

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, MAY 8, 2008

**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 absent.

**2. Posting of Agenda.**

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

**3. Minutes-April 10<sup>th</sup>, 2008**

Mayor Hunter asked for a motion.

Council Member Strauss and Mayor Pro Tempore Cahill seconded, to approve the April 10<sup>th</sup> Minutes as amended. Motion carried 3-0. Durst/Skall abstained.

**4. Demands.**

The demands were met.

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

Joan Holmes, Ross resident, thanked Council Member Strauss and Town Manager Broad for holding the Saturday downtown plan visioning meeting, which she appreciated. She also thanked the Town for "*The Morning After*," which is excellent. She further appreciated Mayor Pro Tempore Cahill's letter that was distributed in regard to the Council's hard work and commended everyone.

**6. Report from Mayor Hunter.**

Mayor Hunter again recommended that anyone who has not attended one of the Ross School meetings in regard to passing their bond issues should try to attend to better understand the great ideas that are being planned. He further urged all interested people to check with the school for dates and the location of those meetings.

**7. Report from Committee Heads.**

Public Works - Council member Strauss

- Schedule for Lagunitas Road Bridge

Council Member Strauss reported that he attended a meeting on April 18<sup>th</sup> with the Public Works Department Director and the Town's Hydrologist on the Lagunitas Road Bridge. They are hopeful that construction will start on May 20<sup>th</sup>, 2009. As a group, they need to push for that date, which is the goal. Also, he is meeting with the County and Supervisor Hal Brown in order to keep everyone to that schedule.

- Fish Ladder update

Council Member Strauss wants to schedule a meeting with the County, Army Corps of Engineers and the Town Hydrologist to make sure they are all on board with the fish ladder. It is all tied together as a region.

- Sir Francis Drake pedestrian pathway update

Council Member Strauss reported that he, along with Public Works Director Jarjoura and Town Manager Broad, met with Caltrans to review the Sir Francis Drake pedestrian pathway in order to get that project moving forward. Town Manager Broad believed 2009 is a likely goal for construction.

General Government -Council member Durst

- MCCMC Legislative Committee

Council Member Durst reported that on April 14<sup>th</sup> she attended MCCMC Legislative Committee meeting and participated in the following votes: Light Brown Apple Moth Eradication via Aerial Spray. By unanimous vote to support AB 2765 by Jared Huffman, this bill would cancel the declaration of a state of emergency on light brown apple moth and require the State to have a public hearing and public notification prior to scheduling aerial spraying. Unanimous support of SCR 87 by Carole Migden, this bill would place a moratorium on the aerial spraying until the health and safety issues are fully vetted by the State and information is made available to the public. They directed the League of Cities lobbyist to convey the result of their vote to the Assembly and State Senate. Also, they voted unanimously to support oil spill presentation and cleanup legislation currently being heard by the State legislature.

- Marin Telecommunications Agency

Council Member Durst noted that MTA is currently reviewing the Designated Access Provider Agreement known as DAP, designating the Community Media Center of Marin aka CMCM as the PEG provider under the provisions of the Comcast Franchise Agreement grant of \$2 million. CMCM will be located at the College of Marin's Kentfield campus. She is currently doing the detailed vetting and will review with MTA staff and those results will be heard at MTA's May 12<sup>th</sup> meeting as well as at a second MTA meeting on May 29<sup>th</sup>. Also, the INET Opt-E-Man MIDAS network is completed. If they wish to be connected in order for Town Council meetings to be viewed on one of the PEG channels or webcast, they must contact Scott McKown via MTA to determine the cost of the equipment to do so.

- Bolinas Avenue Update

Council Member Durst indicated that Ross and San Anselmo Town staff met with a traffic engineer and received a proposal for a traffic calming plan. This would be for additional actions over and above the new stripping on Bolinas. The plan would include additional traffic counts to assess whether the warrants for a stop sign could be met. The plan would include community outreach to area residents for input. Hopefully, they will be able to develop a plan that they can jointly submit for TAM safe pathways money when it is next available in 2009.

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

Diane Rudden, RPOA representative, extended their invitation to attend their Monday meetings. She wished she had the ability to email all Council Members at once and asked staff if that is possible. Town Manager Broad agreed to discuss with their IT person. Ms. Rudden also thanked those that attended candidates' night. Several wanted to ask more questions and desired another forum and she volunteered to be the "middleman" to relay messages to the Town Council, if so desired. They are working hard on "Get Ready Marin." There is a new bulletin board at the post office to provide information to the public. They will reproduce the insert included in the booklets. Also, RPOA has received three complaints concerning leaf blowers and asked the Council to address the issue. Mayor Hunter asked

Ms. Rudden to contact Chief Heying in that regard. Town Manager Broad agreed to send out an independent separate email to residents about leaf blowers to call attention to the issue.

**9. Flood Control Report.**

Council Member Strauss reported that if the bridge is raised too high it then becomes a dam and would then act as a backstop, so that must be considered as well.

**10. Town Council update on cooperative effort between the Town of Ross and the Ross School District to relocate the Town's Emergency Operation Center (EOC) into the proposed new Ross School facility, allowing for coordinated disaster preparedness efforts by the two organizations.**

Town Manager Broad reported that the Ross School Board has also voiced its support for a shared EOC in the new Ross School building. The school is designated as an emergency Red Cross center, so Superintendent Tammy Murphy will also obtain Red Cross consent for the center. The move would provide residents with an EOC in a seismically-safe structure built above the 100-year flood plain level and allow the school and the Town to better coordinate disaster response. They anticipate a single classroom to be used for EOC, but that must be acceptable with the Red Cross. Staff will send out a memo to the Council once information is available.

**11. Town Council update on the completed agreement between the Town of Ross and the Ross School for the Ross School use of the Ross Common for a temporary campus and construction staging area.**

Town Manager Broad reported that the school is moving forward with work on the Ross Common that includes temporary fencing to fence off the temporary campus and construction from outside activity. The school and Town entered into an agreement with Ross Common. They signed the agreement to use the Ross Common as a temporary campus and construction staging area through February 2010. Staff sent out emails about the Ross Common project and the school is hosting a meeting at 7pm May 20<sup>th</sup> that all are invited to attend. The school also provided information on its website to better explain what is going on with the project.

Mayor Hunter opened the public hearing on this item.

Barbara Call, Redwood Drive resident, is astounded about the amount of grading occurring. Her concern is for the redwood trees. She consulted with several expert arborists and if disturbed the redwood trees would be killed. She expressed concern that not enough due diligence was done to protect the 100-year-old redwood trees where six portable buildings will be housed. Town Manger Broad noted that Public Works Director Jarjoura would investigate the matter tomorrow. Public Works Director Jarjoura agreed. Council Member Strauss noted that it is a high priority investigation. The Council agreed.

There being no further public testimony on this item, the Mayor closed the public portion and since no further action is required, the Council moved onto the next agenda item.

**12. Town Council consideration of adoption of Resolution No. 1647 establishing a seasonal restricted parking zone for a weekly Farmers Market.**

Chief Heying summarized the staff report and recommended that the Council consider adopting Resolution No 1647, establishing a seasonal restricted parking zone for a weekly

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farmers market. Staff further added that an informational sign on the closing would be posted on Thursday mornings as well as four special parking signs along the edge of the bike path to inform the public about the parking restriction.

Mayor Hunter opened the public hearing on this item.

Barbara Call, Redwood Drive resident, pointed out that 13 vehicles park in that parking lot every single day, so now 13 vehicles will be displaced by 2:30pm for the vendors. Mayor Hunter agreed that this would occur on Thursdays for three months, which is what will be publicized.

There being no further public testimony on this item, 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. 1647, establishing a seasonal restricted parking zone for a weekly Farmers Market. Motion carried unanimously.**

**13. Town Council consideration of adoption of Resolution No. 1648 establishing twenty-minute restricted parking on Ross Common.**

Chief Heying summarized the staff report and recommended that the Council consider adopting Resolution No. 1648, establishing twenty-minute restricted parking on Ross Common.

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. 1648, establishing twenty-minute restricted parking on Ross Common. Motion carried unanimously.**

**14. Town Council consideration of adoption of Resolution No. 1649 approving the Ross Valley Paramedic Authority tax levy for the 2008-09 fiscal year.**

Chief Heying summarized the staff report and recommended that the Council consider adopting Resolution No. 1649, approving the Ross Valley Paramedic Authority tax levy for 2008-09 fiscal year.

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 Durst seconded, to adopt Resolution No. 1649, approving the Ross Valley Paramedic Authority levy tax for the 2008-09 fiscal year. Motion carried unanimously.**

15. Town Council consideration and response to the Grand Jury report dated April 1, 2008 entitled “Marin on Fire! Not if, but when.”

Chief Heying summarized the staff report and recommended that the Council consider and respond to the grand jury report dated April 1, 2008 entitled “*Marin on Fire! Not if, but when.*”

Mayor Hunter opened the public hearing on this item.

Joan Holmes, Ross resident, asked staff if Ross residents are able to talk to neighbors about weeds encroaching. Chief Heying responded that the Fire Department has received complaints. The Fire Department acts independently to address concerns and at times works with neighbors to establish solutions.

Ms. Holmes asked staff if MERA would be going into the EOC at Ross School. Chief Heying contacted Superintendent Murphy and she is preparing a response. MERA is not operating at the level it should be and co-location with the school will bring MERA radios closer to the school to be used by school personnel.

There being no further public testimony on this item, 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 Skall seconded, to authorize Mayor Hunter to sign and send the letter prepared to the Grand Jury. Motion carried unanimously.

16. Town Council consideration of adoption of Ordinance No. 611 to increase fire protection measures through modifications to the following chapters of the Ross Municipal Code: Chapter 12.12, Weeds, Trees, and Vegetation; Chapter 15.32, Report of Residential Building Records; Chapter 18.39, Hillside Lot Regulations; Chapter 18.40, General Regulations; and Chapter 18.41, Design Review.

Chief Heying summarized the staff report and recommended that the Council consider adopting Ordinance No. 611, to increase fire protection measures through modifications to the following chapters of the Ross Municipal Code: Chapter 12.12, Weeds, Trees, and Vegetation; Chapter 15.32, Report of Residential Building Records; Chapter 18.39, Hillside Lot Regulations; Chapter 18.40, General Regulations; and Chapter 18.41, Design Review.

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.

Mayor Hunter added that this ordinance would increase fire protection in the Town of Ross.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to adopt Ordinance No. 611, to increase fire protection measures through modifications to the following chapters of the Ross Municipal Code: Chapter 12.12, Weeds, Trees, and

Vegetation; Chapter 15.32, Report of Residential Building Records; Chapter 18.39, Hillside Lot Regulations; Chapter 18.40, General Regulations; and Chapter 18.41, Design Review. Motion carried unanimously.

**17. Presentation from Marin Open Space Trust.**

Phil Paisley, Marin County Parks and Open Space Commissioner, discussed the establishment of the Marin Open Space Trust, which raises funds and secures open space easements, which was created in 1972. The Trust will augment funding for the Marin Open Space District that has amassed 14,000-acres in 29 open space preserves. They will have the kinds of wildlife corridors needed to have a vibrant wildlife, bird and plant populations. Proposition 13 passed, which cut their tax in half, so they have accomplished half of their goal. With the price of land, it will be very difficult to accomplish their goal. Other counties in the Bay Area have established open space trusts such as San Mateo, Napa, and Sonoma County. He wanted to introduce Marin Open Space Trust to Ross and hopefully in the fall present what they are all about and what will occur. Their goal is very ambitious. The Trust hopes to raise \$20 million in the next five years to purchase or secure an additional 14,000-acres of remaining significant open space land and trail corridors. More information about the open space preserves in the County is provided on their website: [www.marinopenspace.org](http://www.marinopenspace.org). All trail maps, descriptions of each and wildlife in the area is available as well.

Executive Director John Leydecker, Marin Open Space Trust, explained that are able to operate better than local governments, except easements and so forth. Their mission is not to just raise money, but also raise awareness to preserve wildland. Many areas appear to be protected, but they are not protected. They want to help not only Marin County Open Space District, but also individual cities to realize their goals. They have sources of funding that will be available to them as a private land trust that are not available to municipalities and government entities. They have expertise in structuring and finding money for projects. They are very excited to work with Marin County and the Open Space District. They will work collaboratively with other organizations. Also, they fully intend to stay out of the way of groups working diligently to provide workforce and low income housing in Marin County. They wanted to do their part in Marin where there are needs that must be met on a Marin and local scale. The majority of work will be with local communities. They look forward to working with Ross and will be back in the fall. He further noted that additional information can be found on their website: [www.marinopenspacetrust.org](http://www.marinopenspacetrust.org). Donations are tax deductible and can be sent to the Marin County Open Space Trust at P.O. Box 4133, San Rafael, Ca 94913.

Council Member Strauss asked if the Trust could purchase properties located in the flood plain. Mr. Leydecker believed so. They must prioritize various items and determine the value and viability to raise money. They will be project specific as opportunities arise and they will work with other agencies.

**18. Follow-up discussion on after-the-fact construction.**

Town Manager Broad explained that last year the Council increased fees for after-the-fact applications and building permits in an effort to discourage unlawful behavior. At this point, there are 17 pending abatements for such violations, many discovered through neighbors' complaints or during the resale inspection process. Tonight staff desired direction from the Town Council. They talked about following up with general government because

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some items discussed last year had implications for the budgetary process since some items listed needed money allocated, so that is why it is before the Council tonight. Staff asked if the Council had any new comments or if the desire is for staff to move forward and work through the matter with Council Member Durst and Mayor Pro Tempore Cahill and incorporate the items into the budget to be brought back to the Council in June. The Council agreed to have the subcommittee review the matter.

Mayor Hunter asked staff out of the 17 pending abatements how much is from resale inspections. Senior Planner Semonian responded that about nine are from the resale inspection process.

Mayor Pro Tempore Cahill asked staff how this compares to prior years. Senior Planner Semonian only reviewed the pending abatements she was involved with. Town Manager Broad agreed that staff would outline the types of projects during the subcommittee meeting.

Council Member Skall asked staff if people are completely surprised about their violation. He believed some issues are those that purchase a house without any knowledge of an after-the-fact application. He added that it would be helpful for residents to ask the Town if there are any potential items that they should be aware of because many are completely unaware that there are issues and that they are in violation. Senior Planner Semonian noted that converting attic space and constructing a shed without variances are some examples of the after-the-fact violations. Town Manager Broad believed several are in violation of zoning regulations or conditions of approval. Also, the plans have been digitized, so it makes it much easier to review matters.

Council Member Durst found several after-the-fact applications to be malicious and desired some sense from Town Attorney Hadden Roth in that regard. Town Manager Broad agreed to discuss the matter with the Town Attorney.

Mayor Hunter opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, believed that those that follow the rules are in some way penalized, while others that just do what they want, get what they want. She then noted that this topic was discussed at their last RPOA meeting.

Mayor Hunter explained that they began to see a rash of these after-the-fact applications and that is the reason for the increase in fees.

Richard Hannum, Baywood Avenue resident, appreciated this Town Council and asked the Council to consider how much of the illegal construction is a legacy from a period when it was difficult to get the Council's approval for projects. He noted that the Town of Ross has a completely different Town Council and a much more reasoned process.

Don Santa, Ross resident, agreed with Mr. Hannum's comments because in the past approaching the Council was very difficult. The measures taken by the current Town Council has vastly improved and created an environment to deter after-the-fact applications. The new process highlights the hardship as well as the financial hardship and encourages

those not to violate the rules because it is not worth it. He further believed the Council is moving in the right direction.

Joan Holmes, Ross resident, stated it is double-edged sword in her view.

Mr. Hannum believed it is important that the Town not look at how to punish residents, but look at how they can encourage residents to follow proper procedure. Mayor Hunter indicated that the new Advisory Design Review process was created for that reason.

There being no further public testimony on this item, the Mayor closed the public portion and indicated that the matter will be discussed at by the subcommittee. Since no action is required, the Council moved onto the next agenda item.

**19. Town Council consideration of ratifying the U.S. Mayors Climate Protection Agreement.**

Town Manager Broad summarized the staff report and recommended that the Council consider ratifying the U.S. Mayors Climate Protection Agreement, which commits Ross to striving to meet the Kyoto Protocol targets and supporting state and federal greenhouse gas emission reduction legislation.

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 Skall asked staff if they must comply with any items and if the Town is obligated to sign the document. Town Manager Broad did not believe there are any consequences.

Council Member Strauss believed it is a good goal to have such as reviewing police vehicles in terms of hybrids and reviewing the Town's tree canopy, which are goals in the General Plan. Mayor Pro Tempore Cahill agreed and believed it is excellent. Council Member Strauss encouraged the Mayor to sign the agreement. The Council concurred.

Mayor Hunter asked for a motion.

**Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to authorize Mayor Hunter to sign the U.S. Mayors Climate Protection Agreement. Motion carried unanimously.**

**20. Town Council consideration of authorization of expenditures for overlay projects for fiscal year 2007-08 and 2008-09.**

Public Works Director Jarjoura summarized the staff report and recommended that the Council consider authorizing expenditures for overlay projects to allow the Town to receive \$400,000 in Prop 1B funding for fiscal year 2007-08 and 2008-09. This project would then be included in future Town budgets.

Mayor Pro Tempore Cahill asked staff if these are the lowest PCI's. Public Works Director Jarjoura responded in the affirmative. Mayor Pro Tempore Cahill asked staff if there are areas that they should focus on first. He asked if these projects will be affected by the major

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construction projects and wondered if they should postpone work to a later date, so the overlay does not occur while construction is still in process. Public Works Director Jarjoura responded that the only project affected would be a portion of Fernhill from Norwood to Glenwood. Staff further agreed to take the construction schedule into consideration.

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.

Mayor Hunter pointed out that staff's aggressive pursuit of the grant is the reason Town roads are in great shape and the budget is low. Public Works Director Jarjoura stated that since they started the overlay the PCI in the Town of Ross was 70, which is better than other cities and the County, but with the repaving they are hoping for 80 PCI and that will take care of the whole system.

Council Member Durst pointed out that the League of Cities wanted the repaving done as soon as possible.

The Council appreciated Public Work Director Jarjoura's hard work.

Mayor Hunter asked for a motion.

**Council Member Durst moved and Council Member Skull seconded, to authorize expenditures for overlay projects for fiscal year 2007-08 and 2008-09. Motion carried unanimously.**

### **21. Status report on the five Town Council goals for 2007-2008.**

Mayor Pro Tempore Cahill worked with other Ross Valley jurisdictions on drainage, warning systems and emergency response. The warning systems and emergency response protocol are in place. The County and Flood Zone 9 are moving forward with a number of projects as discussed by Council Member Strauss. Most of those projects are in study form pending the outcome of the flood fee lawsuits. Also, with the available funds, they are cleaning up the creek.

Council Member Durst reported that the Advisory Design Review group met for first review on April 24<sup>th</sup>. She along with Mayor Hunter and Council Member Strauss observed as members of the public. They are very fortunate to have this group of fine individuals volunteering their services on ADR. They gave insightful suggestions to the applicant in spite of having to review a very difficult proposal and they received very positive feedback from the neighbors who sat with the ADR Group. One neighbor expressed her appreciation of being able to take part in the process and voice her concerns to ADR before Town Council heard the application. After the regular ADR meeting, they held a Council Workshop with the Mayor and Council Member Strauss on issues involved with design review. The workshop was meant to give the ADR Group a look into what they are thinking about when they look at a design proposal. They examined three types of applications: flood control; hillside lot; and historic complex and looked at six design reviews in these categories from the recent past where the Council has approved easily at 5-0- finding for excellence, fit and enhancement. She will continue to work with the ADR Group to further define and refine

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the process. She then announced that the ADR Group meets on the 4<sup>th</sup> Thursday of each month at 5 pm and the next meeting is on May 22<sup>nd</sup>.

Council Member Strauss reported that on Saturday he attended a successful downtown visioning event where he received positive feedback. The committee will meet to prepare all the comments. It is a very transparent process and there is not one solution. As a community, they must come together to create this sense of community downtown. They received 72 comments and a package will be developed. He further recommended retaining a traffic consultant to be added to the budget.

Council Member Skall reported that half the Town is knowledgeable about how to get ready. They made terrific progress with "Get Ready Marin." Well over 100 individuals are ready. Another "Get Ready Marin" meeting occurs on Friday, May 16<sup>th</sup> at 201 Bolinas Avenue.

Mayor Hunter said we have made progress but not concluded exploration of fire consolidation. We are in negotiations with Larkspur to do an operational overlay to provide needed services to both communities and have great fire protection as well as address emergency preparedness. There will be a full time chief on staff for emergency preparedness. Specifically, we are in the process of aligning the Ross firefighters package with a consolidated package in terms of contract.

Mayor Hunter opened the public hearing on this item

Barbara Call, Redwood Drive resident, attended one downtown plan meeting and her main concern is that it is an awesome task and did not think 20 individuals attending one meeting and 25 individuals attending another meeting will truly represent what the Town needs or desires. She asked the Council to send out a questionnaire to actual citizens of Ross because many do not understand the driving force behind a downtown plan. She wanted the Town to ask residents what they think is necessary and what they desired. She volunteered to be on the committee. She believed the Town would receive a better response. Mayor Hunter believed it is a good idea. Council Member Strauss stated that they must meet and strategize how the outreach will be achieved. Ms. Call volunteered to help Council Member Strauss. She noted that it is a huge task that will affect the entire community of Ross.

Douglas Abrams, Canyon Road resident, asked the Council to highlight the attributes of consolidating. Mayor Hunter responded that they must be sure every dollar spent they receive the best protection. They first looked at the Police Department and then the Fire Department. In the case of fire, there was strong support from firefighters in regard to a combination. They do not have a full-time commander on duty and that is a problem. Also, they needed a full-time training office and battalion chief on emergency preparedness, so having a full-time chief is a benefit. Also, it gives firefighters the ability to be promoted, so Ross firefighters will have better opportunities. He further noted that they are determining whether or not it makes fiscal sense at this time.

There being no further public testimony on this matter, the Mayor closed the public portion and since no action is required, the Council moved onto the next agenda item.

22. **Town Council adoption of five Town Council goals for 2008-2009 and the implementation of these goals.**

Town Manager Broad summarized the staff report and recommended that the Council adopt the five Town Council goals for 2008-09 and the implementation of these goals as follows:

- Downtown Plan
- Flood Control
- Fire Consolidation and Police Department Reorganization
- Emergency Preparedness (*focus on assisting seniors*)
- Encourage Bicycle and Pedestrian Opportunities

Mayor Hunter opened the public hearing on this item.

Joan Holmes, Ross resident, asked if there would be a certain amount of goals each year. Mayor Hunter noted that this process has just started and it seems to move items forward faster.

Michael McPhee, East Road resident, discussed the traffic problem on Kent Avenue to Ross due to all the cycling clubs and some opportunity must be addressed in regard to a bike lane. Mayor Hunter agreed there are problems with cyclist fighting for road space.

Douglas Abrams, Canyon Road resident, asked the Council to evaluate the status of the Police Department and civic and municipal buildings to be part of the downtown to rehabilitate the buildings or construct new.

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.

Council Member Durst noted that flood control is ongoing. The downtown plan is a very complicated item and requires a tremendous amount of public input. She recognizes that if they do the work of the public, it takes a long time, so all the goals on the list go through full public vetting.

Mayor Hunter recommended continuing this matter to the next meeting in order to provide another month for the Council and public to comment. The Council and staff agreed.

23. **30 Ross Common, Commercial District Use Permit No. 1684**

Kathleen Firestone (applicant) & Deborah and Tony Montero and Marcella Arana (owners), 30 Ross Common, A.P. No. 73-272-11, C-L (Local Service Commercial). An ice cream and frozen yogurt parlor/café in a ground floor tenant space with 675 square feet of interior space and 400 square feet of outside area. The applicant would sell organic ice cream and frozen yogurt as well as coffee, tea, fresh fruit, smoothies, nut milks and desserts. Proposed days and hours of operation are 6 am to 9 pm daily with three to five on-site employee and estimated customer traffic of 50 to 100 people per day.

*This item has been continued at the request of the applicant.*

24. 18 Ross Terrace, Variance and Design Review No. 1679

Dan and Mia Beckham, 18 Ross Terrace, A.P. No. 71-240-30, R-1:B-15 (Single Family Residence, 15,000 Square Foot Minimum Lot Size). Variance and design review to allow construction of an 8 foot tall wall (6 feet permitted) 30 to 42 feet from the front property line adjacent to Sir Francis Drake Boulevard and extending approximately 100 feet east along the north and south property lines. The applicants propose to build up soil against the walls that face Sir Francis Drake Avenue and Ross Terrace to reduce their visual height to 6 feet. Design review is also requested to allow landscape improvements associated with a new pool area, including a 225-square-foot pool equipment and storage enclosure, patio areas, water features, pergolas, an outdoor fireplace, and landscaping around the drainage channel along the north property line. After-the-fact variance and design review is also requested to permit water storage tanks within the north side yard setback and over 100 linear feet of stacked rock retaining walls at the rear of the site.

Lot area	39,708 square feet
Existing Floor Area Ratio	14.3%
Proposed Floor Area Ratio	14.3% (15% permitted)
Existing Lot Coverage	14.3%
Proposed Lot Coverage	15.0% (15% permitted)

Senior Planner Semonian summarized the staff report and recommended that the Council consider the landscaping proposal and approve the project as outlined by staff subject to the conditions and findings in the staff report including written consent from the neighbor in regard to the soundwall along the shared property line.

Jim Bradanini, landscape architect, agreed with the staff report. They are looking at a soundwall barrier off of Sir Francis Drake. It is well set off the roadway at a minimum of 46 feet from the property line, densely buffered with redwoods and bay trees, so no one can see through that existing vegetation. The intent is to soften the visual impact of that 8-foot wall. They will have some mounding on the outboard side as well. Aggressive planting is proposed with vines on both sides. It will ultimately become a green wall. They met with the neighbor at 8 Sir Francis Drake and feel they can receive his consent to build the wall. Currently there is a 6-foot fence on top of a 2-foot retaining wall, and now it will go from wood to a masonry structure. They will work with the neighbor on colors and soften the appearance with additional vine plantings. In regard to the oak trees, they are open to any comments from the Council. The scope of the project is putting in a new pool. Original approvals for this house had a pool, and they are articulating that more from what is shown. There is an existing open lawn area for their children and fencing along with soundproofing will enhance the enjoyment of that yard. There are two outdoor areas to the north of the property within the setback and they are reintroducing more landscaping. They want to provide a water feature to mitigate the sounds from Sir Francis Drake. Also, the pool equipment is included in the masonry wall. He further noted that they represent all the existing conditions on the east side.

Mayor Hunter discussed the proposed wall between the Beckman's and Sir Francis Drake, so if there were agreement, the 2-foot retaining wall would be removed. Landscape Architect Bradanini responded that it would be one structure. There is no net gain in height. The fence steps right now and there are places where the wall is over 8 feet. He believed the owner was concerned about appearance of the wall and they will provide mitigation in that regard.

Mayor Pro Tempore Cahill clarified that the proposed wall will not step. Landscape Architect Bradanini noted that they would follow grade. Mayor Pro Tempore Cahill asked if there are 8-foot walls on both sides of the entry gate. Landscape Architect Bradanini responded that it would be more in the scale of 6.5 feet and the same range for the other side. He explained that it will match and then tie into the other column. The columns are about 7 feet, so the walls will be lower than the columns. The wall will be at a maximum 8 feet and in some cases a 6 or 7-foot structure.

Mayor Pro Tempore Cahill asked about the outdoor fireplace in regard to reduced emissions. Landscape Architect Bradanini responded that it is a masonry fireplace. It is a high-energy structure and designed to burn at an effective rate. It will be a gas fireplace, so it is more ambient heat. Mayor Pro Tempore Cahill asked staff in the future to call out the fireplace in regard to “gas” or “wood burning.” Senior Planner Semonian responded in the affirmative.

Council Member Durst asked staff if the fireplace is within the watercourse setback. Senior Planner Semonian responded in the affirmative.

Mayor Hunter opened the public hearing on this item.

Joan Holms, Ross resident, wanted to know the location of Ross Terrace. Mayor Hunter explained that Ross Terrace is at the former location of the hospital. Senior Planner Semonian pointed out that the name of the private street is Ross Terrace. Ms. Holms expressed concern for water runoff and asked that they carefully consider the drainage. Landscape Architect Bradanini noted that they would mitigate some of the runoff as part of their drainage plans. Mayor Hunter pointed out that Condition No. 6 addresses drainage.

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 stated even with agreement from the neighbor at 8 Sir Francis Drake, she objected to the 8-foot fence because it is within the watercourse. Also, since the fireplace is located in the watercourse setback, the area should be planted with riparian species and recommended deleting the fireplace from the landscaping plan. She further accepted the stucco fence on Sir Francis Drake as long as it is hidden.

Mayor Pro Tempore Cahill appreciated the landscaping design. Given the fact that the wood wall is already present where the new wall is proposed, he had no objection with the north wall as shown on the plans. This watercourse should not be considered a natural watercourse because it is an artificial ditch. Watercourse setbacks were not designed for this sort of situation. He did not think it is necessary to have a 25-foot setback guideline in this case. He is in favor of the improvements and agreed with the staff report. Council Member Skall concurred.

Council Member Strauss also concurred and appreciated the gas fireplace. He wondered if it made more sense to keep it an open swale without the pipe in terms of maintenance.

Mayor Hunter agreed with the staff report and Mayor Pro Tempore Cahill’s logic in regard to the watercourse setback, which is basically a ditch.

Council Member Strauss asked if any improvements are proposed along Sir Francis Drake in regard to the sidewalk behind the bus stop, which has an unattractive chain link fence. Landscape Architect Bradanini did not propose any improvements other than cleaning up the site.

Mayor Hunter asked for a motion.

**Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to approve 18 Ross Terrace with staff's recommendations with one added condition that a "gas" fireplace be installed. Motion carried 4-1. Durst opposed.**

**Conditions 18 Ross Terrace, Beckham**

1. The project shall be constructed in substantial compliance with the plans approved at the May 8, 2007, Town Council meeting except as otherwise provided in these conditions.
2. The outdoor fireplace shall be gas and not wood-burning.
3. The new walls shall be landscaped with climbing vines at least 15 gallon in size, spaced appropriately, and irrigated.
4. The wall along the property line shared with 8 Sir Francis Drake shall not be constructed until the following conditions have been met:
  - a. The applicant has submitted written evidence that the adjacent property owners have consented to the wall construction and any work required on their site.
  - b. Written evidence is provided to the Planning Department that confirms an arborist has reviewed detailed plans for the wall and has inspected the oak tree adjacent to the wall and has confirmed that the construction will not negatively impact the tree. Any required mitigation measures shall be included in the plans submitted for the wall.
  - c. A surveyor has identified the location of the property line.
5. A certified arborist retained by the applicant shall review the landscape plan to ensure that the proposed landscaping, including all fill, irrigation and plants, will not harm the trees at 8 Sir Francis Drake Boulevard. At a minimum, the following precautions shall be taken:
  - a. Retaining walls shall be designed, sited, and constructed so as to minimize their impact on significant and/or protected trees.
  - b. Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist is required.
  - c. Concrete shall not be placed over the root zones of trees, unless otherwise permitted by the project arborist.
  - d. Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.
  - e. Compaction of the soil within the drip line of significant and/or protected trees shall be avoided.

- f. Any excavation, cutting, or filling of the existing ground surface within the drip line of trees shall be minimized and subject to such conditions as the project arborist may impose.
  - g. Oil, gas, chemicals, or other substances that may be harmful to trees shall not be stored or dumped within the non-intrusion zone of any significant and/or protected tree, or at any other location on the site from which such substances might enter the non-intrusion zone of a significant and/or protected tree.
  - h. In no case shall construction materials or debris be stored within the non-intrusion zone of a significant and/or protected tree.
6. The applicant shall maximize the use of native California riparian plants within the 25 foot wide side yard setback area along the northern property boundary.
7. A drainage plan shall be submitted prior to issuance of a building permit that ensures all roof, lawn and pool runoff will be redirected to be dissipated on site and not concentrated and directed to the storm drain system.
8. 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.
9. Exterior lighting shall comply with the Town regulations, shall be low wattage, and shall be shielded and directed downward. No uplighting of landscape features or trees is approved.
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 project shall comply with any requirements of the Department of Public Safety.
12. The construction work, staging and all construction vehicle parking shall take place on site. The applicants must secure written permission from adjacent property owners if they wish to perform work on other sites.
13. Any portable toilets shall be placed out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
14. 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. If this project is completed as part of the existing building permit it must be completed prior to the construction completion date for that project. The Town has a nine-month "cooling period" between permits.
15. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.** Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits and/or prior to modifications.
16. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY MAY 8, 2009 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**

17. 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.
18. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
19. 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.

*The Council took a short recess at 8:53pm.*

25. **7 Woodhaven, Demolition Permit, Variance, Design Review, Hillside Lot/ Hazard Zone 4 Use Permit and Second Unit Permit No. 1680**  
Steve Bode, 7 Woodhaven Road, A.P. No. 73-021-04, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size). Demolition permit to allow the demolition of an existing residence and detached accessory structures totaling 1,961 square feet of floor area. Variance, design review, hillside lot/ hazard zone 4 use permit and second unit permit to allow the following: 1.) construction of a 4,601 square foot residence and attached two-car garage with a maximum ridge height of 28 feet; 2.) construction of a 1,199-square-foot detached second unit above a two-car garage (700 square feet and one story permitted), with a maximum ridge height of 18.5 to 23 feet (18 feet permitted); 3.) location of the new residence, second unit, driveway and landscape retaining walls within 50 feet of a watercourse contained in a culvert (25 to 50-foot setback recommended); 4.) 788 cubic yards of cut and 340 cubic yards of fill; and 5.) over 100 linear feet of new driveway and landscape retaining walls with a maximum height of 9 feet.

Lot area	72,745 square feet
Present Floor Area Ratio	2.7%
Proposed Floor Area Ratio	7.6% (15% permitted*)
Present Lot Coverage	2.7%
Proposed Lot Coverage	5.8% (15% permitted)

(\*THE SLOPE OF THE SITE VARIES. BASED ON STAFF'S CALCULATION OF LOT SLOPE, THE HILLSIDE LOT ORDINANCE WOULD RECOMMEND A MAXIMUM FLOOR AREA OF 4,801 SQUARE FEET.)

Senior Planner Semonian summarized the staff report and recommended that the Council provide feedback on the design and then continue the matter in order for staff to receive more information.

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Steve Bode, owner, appreciated staff's work and presented a powerpoint presentation that included the existing site. He explained that the place was rundown and to improve the site they have to create a new footprint. They submitted an application back in 2005, but did not take into consideration what was already present on the site. They did extensive study to daylight the creek and that will be quite an undertaking and impossible since this project was not built due to access changing. When moved back to the current location, it meant that they could not daylight the creek anymore. They took the existing site to fit in with what is already present and to fit into the hillside. They wanted to modernize a nice country house for a family. They do not want to change fundamentally the way this works. During discussions, the neighbors were agreeable to move the driveway over a few feet to reduce the steepness and fit better into the current hillside. Then they could improve the property without fundamentally changing everything. He then presented the proposed rebuilding for the Council's consideration. The driveway is much more curved at the base for a much more elegant entrance. They created guest parking. The house is fundamentally situated the same. He further noted that it follows the contours of the hillside.

Richard Hannum, architect, took the area of the property that is flat and made that the living space. They have an over cut situation, so they repaired the area using the buildings. Rather than cutting it, they are stepping right into it. The building encases it and now it is not exposed. When looking at the model, the flat zone becomes the flat zone that runs right through the house. All along the ground plain is a garden effect and the building splits it on either side. The driveway is now relatively simple and has a fully landscaped area that looks like parking. They will have better separation with better landscaping and protect the view of the house from down below. Now it becomes more of an extension of the woods, so that open space is more of a continuation of the hillside. In regard to the oak tree in question, the arborist determined that it is in great shape. One branch was removed. The crown of the tree is up 2.5 feet, so they raised the entire house and now the deck is above that crown. They used the ground crown of that oak tree as the grade of the house. There has been a lot of interaction between staff, the ADR Group and himself, so it was important to create a landscaping zone to step down the hillside. In regard to the concern about grading, the civil engineer made a mistake in the placement of the corner and the whole part of the house steps up and the second level steps above it as shown on the model. The upper level is at the upper grade point, so they are not excavating all of that. He then discussed the hillside parcel and slope calculation and they took the calculation from the centerline of the house with 33% slope as the intent of the code and that is how they get their slope ratio.

Council Member Strauss believed what is proposed is the best solution in regard to the slope calculation. He further believed it is important to be consistent.

Architect Hannum noted that if they have more landing it was even steeper and with greater restriction, so they are only building in one area with certain slope density. It is a scaling and massing issue. The design of this house, because it stands behind itself, the design breaks the mass and the design is responding well to the issue of the site itself regardless of the calculation.

Mr. Bode noted that it is a 4,600 sq. ft. house with a 700 sq. ft. guesthouse and the garages are buried into the hillside. They are improving the property and creating a second unit. They are repairing the creek with a culvert and asked to be allowed to have this size home according to the ordinance.

Architect Hannum stated that the culvert follows the road area and the house and all improvements are outside of the drain catchment of this open watercourse, so there is zero impact as confirmed by the Town's Hydrologist. As it relates to this particular site and design of the house, all the water that drains off the upper hillside and into the riparian creek is outside the zone of the house. They are not impacting the watershed at all with this house.

Mr. Bode provided the front elevation as presented to the ADR Group, which was modified to bring the hillside in and change the entrance to make it grander. It is set on the current pad and fit into the hillside contours in order to minimize cut. They are within all height requirements. The south view shows the upper story and they created a loggia for the pool area with minimal cut. He discussed the existing culvert and they propose excavating out and replacing with 20-inch plastic culvert, which would match the culvert replaced on lower Woodhaven Road to improve safety and flow. In terms of tree protection, they are adding native trees, screening the house and adding water retention features. The boundary survey is in process and they are currently working on driveway easements.

Mayor Hunter clarified that the culvert will be replaced. Mr. Bode responded in the affirmative.

Mayor Hunter opened the public hearing on this item.

Arnold Mark, Woodhaven Road resident, expressed concern for fire protection due to the heavily wooded area. Also, supply of water in the event of a fire is a concern. Another fire hydrant has been installed further down Woodhaven, but he is not sure if the supply of water available is enough to help prevent fire from spreading. The third concern is that when construction occurs on Woodhaven there will be heavy equipment, and expressed concern for the road being damaged. If there is damage to the road it should be repaired to the existing conditions. He discussed this matter with Mr. Bode who indicated that he would repair the road to his satisfaction.

Richard Treadwell, Woodhaven Road resident, submitted a letter to the Town Council that included the following information:

*"We have received a Notice of Hearing regarding a demolition permit, variance, design review, hillside lot/hazard zone 4 use permit and second unit permit application from Steve Bode for his property at 7 Woodhaven Road. As the residents, owners and next-door neighbors at 9 Woodhaven Road, we have the following concerns and suggestions about the proposed development of this project as requested in the application.*

*According to the Notice of Hearing, based on staff's calculation of lot slope, the hillside lot ordinance would recommend a maximum floor are of 4,801 sq. ft. while the application requests the construction of 5,800 sq. ft in two separate structures. Also, a variance is requested to allow a maximum ridge height of 18.5 to 23 feet of the detached second unit where 18 feet is permitted. The construction of the detached second unit of 1,199 sq. ft. above a two-car garage grossly exceeds the 700 sq. ft. and one-story permitted. Therefore, we respectfully request that the Council deny the request in the application for 5,800 sq. ft. of construction and limit the square-footage of construction to the 4,801 sq. ft called for by the Hillside Ordinance.*

*In our opinion, the best way to achieve this square-footage objective would be to deny the request for a detached second unit altogether, which would also negate the need for the variance regarding the ridge height of the second unit. Further, the construction of this second unit would have a serious negative visual impact on our property as it directly abuts our south boundary line and at the request height would stand out above normal landscaping plantings. Thank you for your consideration of these concerns and suggestions.”*

Nora Laherty, Upper Road West, was concerned regarding potential loss of the canopy of trees that protect their views and the initial report indicated that no trees would be removed other than two trees outside of the 20-foot setback and she desired clarification on the location of those trees because the removal could potential impact her views. She expressed concern for the accuracy of the story poles, which is very important. If the building is taller than proposed it would be an impact and desired clarification on that issue as well.

Mark Laherty, Upper Road West resident, asked if property owners are able to now determine the slope calculation. Mayor Hunter responded that it would be a decision made by the Council. An applicant is always welcome to point out how they see it or how they measured the slope, but the Town Council makes final determination.

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 liked the design based on the fact it is less of an impact than the previous design. They are using the same foundation areas. In terms of the site, the location of the building in his opinion is appropriate based on topography.

Council Member Strauss generally liked the design of the project, but issues must be worked out with staff. Fire protection is a major issue and there are guidelines that must be considered. He noted that Mr. Bode agreed to address heavy equipment. The lot slope is critical and they must know what they are approving. They need to work it out before coming back to the Council, possibly with a subcommittee. He agreed that the canopy of trees is very important to maintain to the extent they can be maintained. But he liked the design. He agreed it is in the right location and believed it is a great project.

Mayor Pro Tempore Cahill agreed with Council Members Strauss and Skall, but pointed out that hillside lot ordinance guideline for FAR is a bit of misnomer. It is a recommendation that can be exceeded based on certain factors as listed in the ordinance. It is Important to look to see whether or not it fits well into the site and whether it has any of the negative impacts that the hillside ordinance avoids such as over disturbance of site visibility and ridgeline tops. This is an excellent design that fits very well with the purpose of the hillside lot ordinance. Several factors must be worked out such easement issues and the survey. Generally, he looks at this project favorably.

Council Member Durst disclosed that she received notice from the Town about this application. Her property is far enough away from this site that she will not be impacted by this project, so she did not need to recuse herself from this design review. During her site visit yesterday the survey team had just arrived to do additional survey work to resolve property line and setback issues. Therefore, she agreed with the staff report analysis on the condition of the application needing a completed survey and a site plan that minimizes cut

and fill. Also, she agreed that eliminating the pool and flat lawn area in the site plan may contribute to a design that is more appropriate to the hillside location. She also agreed with staff's analysis that the strict hillside lot ordinance guideline application cannot be used on this site due to its varying degrees of slope and irregular shape. The guideline FAR should be 4,801 sq. ft. Also, she would like to remind everyone that the degree of slope in any given place serves to exacerbate bulk and mass issues and makes excellence of design more problematic. She further stated that Mr. Bode should have received agreement from staff as to FAR prior to starting the design process.

Also, this was the first ADR Group review. Mr. Hannum presented the design. Since the situation was rather awkward since Mr. Hannum is also an ADR Group alternate, she would disagree with the observation that the group gave a favorable review to the project. Rather she would characterize the input as good observations from a very bright group of people. She did find the design as presented tonight lacking in the quality of detail they have received from other applicants for new homes. Additionally, there was no roof plan submitted. Since the home can be seen from Upper Road West, they should know what the articulations are from above. The form of the roof was a key issue to the Upper Road West neighborhood objections in the 2005 application.

Another ADR observation was that the design had an "Eichler" home appearance to it. She also is not sure if this design is appropriate for the site in its current iteration. She would like to see a design that resembles a fine custom modern design in the tradition of William Wurster. Finally, the second unit puts too much bulk and mass on the property and does trigger the excess FAR finding for the hillside lot ordinance. In trying to balance the housing stock and excellence, it is better to have an excellent site plan in which the second unit contributes to the excellent design. She would support continuing the application until these issues are resolved.

Mayor Hunter agreed with the majority of Council's comments about the design. It settles into the site nicely. He is concerned about their inability to measure slope. It is a problem that must be addressed. They must determine slope and then determine allowable FAR. He suggested consulting with the Town Engineer because they have the data in order to receive another opinion to state the slope and rational in order to build a consistent way of measuring. Architecture is important. Repairing the roadway is important. A tree plan is also needed. They must know the correct cut and fill. The story poles must be located in the right location. Since they plan on replacing the existing culvert, a peer review of the study would be worthwhile. He generally echoed the concerns of the Council.

Mr. Bode appreciated the Council hearing their application tonight. There was no deliberate non-action on the boundary survey. He explained that the topographic survey was based on some monuments found at the site. He checked with the Fire Department about the hydrant and it was recommended that one would be adequate. They need accurate numbers on cut and fill. In regard to slope, he agreed that the Council has a major job to determine slope. However, he pointed out, as mentioned, that is a guideline and if they determine that it is something else, then he has seen several ask for a variance and hoped staff and the Council will take into consideration excellence in design if another system is used. He submitted a tree plan. Two Burch trees exist in front of his property that will be removed. They are not native trees and those would be removed. He further agreed to get a geotechnical peer review.

Patricia Treadwell, neighbor, asked about the rental unit. Mayor Hunter explained that the living portion is 700 sq. ft. There is a tenant in the second unit that is present now.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to continue the application for 7 Woodhaven Road to a later date. Motion carried unanimously.

26. 59 Bridge Road, Variance and Design Review No. 1683

Jay and Katie Kern, 59 Bridge Road, A.P. No. 73-261-37, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Variance and design review to allow modifications to the existing residence and landscape improvements that include: 1.) modifications to each elevation of the residence, including removal and replacement of non-original windows and other features; 2.) demolition of an existing, detached, garage and remodel of the basement/garage area to create parking for 3 vehicles; 3.) demolition of the pool and construction of a new pool and patio area, partially within the rear yard setback (40 feet required, 30 feet proposed); 4.) construction of a 410 square foot pool cabana with a maximum ridge height of 19.5 feet from finished grade and 22.5 feet from existing grade; 5.) landscape grading involving 528 cubic yards of cut and 582 cubic yards of fill; 6.) modifications to 649 linear feet of existing landscape retaining walls, a total of 726 linear feet of landscape retaining walls ranging from 2 to 6 feet in height are proposed; 7.) solar photovoltaic panels on the roof of the residence; and 8.) solid wood entry and pedestrian gates and stone-finished walls and columns up to 6.5 feet in height (6 foot tall gate permitted with design review).

Lot area	32,405 square feet
Existing Floor Area Ratio	38.2%
Proposed Floor Area Ratio	38.0% (20% permitted)
Existing Lot Coverage	15.8%
Proposed Lot Coverage	19.0% (20% permitted)

*The existing residence is nonconforming in height and number of stories. The existing detached garage is nonconforming in setbacks.*

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

Jay Kern, owner, noted that the house was built in 1882 and he was drawn to the history. Staff made a suggestion to consult with a historical consultant to make sure what was planned was in keeping with the history and the resulting plans recognize the history. They struggled with the pool because it is an odd site and the proposed location seemed to be the best solution.

Jared Polsky, architect, noted that only minor changes were made such as removing the garage and lowering the floor.

Michael Yandel, landscape architect, recognizing the historical character, there is responsibility to get it right and this plan respects the character. The site was organized into

use areas. They created a garden that enhances the home. Critical to that design was getting an automobile out of the middle of this site. They wanted to access the front of the house and provide a nice front yard and keep the existing access road as presented all the way around. The garages are tucked under the house. They worked with the neighbors to resolve issues. The front entry was pulled back from the current condition to allow plantings out in front as it addresses the cul-de-sac. They propose a solid gate and circumstances allow the Council to review. It is unusual circumstance. The house is in its own cul-de-sac. It also differentiates two properties. It serves to block negative views from the site and street to reduce headlight glare. They created a clear guest arrival in regard to the auto court and pull all traffic to one location. They reduced impervious surfaces by using gravel, so it slows speed down. The existing asphalt remains all the way around and they maintain the existing grade due to the oak tree. The arborist recommended leaving the road in its present form in order not to impact the oak tree. The pool was located to the rear. He described the proposed improvements, which included a cabana, fireplace and gardens. It is a great site for staging construction because all construction traffic can stay onsite. They worked with adjacent neighbors to understand impacts and existing screening blocks out any proposed improvements, but there was concern about light, so they talked about establishing a line of materials at the height of the existing ivy hedge to provide the neighbor with more light. Also, they are adding a wood fence along the side with screening on their side. It is a project that the Council should be proud to approve and a great home and garden that carries on that legacy.

Senior Planner Semonian recommended a transparent gate instead of the proposed design. Staff also recommended modifying Condition No. 15, so the expiration date reads "2009," not "2008."

Council Member Strauss asked if the fireplace is wood burning or gas. Landscape Architect Yandel responded that the fireplace is wood burning. Architect Polsky explained that the top of the opening is designed as an airfoil. It is an EPA certified level 2 Rumford fireplace that meets most jurisdictional guidelines for clean air.

Mayor Pro Tempore Cahill asked if there are any changes proposed in the cul-de-sac. Landscape Architect Yandel would like to modify the front expression, but must discuss that with the neighbors because they can do better. Mr. Kern shares the cul-de-sac with two others and one neighbor is amenable, but they all must agree how to treat that area. He further noted that they want to improve the appearance of the front.

Mayor Hunter opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, asked if the existing path would remain. Landscape Architect Yandel responded in the affirmative.

Terri Barton, Allen Avenue resident, desired more sun, so they will spread out the bamboo and lower it. She wanted the redwood tree removed because it impacts her light. She found the plan acceptable, except she requested the evergreen tree near the pool house to be eliminated because of its potential to block winter light to her site. The redwood tree has not been there that long, about 8 years, and she wanted her winter light maintained. A deciduous tree is acceptable, but not an evergreen in order to maintain her light. Mr. Kern had no objection to planting a deciduous tree.

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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 can approve the project with staff findings and conditions. She found the solid gate acceptable. She found the design acceptable. Mayor Pro Tempore Cahill and Council Member Skull agreed.

Council Member Strauss believed the project is terrific, but did not appreciate the solid gate due to the policy in the General Plan. If the policy is not upheld, then they must re-examine the policy. Fireplaces are being discouraged and he did not see the need for a wood-burning fireplace.

Mayor Hunter loved the improvements and the overall concept is wonderful. The Council is divided on the solid gate issue, but there is a concern. They must establish a standard whereby the gates in Town are 50% transparent. Daylight gates allow passers-by to get a glimpse of the property, a peek inside that avoids a walled in feeling. As Council, they have a responsibility to think about the small town character and generally it does not have gates.

Council Member Durst suggested a modification in the gate design where it might not reach full 50% opacity, but if the slats were modified so they are angled to get sunlight through it that design would work out well. She recommended modifying the slats to have some light, and then they could justify that design. It provides a degree of light and privacy as well. She suggested a condition that requested looking at a redesign of the entry gate to some degree of opacity. She loves the fact that the garage goes under the house.

Mayor Pro Tempore Cahill concurred with Mayor Hunter's comments that this is a wonderful project and great for the community. In regard to the issue of solid gates, they had before them a proposal to put into the code a provision that required gates to be 50% transparent and they all agreed to not add that language because every property is different. They must review on a case-by-case basis. This is a property that is set back from the street, so even for the cul-de-sac it will not appear as a solid walled off appearance. He found a solid gate reasonable in this case.

Council Member Durst suggested approving and asking for an alternate design and if staff determines that design is not better than what is proposed tonight, then in terms of offering the best of both worlds, then it can simply be a staff's discretion.

Mayor Hunter suggested approving the application with the findings and conditions with the following modifications: 1.) a change to the expiration date to 2009; 2.) the addition that the applicant is required to bring in alternate designs for the gate to provide approximately 50% daylight, to be determined by staff. If staff is concerned regarding the gate design, staff may consult with a member of Council; 3.) deciduous trees will be planted in place of the evergreen trees near the pool; and 4.) consideration must be given for an EPA level 2 Rumford fireplace. The Council agreed.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to approve the project with the findings as outlined in the staff report and the following conditions. Motion carried unanimously.

Conditions of Approval, 59 Bridge Road, Kern

The following conditions shall be reproduced on the first page(s) of the project plans:

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on May 8, 2008.
2. The gate design shall be modified to be more transparent. The design of the gate shall be submitted for review and approval by staff. If staff is concerned with the gate design, staff may consult with a Council member or return the design to the Council for review.
3. The fireplace shall be gas, EPA Phase 2 certified, or a Rumford that meets EPA Phase 2 standards.
4. New trees proposed in the pool area shall be deciduous and not evergreen.
5. Prior to project final, the applicants shall remove the 12" redwood tree at the east side of the driveway in order to increase winter sunlight to the adjacent neighbor.
6. The pool equipment and any other exterior mechanical equipment shall comply with setbacks and shall be placed in a sound proof enclosure, insulated, and/or vented so that its operation is not heard from adjacent sites.
7. Prior to project final, the applicant shall install a wooden sound barrier fence, up to seven feet in height, between 29 Allen Avenue and the project site. The fence shall be a height necessary to block noise from passing vehicles but not tall enough to block winter sunlight to 29 Allen Avenue.
8. The landscaping shall be installed in accordance with the approve landscape plan prior to project final. Any new planting between the residence and the property line shared with 29 Allen Avenue shall either be deciduous or limited in height so that it provides a sufficient screening buffer between the sites at a height that does not unreasonably block winter sunlight to the residents of that site.
9. All exterior lighting shall be reviewed and approved by staff prior to installation. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from downslope sites). No up lighting is approved.
10. The applicants shall comply with all requirements of the Marin Municipal Water District for water service.
11. The applicants shall pay required Town fees of \$3 for every cubic yard of off-haul resulting from this project. Final off-haul amounts shall be calculated by the project civil engineer with calculations submitted to the Director of Public Works prior to the issuance of a building permit.
12. 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.
13. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review.
  14. 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 shall be subject to automatic penalties with no further notice. The construction shall not be deemed complete until final sign off is received from representatives of the building/public works, planning and public safety departments. All exterior work and landscaping shall be complete before project final.
  15. 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.
  16. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
  17. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, 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 ANY CHANGE.
  18. Failure to secure required building permits and/or begin construction by May 8, 2009 will cause the approval to lapse without further notice.
  19. 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.
  27. **115 Lagunitas Road, After-the-Fact Variance and Design Review No. 1681**  
Martin Rosen, 115 Lagunitas Road, A.P. No. 73-241-02, R-1:B-7.5 (Single Family Residence, 7,500 square foot minimum lot size). After-the-fact variance and design review approval for a new, approximately 225-square-foot deck at the rear of the residence, within a side setback area (15 feet required, 32 inches proposed). The deck would be finished with flagstone and stucco and replaces a wood deck that was demolished.

Approximate existing and proposed conditions:

Lot area	8,509 square feet
Existing Lot Coverage	31.1%
Proposed Lot Coverage	30.8% (20% permitted)

*The existing residence is nonconforming in setbacks.*

Senior Planner Semonian summarized the staff report and recommended that the Council uphold the \$4,500 application fee, which includes \$3,000 in penalties for starting work without appropriate planning approvals, since the applicant was informed of the zoning requirements and chose to move ahead with the project without planning department review or approval. Staff recommends that the Council approve the deck subject to the findings and conditions outlined in the staff report.

Mayor Pro Tempore Cahill asked staff if the applicant intentionally moved forward with this project. Senior Planner Semonian believed so, but indicated the applicant was present to explain his actions.

Council Member Strauss discussed Condition No. 1 and wanted to know if that included providing plans about what is present in terms of the building department in regard to the deck replacement. He believed there should be some footings. Martin Rosen, applicant/owner, stated that they are 18-inches and agreed to have his contractor submit drawings. Council Member Strauss believed the requirement should be to have actual drawings of what was built. Public Works Director Jarjoura agreed to investigate.

Mr. Rosen stated that the deck has been present for 30 years and is in a state of disrepair. He has not used that deck since August 31<sup>st</sup>, 2006 due to safety concerns. They have a Birch tree that was buckling the deck along with wood rot. They replaced the steps once already and remedied some wood rot and removed shingles. It was in a horrible condition. The height is the same. If he were informed that he would be fined with triple penalties, he would not have done the work. \$4,000 is not an inconsiderable amount. He heard that it was considered a repair, not new construction. When he was in the process, he went to the Public Works Director and asked for a demolition permit. He lives on Lagunitas and was not hiding the project. Everyone knew what needed to be done and he had in his mind that it would be an extensive repair, but a repair. He asked for remediation of that severe penalty. He did not find the penalties imposed to be reasonable. He thought this was a repair and a simple operation, but he was wrong. In regard to water, there is a concrete base that has been there forever, so there is a one-quarter inch to 1-foot slope off the deck that would lead to the grass.

Council Member Strauss asked about the brick in relation to the photograph. Mr. Rosen noted that there are holes next to the brick area for jasmine plants to be replanted.

Mayor Hunter opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, pointed out that she can view the deck from the top of her floor and from her kitchen.

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.

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Council Member Strauss agreed with the staff report. He wanted to make sure that proper drawings are submitted to the building permit for the Public Works Director's review.

Council Member Skall noted his frustration because there was miscommunication. If the applicant heard that he could repair the deck, then the applicant should not be penalized for reconstructing it.

Public Works Director Jarjoura explained that replacing a few boards with no structural issue no permit is required. Replacing a deck is not a repair. A permit is not needed to repair a piece of the railing. When one totally removes the deck it is a different issue. Staff never visited the site and only had a discussion about the site. At that time, staff did not understand the nature of the work the applicant intended to do. But if replacing the deck a building permit and design review would be needed. Mr. Rosen pointed out that he would not have requested a demolition permit if he was only making a repair.

Town Manager Broad was not part of this process, but staff conveys to all applicants about what determines a repair and new construction. It is common process by staff.

Mr. Rosen invited staff to review and visit the site, which did not occur until he received a stop work order. He was concerned about the status of that deck. Council Member Strauss stated that one step would be to tear it out, but it is in approximately the same location and the bulk and mass is reasonable the same. He then wanted to make sure it was properly built, so they must receive the proper design of the footings.

Council Member Durst would approve with staff findings and conditions. If a structure is removed, then the proper process must occur in terms of design review. The deck was redesigned and the Council did not get an opportunity to review that design. It was not a repair, but new construction.

Mayor Pro Tempore Cahill believed violations are very important in regard to after-the-fact permit penalties. They have conflicting testimony about what occurred. He is torn. There is definitely a possibility that the applicant misunderstood what he heard thinking it was a repair and not understanding that it is a structural issue. Then the Public Works Director indicated that he informed Mr. Rosen that this project would require design review and other staff review, so he is torn at this point. It is important that if someone comes in and they just did not realize and made an honest mistake that these penalties should not be imposed.

Council Member Strauss believed enough communication was provided and agreed with the staff report. He then asked himself if he would have approved this design, so what staff has presented is best for both parties.

Mayor Pro Tempore Cahill agreed with the staff report and requiring additional plans. He then asked whether or not they impose the additional penalties.

Mayor Hunter stated that they are in a position that they have a regulation on unpermitted penalties for after-the-fact approvals. This should have come before Council and they do not have findings to waive the penalties in this situation.

Council Member Skall stated that they do not have all the information, so this report in some way is all after-the-fact. He agreed with the application fee, but not the penalty. They must review on a case-by-case basis. In this case, it is just not clear.

Town Manager Broad suggested the two-time fee rather than the three time fee. Essentially assigning 50% fault to both parties. The Council and Mr. Rosen accepted the compromise. Mr. Rosen hates the feeling of cheating, which he did not do, and only did what he thought was right.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to approve the after-the-fact approval for 115 Lagunitas Road with the findings and conditions as outlined by staff in the staff report with the addition of requiring drawings necessary for the Building Department to determine that the deck and structure is constructed properly; and that they reduce the penalty to “two-times” the application fee. Motion carried 4-1. Skall opposed.

Conditions of Approval, 115 Lagunitas Avenue, Rosen

The project shall be subject to the following conditions:

1. A building permit, plans, and after-the-fact inspection fees are required for the work.
2. No changes from the approved plans, before or after project final, 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 any change.
3. All deck runoff shall be dissipated on site.
4. 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.
5. This project shall comply with all requirements of the Department of Public Safety.
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 (including all landscaping work), the owner shall be subject to automatic penalties with no further notice. The construction shall not be deemed complete until final sign off is received from representatives of the building/public works, planning and public safety departments.
7. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
8. Failure to secure required building permits and/or begin construction by May 8, 2009 will cause the approval to lapse without further notice.

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.
28. **Open time for matters pertaining to the closed session in agenda item 28.**  
There was no one wishing to speak.
29. **Council will adjourn to closed session for the following: Labor Relations — Government Code Section 54957.6 related to negotiations between the Town of Ross (Gary Broad, Town Manager as Town Representatives) and the Ross Professional Firefighters Association, Local 1775.**
30. **OPEN SESSION. Council will return to open session and announce action taken, if any.**  
Mayor Hunter reported that there was no action taken.
31. **Correspondence**
  - Letter not supportive of asphalt used for a sidewalk infill on Poplar  
Mayor Pro Tempore Cahill recommended that Council not accept any letters that did not provide a proper first/last name and address.
  - Letter from Pam Riley about Ross Rec losing storage space and desired a permanent storage area in the old school house  
Town Manager Broad would permit a storage shed for the duration of the school project.  
Council Member Strauss and Council Member s Skall will work with the school to secure a permanent storage space.
  - Letter from the Babcock's about the Downtown Plan  
Council Member Strauss noted that the letter is full of misinformation and agreed to contact the Babcock's to explain the situation.
  - Letter from Wendy McPhee about centennial options  
The Council will contact Ross Historical Society in that regard.
  - Letter from Office of Command Department of the Army to acknowledge June 9<sup>th</sup> to 15<sup>th</sup> as United States Army Week in Ross.
32. **Other Business-** None
33. **Adjournment.**  
By order of Mayor Hunter, the meeting adjourned at 10:50 pm.

\_\_\_\_\_  
R. Scot Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Gary Broad, Town Manager