, A.P. No. 73-171-33, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Variance to permit an outdoor fireplace within the east side yard setback (15 feet required, 3 feet proposed) and rear yard setback (40 feet required, 15 feet proposed). Variance to permit a 9-foot tall entry arbor on the Olive Avenue property line (25 foot setback required).

Senior Planner Semonian summarized the staff report and recommended that the Council approve the application subject to the findings and conditions outlined in the staff report.

Michael Yandle, landscape architect, discussed the outdoor fireplaces for the next three projects and explained that they are infrequently used. Outdoor fireplaces are used less than a typical barbeque, but are important architecturally to each of the projects as a focal point for the outdoor terrace. He understands that there are no Town or County ordinances that preclude or restrict outdoor fireplaces. He is sensitive to impacts and in all three projects there are no impacts to surrounding neighbors or community. In regard to Olive Avenue, this is a great site and a great house that has been remodeled, but it is tight in the yard space. They tried to work in areas that already have improvements. There is a gate an arbor in front of the house, but they wanted to change it to a style more in keeping with the character of the house. There is a simple

January 10, 2008 Minutes

lantern type fixture that hangs out with just a glow light. In the back, they removed the aggregate terrace and used random blue stone with plantings and located the fireplace at an apex of that. There are no visual or adjacency impacts. The top of the fireplace is 2 feet above the current fence height. It is a 10-foot fireplace with a 6-foot fence, so only 2 feet is seen. The property will be beautifully planted and a great addition to the Town of Ross.

Council Member Durst asked if they plan to landscape behind the fireplace. Landscape Architect Yandle responded in the affirmative. He noted that all the surrounding neighbors find the fireplace acceptable and had no objections.

Mayor Pro Tempore Cahill asked for a description of the fireplace itself. Landscape Architect Yandle responded that it is a shallow fireplace mainly for heat distribution out the front. It is small in scale with a 3-foot chimney and 5 feet on the overall box. Mayor Pro Tempore Cahill stated that throughout the Bay Area one concern is air quality and reducing smoke and it is his understanding that this fireplace has less smoke emissions. Council Member Strauss noted that it does not reduce emissions; it is just designed to throw heat out. Senior Planner Semonian added that the fireplace manufacturer has measured the emissions to show that they do meet EPA standards, but staff could not state with certainty because EPA has not certified fireplaces yet.

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

Council Member Durst stated that the lot is over its permitted lot coverage and there is already a swimming pool that takes over a fair amount of the yard. This element is in the setback and they denied the application on Norwood Ave. for the same situation. There is an issue of fairness in this particular application. Also, they must think about when this will be used and how. It will be used in the summer months when they have Spare The Air days. They must balance whether or not this is that valuable from a global standpoint. There are aspects of the landscaping plan that she appreciated, but she had problems with the fireplace terrace, and felt there is just too much hardscape in that area.

Mayor Pro Tempore Cahill believes there is a difference between this proposal and the Norwood Ave. property. The barbeque was immediately adjacent to the neighbor's window and in this case there is no living space or house is adjacent to this hardscape. He finds the design excellent. It does not impact the neighbors in any material way and noted support. Council Member Skall concurred.

Council Member Strauss objected to the fireplace in the side yard setback. A focal point does not have to be a fireplace. He indicated that he is unable to make the findings and believed outdoor enjoyment could be better used.

Mayor Hunter expressed concern with the fireplace being right on the property line below a redwood tree. It is a beautiful site, but objected to the fireplace.

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to approve the application with the deletion of the outdoor fireplace from the application subject to findings and conditions outlined in the staff report. Motion carried 3-2. Cahill and Skall opposed.

Donna Goldman, applicant/owner, believed this plan pulls them to the backside of the property and away from an adjacent neighbor's yard space. In regard to the redwood tree, they can easily prune so there is no concern about having any issues with the redwood tree. She stated that they would not use the fireplace in the summer or on spare the air days. It is mostly used in the fall and winter months. She asked the Council to reconsider their motion because it provides an outdoor space as an extension of their home. This adds architectural mass and beauty. She explained that she had her neighbor's support for the plan, they have spoken about a good neighbor fence and have shared planting ideas, and the surrounding neighbors are very excited. She urged the Council to reconsider their motion.

Council Member Strauss noted that setbacks are to preserve open space. Mayor Pro Tempore Cahill stated that this space is already developed with or without a fireplace. Council Member Strauss objected to a built structure in a side yard setback.

Mayor Hunter has an outdoor fireplace in his side yard setback and they use it a lot in the winter months, so he understands the applicant's desire for a fireplace.

Council Member Durst stated that an outdoor fireplace can be considered appropriate landscaping in certain sites, and she is certain that in this case, it is not appropriate. Every ounce of the property does not have to be built on. The General Plan language indicates that they want to retain the historic look and separation between properties. The neighbor is deserving of a respected setback. In some cases it is appropriate and in others it is not, and in this case, it is not.

Mayor Pro Tempore Cahill reiterated that this is an already developed part of the lot. They are not removing grass or trees and adding hardscape. This is already developed. There is no visual impact to the neighbors in any material way and believed the Council should reconsider and approve the fireplace. Mayor Hunter agreed.

Council Member Strauss noted his disappointment in the process. Mayor Hunter asked for a motion to reconsider the previous motion.

Mayor Pro Tempore Cahill moved and Council Member Skall seconded, to reconsider the previous motion. Motion carried 3-2. Durst and Strauss opposed.

Mayor Pro Tempore Cahill moved and Council Member Skall seconded, to approve the application for a variance with the findings and conditions outlined by staff. Motion carried 3-2. Durst and Strauss opposed.

Conditions of approval for 11 Olive Avenue, File 1676

1. Landscaping shall be installed as shown on the approved plans prior to project final.

2. All landscape and irrigation plans must be designed in accordance with the most current Marin Municipal Water District (MMWD) landscape requirements. The applicant shall demonstrate to the planning department staff that the project complies with the MMWD requirements, or is exempt.
 3. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
 4. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; 3.) The property must be cleared of all dead or dying flammable materials; and 4.) A local alarm system is required.
 5. 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.
 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 for review and approval prior to the issuance of any building permits or construction in conflict with the approved plans.
 7. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JANUARY 10, 2009 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**
 8. 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.
 9. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 10. 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.
 11. 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.
24. **11 Locust Avenue, Variance and Design Review No. 1675**
George and Carroll Yandell, 11 Locust Avenue, A.P. No. 73-101-43 and 73-101-48, R-1:B-10

January 10, 2008 Minutes

(Single Family Residence, 10,000 Square Foot Minimum Lot Size). Variance and design review to allow the replacement of a terrace and water feature with a new bluestone patio (set on sand) and outdoor fireplace within the east side yard setback (15 feet required, 3 feet proposed).

Senior Planner Semonian summarized the staff report and recommended that the Council approve the application subject to the findings and conditions outlined in the staff report. She indicated that the Council should consider the neighbor's concerns regarding the gate as it relates to the construction of the improvements, as the neighbor's driveway may be blocked by construction vehicles that don't have access to the gate.

Council Member Strauss asked why staff would recommend in favor of the project for construction in the setback and watercourse setback. Senior Planner Semonian would not recommend a new structure, but due to the existing development in the area, staff found it acceptable since it would not impact the watercourse and, if the project were not approved, the applicants would maintain their existing wall and patio in this area. The proposed structure would not impact water flow in flooding conditions. Council Member Strauss objected because it is not only in the watercourse, but impacts the creek habitat as well.

Michael Yandle, landscape architect, explained that they are reorganizing the courtyard to be more usable. Bluestone pavers on sand with a simple fountain are proposed. The primary variance request is the fireplace in back and it is occurring in an already disturbed area. They will cut the wall down to 16-inches and adding the fireplace will not change habitat. It will provide a substantial better use of that side of the property. It will be visual from inside the house. The decomposed granite does not function and that is the reason for bluestone pavers.

George Yandell, owner, noted that they are approximately 20 feet above the creek in this area, so the site does not flood on that side as the water would flow towards Sir Francis Drake if it passed the bank of the creek. There was four feet at the front gate at the last flood. The creek jumps, so there is not that much volume. The water comes from the front side, not the backside.

Landscape Architect Yandle believed this is a reasonable solution. He pointed out that they are not adding area. Council Member Strauss objected to building fireplaces in setbacks and wanted to preserve open space between houses. He reiterated his disappointment.

Mr. Yandell understands the wood fireplace issue, but this is not a major contributor to carbon. Council Member Strauss stated that all items add up to global warming.

Mayor Pro Tempore Cahill reviewed the letter from Linda Parker about how there might be some way to correct the problem with the gate. Mr. Yandell responded that there are some people in life that view life negatively. Tuesday night is the first time he heard any comments about the gate. He believes they can find a constructive solution. The fact is that they all live on a narrow dead end street and all neighbors, including themselves, must wait for delivery trucks and gardeners. The first suggestion is to place a sign on their gate to address the problem. Town Manager Broad did not believe there is any relationship between the fence issue and the application before the Council.

Mayor Hunter opened the public hearing on this item.

Brian Salmen, Shady Lane resident, believed this is an opportunity for Council to improve an issue that is significantly adverse and if the gate was recessed simply a car length it would be beneficial. There is a hazard because the gate is right in the dead end road and there is 3 feet before one will drop off in the creek. There is no maneuverability and with a recessed gate it would provide some maneuverability. Mayor Hunter recommended that the neighbors try to work the matter out.

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

Council Member Durst desired more areas of riparian planting and wondered how much enjoyment there will be from a fireplace located in this particular area from the traffic noise. She wondered if this is putting an element in the watercourse that is not necessary. Also, she wanted to see a better landscape plan that includes more riparian habitat, particularly in the southern area. She desired a better job similar to the Reinhart's. She further recommended continuing the application to ask the applicant to come back with a better landscape plan.

Mayor Pro Tempore Cahill had no objection with the fireplace in its current location. Being in the creek setback can be an issue, but in this case, there is no adverse impact for placing the fireplace over what already exists. It is unfortunate that the first conversation with the neighbor occurred two nights ago because there is a problem with the entry gate and wished there was an opportunity for the neighbors to work out a plan that was mutually agreeable. He would approve the project as proposed.

Council Member Strauss believed they should look at recessing gates in the future, so they are not right on the property line, but did not see the connection between that issue and this application. He further objected to the fireplace being placed in the side yard setback.

Council Member Skall is comfortable with the proposal as presented. Mayor Hunter noted his support as well. He further hoped the applicant would work with the neighbor to resolve the issue in regard to their gate.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Skall seconded, to approve the application subject to the findings and conditions outlined by staff. Motion carried 3-2. Durst and Strauss opposed.

Conditions for 11 Olive Avenue, File 1675

1. Landscaping shall be installed as shown on the approved plans prior to project final. Staff may require additional screening landscaping prior to project final, if found to be necessary to screen the structure from the neighbor at 7 Locust.
2. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
3. All landscape and irrigation plans must be designed in accordance with the most current

- Marin Municipal Water District (MMWD) landscape requirements. The applicant shall demonstrate to the planning department staff that the project complies with the MMWD requirements, or is exempt.
4. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
 5. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; 3.) The property must be cleared of all dead or dying flammable materials; and 4.) A local alarm system is required.
 6. 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.
 7. **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 for review and approval prior to the issuance of any building permits or construction in conflict with the approved plans.
 8. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JANUARY 10, 2009 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**
 9. 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.
 10. 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.
 11. 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.
25. **1 Woodside Way, Demolition Permit, Variance and Design Review No. 1674**
Joe and Monica Kwait, 1 Woodside Way, A.P. No. 73-232-05, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Demolition permit, variance and design review for a remodel and addition to the 3,905 square foot residence that includes:
1.) replacement of most windows with new wood windows; 2.) replacement of stucco

with smooth-troweled, integral color, stucco; 3.) a 36 square foot kitchen nook addition on the lower level of the south elevation; 4.) conversion of 200 square feet of the front porch to create a new dining room; 5.) expansion of the one-car garage by 192 square feet to accommodate two cars; 6.) height variance to allow two new attic dormers on the north and west facing roofs (30 feet permitted, 32 feet proposed); 7.) an outdoor fireplace within the rear yard setback (40 feet required, 35 feet proposed); 8.) over 100 linear feet of landscape retaining walls up to 3 feet in height; and 9.) over 50 cubic yards of grading associated with expansion of the basement area and landscaping.

Lot area	13,712 square feet
Existing Floor Area Ratio	28.5%
Proposed Floor Area Ratio	30.2% (20% permitted)
Existing Lot Coverage	20.5%
Proposed Lot Coverage	25.0% (20% permitted)

Senior Planner Semonian summarized the staff report and recommended that the Council continue the matter to investigate whether or not this is a historic structure. Staff is concerned with the landscape plan proposed because it is 82 yards of net fill and it will involve a lot of site disturbance. Staff is also concerned about peak water flow because impacts accumulate when site is disturbed. Several retaining walls are proposed against the property line and staff suggested that the application be continued for the reasons set forth in the staff report.

Council Member Skall asked staff if the “sister” house had a historic review that would be helpful for this site. Town Manager Broad noted that no historic review occurred on the adjacent house.

Ken Linsteadt, architect, believed it is a great house and the style is beautiful, so they are trying to enhance it. The applicants desire more presence off Lagunitas and the dormer will provide that architectural presence. The idea is to repeat the dormer and have symmetry front to back. He proposed a shed dormer to provide light down the central stair and upper storage as well as provide an architectural presence. He provided a section that shows that the shed dormer is a way to spill light down into the central hall. Also, they are trying to get more sense out of the bedrooms. They are reorganizing the second floor for better flow. There is a stair that leads up to the attic and they wanted to move that stair out of the children’s bedroom and use it as a light feature as well. They are using the exact footprint on the first floor and second floor. The roof would be the same, except for the two new dormers. The big move on the ground floor is to take the current dining room and annex the enclosed porch and have that become an extended dining area off the living room. Then the dining room can be open to the kitchen to have a nice open kitchen and French doors can be opened up to an outdoor terrace and provide more light to the back of the house. He understands the comments on the fireplace, but this fireplace is between the house and garage. It will be nice way to create a focal point and stop the eye from looking at the garage. There is an existing driveway to the garage and they will use the existing driveway. In regard to the historic issue, there are four different tests, but felt it is up to Council to decide.

Michael Yandle, landscape architect, noted that the sidewalls are very tiny between zero and 30-inches. They desired a more level lawn for the kids to play in the front yard. They will find a lot of there time playing in front and it helps making the transition more private and secure. There

January 10, 2008 Minutes

is an unusual condition that there is a concrete walk between the two properties when one was a “sister” house and this proposal removes that concrete doubling the buffer between properties and the 2-foot terrace walls helps to get to the mud room door other than by a wood deck. He indicated that the grading would be minimal. In regard to the corner of the garage, it will be raised up and part of the fill number is in the garage component. It will be beautifully planted.

Mayor Pro Tempore Cahill expressed concern for runoff issue. Landscape Architect Yandle responded that the lawn would have the same pitch, so historic flows would be the same as today. The wall curves away from the property line, so any water across the lawn would migrate into plantings.

Mayor Hunter opened the public hearing on this item.

Donna Goldman, Olive Ave. resident, supported the project and felt it would be incredible to level out that lawn, which would add to the home. The dormers would add architectural integrity that the home could use. It would soften the appearance and make it more than a rectangular box.

Joanne Willcox, Woodside Way resident, provided photographs to the Council for their consideration. They are comfortable with most of the changes, but have two major concerns. The proposal to construct a new attic area dormer that will exceed the height limit is a concern. They understand the Planning Department’s assessment, and asked that the Council not allow this variance. Altering the roof line on the south side of the house and installing new larger windows will negatively impact their master bedroom by allowing site line directly into the bedroom windows. She did not see a need for the higher elevation and dormers because the area is only used as an attic. Attics have the potential to become bedrooms, playrooms or an office. She asked that the variance not be allowed, but it is allowed, she then asked that the area be restricted to storage only. Also, the expanded garage is a concern. They have no objection to the two-car garage, but objected to the increase in height of the roofline. The garage sits on the property line and is not setback. Any additional mass would add to visual impacts. Due to the close proximity of the house, they ask that usage of the garage be used for parking cars and storage. She asked that the height variance not be approved to construct new area dormers on the south side of the house. She supported the two-car garage, but not the additional height. She further asked that it be setback at least three feet from the property line and the permit should stipulate in writing that the attic is restricted to storage and the garage is restricted to storage and automobiles only.

Monica Kwait, applicant/owner, appreciates constant dialogue with the neighbors. They asked to develop a third floor that was not supported by staff, so they moved the bedroom and all bedrooms and baths are located on the second floor. They have no plans or desires to use the attic as living space. The back does have a dormer, which adds interest to the roofline and it will only improve and enhance and make the house symmetrical. She assured everyone that they are not using the attic for living space and they are not using the garage as living space.

Joe Kwait, applicant/owner, has pictures of the house with and without dormers and it looks better with dormers, especially on the Lagunitas side. He believed with the dormers it would appear better for the Town.

January 10, 2008 Minutes

Lisa Willcox, Woodside Way resident/daughter or Joanne, suggested allowing the dormer to increase the aesthetic appeal on Lagunitas, but nothing else on that issue.

Landscape Architect Yandle is not sure how to process the items on the table and would appreciate being able to continue and work the issues out.

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

Council Member Skall discussed replacement of windows and had no objection. Mayor Hunter stated that if CEQA finds the historic study is negative then changing windows makes all the sense in the world. The Council concurred.

Council Member Strauss stated that there is an imbalance to the house and it could be improved. He liked the improvements with the exception of the dormers. With regards to the garage and overall scheme, he is in favor of the two-car garage, but pulling it three feet off the property line. The proportions and heights are acceptable. The fireplace would not impact anyone, so he could support a gas fireplace, not wood burning. The area must be reduced and fall back within the FAR with the exception of the garage. He noted support for the staff report.

Mayor Pro Tempore Cahill discussed the basement and believed the basement is a significant improvement to the functionality of the house. It allows a storage room that works. It means they will not use garage for storage, which will enhance parking. There is no change to the exterior, footprint or height and no impact on neighbors and only improves the neighbors and house, so he favored the basement as proposed. Senior Planner Semonian noted that the proposed height is 6 feet, 8-inches. Mayor Pro Tempore Cahill supported the basement.

Town Manager Broad added that prior Town Council did not wish to see floor area go into the basement because it was an intensification of use. Council Member Skall stated that the Town is getting a benefit of pulling a vehicle off the street, but adding FAR to do it, which is a benefit to the Town.

Council Member Durst stated that existing FAR is 3,905 with laundry space, and from a practical point of view, they have plenty of room to work without adding FAR. There is considerable merit to most of the improvements. She would like to see the applicant work with the existing FAR and make that space work for them as a family. It is very generous in that way. Two-car garage is important and it should be pulled over three feet. This was an excellent staff report and agreed with staff's points. She asked the applicant to work with the existing FAR, except for adding the additional garage space and adjusting three feet off the property line.

Mayor Hunter objected to increasing the FAR on a house that is already over the FAR, except for the second garage space. Council Member Durst felt it is possible to create laundry space within the existing FAR.

Town Manager Broad stated staff struggles with floor area variances for small homes on substandard lots and they are dealing with a 3,900 sq. ft. residence on a larger than standard lot.

January 10, 2008 Minutes

Mayor Pro Tempore Cahill stated that the basement has no impact on the Town in his view. They should figure out a way to make findings to support the basement. Mayor Hunter noted that they have regulations and there are no findings to support a laundry room in the basement.

Council Member Durst noted that the attic must stay unfinished. The Council agreed.

Council Member Strauss suggested 6 feet, 5-inches and drop the ceiling so they are building within the existing basement. Council Member Durst stated that it is creating more floor area if it is a laundry room. There is nothing extraordinary or difficult about this site and she thinks if they were to consider this a total teardown would they restore at the existing FAR levels or require the applicant to come in within 20%. She wanted to preserve the look of the Town.

Mayor Pro Tempore Cahill appreciated the opinions, but disagreed. The purpose of the FAR ordinance is to keep building envelopes from impacting neighbors and this will change nothing. They are only penalizing the residents with this provision.

Council Member Skall had no objection to the landscaping. Mayor Hunter felt the staff report is on point. Council Member Strauss did not understand the feature in front other than looking out to the area from the living room. Landscape Architect Yandle agreed its focus is from the living room and formalizing the front of their home. Mayor Pro Tempore Cahill felt the landscaping is very attractive as proposed.

Council Member Strauss wanted to see the flow of the yard feeling preserved, but some re-engineering of the front yard is appropriate. Landscape Architect Yandle noted that this is a zero wall that becomes 30-inches maximum, so it is about a curb or garden wall.

Council Member Durst appreciated the gentle slope.

Council Member Strauss did not want to see a vegetated wall along Lagunitas that destroys the flow and feeling of the existing yard.

Mayor Pro Tempore Cahill discussed the front pathway where there is a concrete section that was the old path that goes with stairs onto the road and pointed out that the concrete portion is cracked and must be repaired.

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to continue the application and ask the applicant and architect to consider issues outlined in the staff report with direction from Council and move the two-car garage 3 feet from the property line. Motion carried unanimously.

Mayor Pro Tempore Cahill directed staff to look at street trees as well.

26. Correspondence- Fish ladder letter

The Council directed staff to craft a response. Town Manager Broad responded in the

January 10, 2008 Minutes

affirmative.

27. Other Business- None

28. Adjournment.

By order of Mayor Hunter, the meeting adjourned at 10:50 p.m.

R. Scot Hunter, Mayor

ATTEST:

Gary Broad, Town Manager