

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, OCTOBER 8, 2009

1. 6:30 P.M. Commencement.

Present: Mayor Pro Tempore Hunter; Council Member Cahill, Council Member Martin; Council Member Skall; and Town Attorney Hadden Roth.

2. Open time for matters pertaining to the closed session in agenda items 3 and 4.
None.

3. Closed Session – Conference with Legal Counsel – Pursuant to Government Code §54956.9 (a) re Jose Adan Reyes-Hernandez v Town of Ross, Marin Superior Court, Case No. Civ 090045.

4. Closed Session – Personnel Matter, Government Code Section 54957, semi-annual evaluation of the Town Manager.

5. Open Session. Council will return to open session and announce action taken, if any.

Mayor Pro Tempore Hunter announced that the Council voted to approve the mediated settlements in regard to Closed Session Item No. 3. The special damages in this case were \$92,000 and the attorney working the mediation was able to get the damages reduced to \$49,000. The Town also must pay \$12,000 in attorney fees making the total amount \$61,000. However, the Town's insurance covers all matters over \$25,000. He further noted that the ABAG attorney did an excellent job.

In regard to Closed Session Item No. 4, there was no reportable action.

6. Posting of Agenda.

Town Manager Gary Broad reported that the agenda was posted according to government code

7. Minutes – September 10, 2009

Mayor Pro Tempore Hunter asked for a motion.

Council Member Martin moved and Council Member Skall seconded, to approve the September 10, 2009 Town Council minutes as amended. Motion carried unanimously. Strauss absent.

8. Demands.

The demands were met.

9. Open Time for Public Expression.

Mary Amonette, Ross resident, stated that the new path is absolutely fabulous, especially the second half. She then suggested that children ten and under should be required to have some sort of bell on their bikes in order for pedestrians to be aware bicyclist are approaching.

Diane Rudden, aka Disaster Fairy, discussed "PASS," which is *pull the string, aim at the fire, squeeze the trigger and sweep the base of the fire*. She further noted that fire extinguishers can only be used once.

10. Report from Mayor Pro-Tempore Hunter.

Mayor Pro Tempore Hunter reported that third annual Town Dinner was held on Friday, September 25th and was yet another reminder of the special nature of living in a small town. It was a great event and he thanked Chief of Protocol Roseanne Lourdeaux, and her committee for a wonderful evening.

In terms of sales tax, a recent report in the IJ indicated that every other taxing entity in the County saw their taxes revenue decrease except Ross which saw an increase. Although the numbers are relatively small, it is an encouraging trend in these difficult economic times.

Also, the second annual Halloween window-painting contest starts on Saturday, October 24th between 2 and 5 p.m. All students 2nd through 12th grade are welcome. All details will be sent in a town wide email.

Mayor Pro Tempore Hunter then reported on Keith Goldstein, who worked at RBC Wealth Management and handled the Town's CD investments, recently celebrated his 50th birthday and sadly drowned in an accident last month. The Town sends out its condolences to Keith's family.

11. Report from Committee Heads.

Community Protection Update - Council Member Skull

Council Member Skull reported that on September 2nd, 2009, Ross Fire Department responded to a 911 smoke check call. Due to dispatch confusion, it delayed the Ross Fire Department. The smoke check turned out to be a spontaneous combustion fire. Fortunately, prior to the Ross Fire Department reaching the site, the fire was extinguished by the efforts and quick action by the reporting neighbors family. Due to developing neighborhood concerns on the delayed response by dispatch and the Ross Fire Department, the general public requested a meeting with the area neighbors, which was held two weeks ago. He attended the meeting along with Town Manager Broad, Fire Chief Vallee, Police Chief Reis and approximately ten neighbors. They had a great discussion on items including the dispatch error, the fire department response and neighborhood concerns. A number of ideas were discussed to prevent an event of this nature from happening again. Follow up has included dispatcher discipline and follow up with County Communication Center for better methods for all dispatchers to learn from the problem. It will also include Town staff pursuing community outreach on how emergency reporting is handled, how dispatch works and what information residents observe and report in an emergency. Fire staff is also reviewing response in high fire hazard areas. The Town's email list, website and DISCO program will provide information to the public.

He then noted that October 4th is Disaster Preparedness Day as well as Family Day and they will have great representation from Ross Fire Department, Red Cross, and Hand Radio Operators Association that will be available to answer questions on emergency preparedness. He further announced that on October 20th at Town Hall at 7:30 p.m. DISCO will have their first public meeting and all residents are encouraged to attend. He further noted that additional information would be provided in "*The Morning After*."

Public Works Update

- Council Member Martin

Council Member Martin stated that the Public Works Committee, which consists of Councilman Cahill, Town Manager Gary Broad, Public Safety Director Mel Jarjoura, Town Engineer John Moe, and Public Works Superintendant Robert Maccario, had two meetings since the last Council meeting. He reported that the schedule to replace the Lagunitas Bridge is becoming seriously challenged because of delays acquiring the required State and Federal permits. Today, Town Manager Broad and Public Safety Director Jarjoura along with the project's design team, met with representatives from Caltrans to try to address the permit delays. The meeting was constructive and hopefully a few of the kinks on the environmental permits process will be remedied. The bridge demolition is scheduled to begin in June 2010 and conclude in October 2010.

In regard to the Shady Lane pathway, as indicated by Mayor Pro Tempore Hunter, it is open and being well received in the community. Members of Council have received numerous letters from residents along Shady Lane praising Public Works Superintendant Maccario for his exceptional efforts of working with affected property owners to achieve the pathway. He also wanted to commend Superintendant Maccario for his exceptional and diligent efforts to work with impacted residents and complete this project according to budget. A number of disease-resistant elm trees have also been planted along the pathway to replace elms that have perished during recent years. Though the pathway is open for use, the project is not complete. All parking along the north side of Shady Lane has been eliminated. Temporary no parking barricades and cones have been installed on Shady Lane to prevent vehicles from parking on the path, which would deter passage and damage to the pathway. Rather than install dozens of "no parking" signs along Shady Lane, Public Works is recommending that the right-of-way that borders the street be landscaped with a combination of deer resistant and drought resistant plants, and large visible rocks to impede vehicles from crushing the path or the landscape. A new right-of-way ordinance is being drafted which would allow the adjacent property to landscape the right-of-way provided they are responsible for its continued maintenance. The Public Works Committee is asking for the Council's authorization to proceed with the placement of soil and rock in the right-of-way along Shady Lane. The Council believed it is a great idea and had no objection.

Concerning the Sir Francis Drake pathway, the next few days the project is being advertised for bidding. Given the upcoming inclement weather, Public Safety Director Jarjoura is asking the County for authorization to initiate and complete the project during the first half of 2010.

Lastly, recommendations were presented to the Council for placement of several unobtrusive signs marking County bicycle routes along Shady Lane, Ross Commons, and Poplar Streets. The Public Works Committee desired the Council's permission to proceed with the installation of these signs. The Council agreed.

Council Member Skall asked staff if the Bicycle Coalition reviewed the placement. Town Manager Broad received calls and emails from the Bicycle Collation encouraging the Council to approve the signs.

12. Report from Ross Property Owners Association.

Diane Rudden, RPOA representative, thanked the Chief for providing the two flags out front. Also, RPOA received several phone calls in regard to Public Works Superintendent Maccario's excellent job done on Shady Lane. She also pointed out that only one light is working on the steps of Town Hall, which should be addressed. RPOA desired some sort of policy on informing residents about burglaries, and suggested possibly informing the public through the town wide email. The Public Safety Committee agreed to investigate.

13. Flood Control Report.

Council Member Martin stated as reported previously the California Supreme Court has agreed to determine if the Ross Valley Flood Fee Assessment was properly implemented. Today, legal briefs from the County and Ford Greene were submitted. It will now be a matter of months before the Court makes a determination on the issue. Rather than stall the development of possible remedies to reduce flooding of the Ross Valley communities, the County has advanced monies for engineering studies by Stetson Engineering. The study is midway through the process. It includes an analysis of possible water detention basins upstream from Ross, as well a cost effect approach for dredging the Corte Madera Creek channel well below Ross.

Flood Zone District No. 9 will meet on October 29, at the San Anselmo Town Hall to discuss these studies and related issues. He has been working with Jack Curley to introduce a position letter at that meeting, which will state that the Army Corps work within the Town of Ross is timely and a critical link in the effort to reduce the severity of flooding in the Ross Valley residential and commercial communities. They are asking the Councils from all the communities affected by the flooding, along with the County Board of Supervisors to jointly sign the letter. Such a consensus statement will assist the efforts of Senators Boxer and Feinstein to advance this project toward its realization.

As indicated by Mayor Pro Tempore, on September 26, over 40 people including many students from Mrs. Q's 4th grade class and their parents, as well as four members from Ross Fire Department spent several hours on a Saturday morning clearing out debris, discarding landscaping, and fallen branches from Corte Madera Creek and Ross Creek. Superintendent Maccario provided all parties with a better understanding of creek ecology, preservation, as well as flooding. Besides clearing the channel, the group identified several potential impediments to the ability to handle water, including a large fallen tree and an extensive structural support system for a private bridge. This past weekend, the creek, in the vicinity of the Lagunitas Bridge was dredged. Approximately 500 cubic yards of sediment was removed. Also, the Stormwater Ordinance, which is intended to establish development policies to detain stormwater close to its source and prevent it from stressing the Town's existing over-burdened drainage system, is in the final review process and hopefully will be presented to the Council for consideration at the next meeting or at the December meeting as well for comment.

14. Report from the Ross School.

School Board President Dan Bernhardt reported that construction of the school is moving forward. They received a clean bill of health from Cal/OSHA two days ago, so they are moving along.

Mayor Pro Tempore understands that President Bernhardt is stepping down in December. President Bernhardt responded in the affirmative. He noted that there are incredible capable

individuals stepping up to replace him, so the District will be in good hands. The Mayor Pro Tempore on behalf of the Town Council thanked him for his service.

15. Town Council consideration of adoption of Resolution No. 1679 in the Matter of Accepting an Interest in Property from the Ross School District and dedicating easements to the District.

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adoption of Resolution No. 1679 in the matter of accepting an interest in property from the Ross School District and dedicating easements to the District. Staff noted a minor change on Exhibit F, which is certificate of acceptance and must add words, “to the Town of Ross.” Also, Exhibit B will be relocated to its corrected place in the document. The agreement between the Town and school is still being finalized. Council can move forward with the resolution with the recognition and understanding that the Council and school must still finalize the language in the liability and indemnification between the Town and school and then all will be recorded.

Council Member Cahill suggested referring to it as “an easement agreement” to cover the areas of the two easements. He recommended that the Council delegate responsibility of finalizing the language of this agreement to the Town Attorney along with the Public Works Subcommittee approval, which includes Council Members Cahill and Martin. The Council agreed. President Bernhardt expected some language modification and appreciated the Council not holding up the matter.

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

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Council Member Martin seconded, to adopt Resolution No. 1679, subject to approval by the Town Attorney and the Public Works Committee in regard to the easement agreement and the minor changes staff outlined during the staff report. Motion carried unanimously. Strauss absent.

16. Consent Agenda.

Commissioner Cahill recused himself from the next agenda item to avoid the appearance of a conflict.

a. 24 Walnut Avenue, Second Unit Permit No. 1754

James Zak, Cynthia Snorf Zak and Roberta B. Bialek, 24 Walnut Avenue, A.P. No. 73-171-46, R-1:B-10 (Single Family Residence, 10,000 SF Minimum Lot Size), Medium Low Density (3-6 Units/Acre). Variances associated with an application for a second unit permit to allow use of the existing guest house as a second unit. The second unit structure would have a nonconforming side setback (15 feet required, 2 feet existing) and rear setback (40 feet required, 8 feet existing) and would be 1,640 square feet in size (700 feet permitted). No construction is associated with the request.

Lot area	24,682 square feet
Existing and Proposed Floor Area	31.5% (20% permitted)

Existing and Proposed Lot Coverage 19.1% (20% permitted)

Mayor Pro Tempore Hunter asked for a motion.

Council Member Martin moved and Council Member Skall seconded, to approve Consent Calendar Item “a” as submitted by staff. Motion carried unanimously. Cahill abstained/Strauss absent.

Council Member Cahill reconvened his position on the Town Council.

- b. Town Council consideration of the appeal of Rick Newton, 94 Laurel Grove Avenue, A.P. No. 72-211-10, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction and of Resolution No. 1661 acting on the appeal.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Martin moved and Council Member Skall seconded, to approve Consent Calendar Item “b” as submitted by staff. Motion carried unanimously. Strauss absent.

End of Consent agenda.

17. Report from Ross Recreation Director Pam Riley and request that the Town Council amend the bylaws related to residency requirements.

Recreation Director Pam Riley reported that Ross Recreation successfully completed another summer season, which was again held at the Kent Middle School. They are grateful to the Kentfield School District for allowing them the use of the campus, which helps to bring more Kentfield students. Since the population of Ross is far smaller, and since many families from Ross are gone for the month of July, they are dependent on these children to fill their programs and support Ross Rec. through its lighter seasons in winter and spring. This past summer approximately 750 children attended Ross Rec. programs.

For the first time this past summer Ross Rec. and Marin Art & Garden Center (MAGC) collaborated and cosponsored camps at MAGC, they were highly successful with an attendance of about 130 children. They look forward to this joint sponsorship again next summer. As seen from their year-end financial report, in spite of a terrible financial recession, Ross Rec. has managed to show a substantial financial gain from programs netting \$62,500 as compared to a program loss of -\$35.50 the previous year. With the addition of other income this year, Ross Rec. gained \$89,179 in a year when the Auxiliary donation was only 20% of what it had been the previous year. During the school year they are working closely with members of the MAGC Board to continue developing joint programs for children and adults. Their most successful venture at MAGC is their brand new garden preschool for three and four year olds. They have hired four wonderful teachers and can accommodate 19 children per day. There are still a few openings on Tuesdays and Thursdays, and they welcome children from their neighboring communities. They are working towards a long-term lease at the MAGC so that they may continue this exciting new venture. The Ross Rec. Auxiliary is planning a major fundraiser to help their ability to secure the space for the future.

The most exciting news this fall is that Ross Rec. now accepts online registrations. It has been a great challenge trying to get the kinks out of this new system, but they are working with relevant tools as their server and hope to resolve these by the next registration period this winter. Fall soccer registration is excellent with close to 300 participants from ages three to eight years. So far the online registration shows 909 people have registered for a Ross Rec. program. Some of these programs unfortunately, had to be canceled for lack of sufficient numbers, so they will have to find increased marketing tools as they move in to this computerized world. This fall they have successfully launched quite a few new programs on the Bacich School Campus. Working with liaisons to their Board of Directors, they were able to conduct a spring survey at Bacich and then respond with requested programs. This is another venue where they hope for continued growth.

Ross Rec. continues to collaborative on a quarterly basis with the Town, the School and the MAGC to achieve open communication and cooperate in joint efforts. Among their many goals would be to help transform the MAGC into a real community center where adults and children can work together and share skills and develop new programs and endeavors. They also continue to work with Ross School to provide needed after school enrichment and look forward to the reopening of the new school, new office and community room for Ross Rec. As always they are open to suggestions from the Council and other community members for new programs and ideas. They would like to increase their adult offerings bringing back more people who no longer have children in the school to participate in some of their fine adult offerings. This fall they offered classes in cooking, gardening, literature, art, tennis, hiking, biking, and a boot camp program. They have special events utilizing their community resources. Dan and Holly Baker of Marche Aux Fleur and AVA Restaurant are offering wine tasting programs at their restaurant and cooking classes in lovely private homes. MAGC is providing great lectures, gardening and holiday decoration programs. She then asked everyone to please support one of these programs to help keep Ross Rec. as a viable entity for the Town. She then requested that the Council approve their bylaws change; approve their new slate for Board of Directors; consider a bridge over Sir Francis Drake Boulevard to MAGC; and consider a T-Ball field on Ross Common.

Mayor Pro Tempore Hunter indicated that approval of their new slate of Board of Directors was not agendized, so that must be considered next month.

Council Member Cahill appreciated the balance sheet and asked staff if the equity in these financials for Ross Rec. shows up on the Town's financial. Town Manager Broad indicated that Ross Rec. has separate financials and a separate audit on their financials should occur. Staff has not heard anything from their auditor, but agreed to ask that question. Council Member Cahill noted that Ross Rec. is a subset of the Town and Ross Rec. has a substantial equity balance and believed it would be appropriate to include in the balance sheet of the Town in its annual financials. He further recommended that staff discuss with the auditors. Town Manager Broad responded in the affirmative.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, asked about the tennis courts in regard to repairs. Recreation Director Riley explained that funds are not available to repair the tennis courts and noted that contributions would be appreciated.

Carla Small, Duff Lane resident, stated that the Town should not depend on the sale of keys to keep those courts in excellent condition and believed the Town should accept responsibility. She personally felt the courts are used and represent the community and should not be left in disrepair. She then asked the Council to contribute funds to fix the courts next year.

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

Council Member Cahill noted that Ross Rec. has a substantial amount of equity in their account and is not sure it is appropriate for the Council to make the decision, but the Board of Directors should consider whether or not it is within their budget to find that extra \$20,000 to repair those courts. Recreation Director Riley agreed to take the matter to the Board. She pointed out that most reserves are allocated.

The Council directed staff to bring back a resolution next month accepting the Ross Rec. bylaws change.

18. Presentation by Dawn Weisz on Marin Energy Authority draft contract for energy supply.

MEA Interim Director Dawn Weisz provided the Council with a powerpoint presentation that included the following on Marin Clean Energy:

- Why was MEA formed? MEA was formed in 2008 to address climate change by reducing energy related Greenhouse Gas (GHG) emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. MEA aims to help Marin County communities meet their AB32 mandates.
- The rationale for MCE – Reduction of GHG & Associated Costs:
 - CA AB32 passed in 2006, requires reducing GHG emissions to 1990 levels by 2020
 - CA needs a reduction of 55,100,00 tons CO₂e
 - This is a reduction of 25% by 2020
 - Cost of AB32 compliance estimated at \$48 million in Marin without MCE
 - MCE will result in a 17% reduction in GHG emissions, achieving two-thirds of Marin's AB32 compliance
- Estimated AB32 Compliance Cost by Community
- Countywide GHG Emissions
- A Brief History:
 - Phase I – 2003-2005 completed tasks:
 - Feasibility Study
 - Peer Review of Feasibility Study
 - Bond Counsel/Legal Review
 - Risk Analysis
 - Phase II – 2005-2008 completed tasks:
 - Formation of Local Government Task Force
 - Local Renewables Analysis
 - Business Plan
 - Peer Reviews of Business Plan by Task Force and City Managers
- MEA Programs:
 - Marin Clean Energy (MCE)

- Energy procurement through CCA to “green up” the energy supply in Marin County at a low cost
 - Solar and Energy Efficiency District (SEED) Program
 - Based on AB811, a land-based financing program to implement rooftop solar and energy efficiency (EE) improvements
 - Other Grant Proposals and Projects
 - Solar car ports, smart grid integration, others
- MEA Board of Directors:
 - Tom Cromwell, Council Member, City of Belvedere
 - Lew Tremaine, Council Member, City of Fairfax
 - Charles McGlashan, Supervisor, County of Marin
 - Shawn Marshall, Council Member, City of Mill Valley
 - Chris Martin, Council Member, Town of Ross
 - Barbara Thornton, Council Member, town of San Anselmo
 - Damon Connolly, Council Member, City of San Rafael
 - Jonathan Leone, Mayor, City of Sausalito
 - Richard Collins, Council Member, Town of Tiburon
- Committees of the Board:
 - Executive Committee – McGlashan, Connolly, Tremaine, Marshall
 - Agenda Review
 - Policy Review
 - Legislative and Regulatory Analysis
- Technical Committee – Connolly, Thornton, Tremaine, Martin
 - Request for Procurement and Power Supply Contract
 - PG&E Proposal Review
 - Review of other AB32 related programs
- Ad Hoc Contract Committee – McGlashan, Connolly, Thornton, Collins
 - Power Supply Contract
 - Contract Negotiations
- Ad Hoc Technical Advisory Group Expertise:
 - Ruth McDougall, Renewable Energy Procurement Manager, SMUD, retired
 - Municipal Utility Energy Procurement & Operations
 - Bill Kissinger, Partner, Bingham McCutchen, LLP
 - Legal Finance, PPA
- Peter Luchettie, Founding Partner, Table Rock Capital, LLC
 - Finance, Renewable Energy Issues, Infrastructure
- Tom Delaney, Account Manager Customer Services & Industry
 - Affairs, California Independent System Operator (CAISO)
- Wally McOuat, Founder, HMM Energy Resources, Inc.
 - Finance, Project Development
- Tom Sweet, Sr. Engineer, URS Corporation
 - Power/Energy Industry Engineering, Design, Technology
- Professional Services Support:
 - Navigant Consulting, Inc.
 - Technical Consulting/Implementing Support
 - Milbank, Tweed, Hadley & McCloy LLP
 - Power Supply Agreement Legal Counsel
 - Richards, Watson and Gershon LLP

- General Counsel
 - Nixon Peabody LLP
 - Special Counsel
- Benefits for Customers:
 - Provides Customer Choice
 - Light Green, Deep Green or PG&E
 - Cost Competitiveness
 - Cost at or below PG&E
 - Higher Renewable Content
 - MCE ability to significantly increase renewable content at current PG&E costs
 - Cost Stability
 - MEA plans to stabilize costs through predetermined supply costs
 - Focus on Customer Needs
 - MCE brings value to its customers and member jurisdictions by setting rates tailored to local needs
 - Direct Customer Participation
 - In GHG reduction
- Benefits for Marin County:
 - Competition in business
 - Better Product
 - Bringing jobs and revenue to Marin County
 - Marin will be the center of an over \$90M/year CCA, bringing jobs and revenue to the local economy
 - Local Renewable Development
 - Ensures local focus in development of renewable energy projects
 - Implementation of EE and Distributed Generation
 - MEA will implement EE and other programs to encourage distributed generation into ongoing operations
 - Minimum 13 MW of DG and 11% EE planned in first 10 years
 - Huge Strides toward meeting AB32 mandate
 - Avoid most of \$48 million in AB32 compliance costs
 - The cost of compliance without MCE will come from other sources, including general funds, local businesses and Marin County residents
- GHG Reduction Sample Measures for Marin:
 - GHG Reduction Goal: 797,130 tons CO₂e
 - 175,000 reduction in 2011
 - 534,000 reduction in 2020

MEA Project Manager Beth Rasmussen discussed the following:

- Power Purchase Agreement Development Process:
 - RFP, May 2009
 - Key Requirements Sought:
 - Energy supply at or below PG&E's projected cost
 - Range of products for MCE customers
 - Light Green Option: 25% renewable content
 - Deep Green Option: 100% renewable energy

- Minimum contract term length of 5 years, commencing on May 1, 2010
 - 12 proposals received
- Bid Summary
- PPA Development process continued:
 - July 2009: 12 proposals received
 - Proposals reviewed and screened by technical advisors, legal counsel and MEA staff
 - August 2009: 3 finalist selected
 - September 2009: Negotiations with finalists
 - Continued review by MEA Ad Hoc Contract Committee, technical advisors, legal counsel and MEA staff
 - October 2009: Shell Energy North America selected as first-position bidder
- Bidder Evaluation Criteria
- PPA Continued:
 - October 1, 2009: Draft Contract Release
 - Review and comment by City and Town Councils, City Managers, City Attorneys
 - Continued negotiations between Shell and MEA
 - November 4, 2009: Final Contract Delivered to MEA Board
 - November 5, 2009 - February 4, 2010: Review of Final Contract by City and Town Councils
 - Final “*offramp*” for MEA member communities
- Draft PPA:
 - General Overview
 - Contract is based on the industry-standard Edison Electric Institute (EEI), Master Power Purchase and Sale Agreement
 - Contract insulates municipal funds/budgets before, during and after the delivery period
 - Firewall also ensured by State law and the JPA agreement
 - Five year delivery period, beginning on June 1, 2010 and ending on May 31 2015
 - Contract prices set at the beginning of the five-year term
 - Commercial Terms: Contract is a “*full requirements*” contract
 - Supplier will deliver all of the energy MEA needs, including
 - Electrical energy, including renewable energy content
 - Capacity, as required by CAISO
 - Ancillary services, as required by CAISO
 - MEA has responsibility for certain other administrative and technical matters including:
 - Interface with the CPUC
 - Customer services related to MCE
 - Implementation of related EE and Solar programs
 - Rate setting and resource planning
 - All MEA customers will receive at least 25% of energy deliveries from CEC eligible renewable resources
 - Supplier must maintain a minimum “*investment grade*” credit rating
 - MEA credit exposure is limited to customer receipts/revenues

- MEA will be allowed to substitute renewable energy generated by newly developed and/or purchased resources for contracted energy volumes
- Key Pricing Considerations for MEA:
 - Energy pricing will be refreshed prior to contract signing
 - MEA will not execute PPA if pricing does not support Light Green generation at or below PG&E projected cost
- Key Customer Choice Considerations:
 - MEA customers will have a choice in their energy supplier:
 - Light Green: 25% renewable content, increasing over time, at or below projected PG&E cost
 - Deep Green: 100% renewable content
 - In the initial years customers pay a slight premium over projected PG&E cost
 - In year 2016, Deep Green cost is expected to be below projected PG&E cost for residential customers
 - Coal and nuclear generated power will not be purchased for either product
- Sample PG&E Bill
- What is the Impact to MEA Customers? MEA customers continue to pay PG&E bill. Generation charge will be remitted to MEA.
 - Only line item that changes is “generation” costs
- MEA Uses of Funds: Year 1 - Total Year One Uses: 18,100,000
- MEA Uses of Funds: Years 1-5
- Comparative Energy Costs in Year 1

Interim Director Weisz discussed the next steps as follows:

- The Future - Owned Renewable Assets:
 - MEA will negotiate future contracts prior to initial contract expiration, substitution in new assets, ensuring seamless energy delivery
 - MEA will invest in local and regional renewable projects
 - Owned renewable projects lock in costs, avoid fossil fuel cost fluctuation, mitigate risk
 - Target: 100% renewable content by 2020
- Contract Pricing: Assumes a 3.4% rate increase for PG&E, their average rate increase over the last 10 years. It assumes a 3% rate increase for MEA through Year 6 and a 2% increase for MEA after Year 6
- Improving Energy Supply:
 - Higher Renewable Content: MEA is poised to currently exceed Renewable Portfolio Standards (RPS) at or below PG&E costs; PG&E has indicated it will meet RPS in 2010
 - Lower Generation Costs: MEA can develop energy generation projects more cheaply than PG&E by using tax-empted financing
 - Increased Market Competition: MEA will compete with the existing monopoly utility to create lower energy generation prices
- Renewable Energy Content: PG&E compared to MCE Light Green
- Member Risk Mitigation:
 - General funds continue to be insulated

- State law, JPA agreement and Section 10.13 of EEI Agreement
- Credit worthiness ensured
 - Supplier collaterals posting if credit rating declines
- Opt-out contingences managed
 - Contract allows for variation in usage
- Legal challenges evaluated
 - Funds budgeted for legal support
- Provider guarantees
 - Extensive experience, financial sound, credit provisions, termination payment
- Customer Risk Mitigation:
 - Customer cost at or below PG&E projected cost
 - MEA will note sign five year contract if prices exceed projected PG&E costs; reserves and owned assets improve economics over time
 - Predictable costs
 - Five-year energy pricing will be known to contract signing
 - Provider energy supply guarantees
 - No interruption of power due to provider failure; customers can be returned to PG&E at no cost to them
 - Ability to opt-out of MCE
 - Four notices delivered during opt-out period, no penalty in opt-out period; possible capped exit fee after opt-out period
- Projected Scheduled July 2009 –February 2010

Council Member Cahill asked what customers are included in June 1st rollout. Interim Director Weisz explained that there are two phases in regard to the rolling out of customers. The first phase will be all municipal customers, which would include Ross and some commercial customers or residential. Currently, three different scenarios are being reviewed and that will be set in stone on the day the contract is executed.

Council Member Cahill desired an explanation on the opt-out provisions for customers. Interim Director Weisz stated that 60-days before service opt-out notices would be sent to all customers. Two different notices will be sent within that 60-day period. In addition, there will be a lot of heavy marketing to inform the residents. After the 60-day period service would begin. PG&E will still provide a bill to customers, just one line item changes. Then there will be an additional 60-days to opt-out and two additional notices. In the second phase-in all target mailing will not be received until it is time to phase-in and that will occur around the fall of 2010. There is no penalty for opting-out. MEA will cover that termination cost.

Council Member Skall understands the bill inserts, but asked if email notices will occur as well. Interim Director Weisz responded in the affirmative.

Council Member Martin desired an explanation on the feasibility study. Interim Director Weisz noted that the City Managers are conducting a peer review of the draft contract. Two different firms will review and provide feedback before the final contract is approved in November.

Mayor Pro Tempore Hunter understands the initial term is five-years, but what are the mechanics for renewal and is there any calculation that would prevent a huge jump of energy cost at that point. Interim Director Weisz responded that during that five-year period they would be busy getting other items in motion. They need 100 to 150 MW. Bids came in for 80 MW of wind from a large solar project. They will be looking to get those projects up and running and be in a position to supply customers with those assets to avoid buying power from another existing source. They wanted to add value and renewables to the market. At the end of five years they want to have other power sources in place. Then the RFP will select from the best bids and find what works within the pricing.

Mayor Pro Tempore Hunter asked what local assets Shell Energy North America has. Interim Director Weisz noted that definition of local is Northern California, which is 200-mile radius and Shell owns some local assets in that radius. All products in the contract will probably not be within that radius, but a good majority will be.

Mayor Pro Tempore Hunter asked the number of governmental entities that have to opt-in for this to move forward. Interim Director Weisz responded that the economics are not so much of a factor based on the amount of volume. They must have several cities involved to make it work, but that will be a policy decision. She further noted that the economics would work even with a small volume.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Carol Lang, Ross resident, asked if the generation cost would be an average. Interim Director Weisz responded that they would use the same tier structure used by PG&E in regard to generation cost. The solar installers have urged them to keep it simple, so it will help customers to see the changes on their bill. She further noted that could change overtime as the Board sets policy.

Juliette Anthony, SolarTimes Researcher, wrote an article called, "*Marin County's Not-So-Clean Not-So-Local Energy Sources*" and pointed out that McQuarie-Cook Power does not have any blood on their hands. They have a wonderful record and preferred McQuarie-Cook Power over Shell Energy North America. She further urged MEA to reconsider their choice and look again at McQuarie-Cook Power.

Joe Nation, PG&E representative, stated that AB32 is the most aggressive GHG bill in the country. Since leaving the State Assembly, he now teaches climate change at Stanford and PG&E asked him to help with GHG reduction strategies. He focused on three items: issue of price, risk and GHG emissions. On the issue on price, as seen, the contract has no prices included whatsoever and it probably will not have any prices until the very last day. Then focus on risk assessment. One year ago the City Managers reviewed the risk and one recommendation by MRW Associates was to come back and look at it again. They must look at participation rates and natural gas generation rates that could change that may not have been assessed fully the first time. In terms of GHG reductions, he understands the imperative need to reduce GHG. The MCE plan will take Marin in the wrong direction. He asked the Council to focus on what is actually in the contract, which indicates that they will contract until 2015. The minimum requirement is 25% renewables, which means a mix of 25% green and 75% brown GHG emitting. That is worse than exists today. PG&E's mix to Marin County's entire service area is about 50% GHG free. Rather than MEA actually taking

Marin in a better direction it will take Marin in the wrong direction and cost Marin money. It is a shell game sort to speak because they are buying existing renewables, so Shell, instead of selling green power to some other customer, sells them brown power and transfers green to Marin, so there is no net benefit whatsoever to the society. In fact, the MEA will have to report to Air Resources Board that emissions for this County actually got worse. He further hoped the Council focuses on price, lack of price, risk and in particular, focus on GHG emissions and what this plan does and does not do.

There being on further public testimony on this item, the Mayor Pro Tempore closed the public portion and brought the matter back to the Council for discussion.

The Council decided to schedule a special meeting to further discuss the draft contract. All Council and public comments are due by November 5th.

19. Food to Energy (F2E) presentation by Central Marin Sanitary Agency and Marin Sanitary District.

Jason Dow, Central Marin Sanitary representative, provided a powerpoint presentation to the Council on F2E Initiative that included the following:

- Presentation Outline:
 - What is CMSA?
 - Brief History
 - Services
 - Operations
 - Food to Energy Project
 - Energy Generation at CMSA
 - Project Benefits
 - Preliminary costs and payback
 - F2E status, issues, next steps
 - Questions
- CMSA History:
 - CMSA JPA in 1979
 - City of Larkspur
 - San Rafael Sanitation District
 - Ross Valley Sanitary District
 - Sanitary District #2 (Corte Madera)
 - CMSA constructed in early 1980s
 - Located in San Rafael (Andersen Drive)
 - Began operation in May 1985
 - Replaced four small plants in Central Marin
 - CMSA built for \$84 million
- CMSA Service Area
- About CMSA – Our Board:
 - Appointed Board of Commissioners:
 - Al Boro, San Rafael Mayor, 18.5 years
 - Bob Sinnot, Larkspur Fire Chief, 7 years
 - John Dupar, Corte Madera Mayor, 7 years
 - Cyr Miller, San Rafael City Council, 3.5 years
 - Sue Brown, Ross Valley Sanitary, 3.5 years

- Marci Johnson, Ross Valley Sanitary, 2 years
- About CMSA – Services:
 - Treatment & Disposal of Wastewater
 - Treatment & Disposal of Biosolids
 - Source Control Regulation – Industrial/Commercial
 - Public Education – Marin County Program
 - Contract Services
 - Pump Station O&M for Corte Madera
 - Source control/FOG management for LGVSD
 - FOG management with Ross Valley and San Rafael and Tamalpais Community Services District
- About CMSA – Operations:
 - 40 staff members
 - Administrative, Finance & Engineering
 - Operations, Maintenance & Electrical
 - Laboratory, Environmental Compliance
 - Shared Safety Director
 - Adopted Fiscal Year 2009/2010 Budget
 - \$9.5 million operating
 - \$14.2 million capital
 - Treat about 11 million gallons influent per day
 - Serve about 110,000 customers, including San Quentin
- Treatment – Influent vs. Effluent
- Treatment – Biosolids Residuals
- Food to Energy Project - Turning a former waste into something else
- 2008 Methane Capture Feasibility Study:
 - Collaborative study between San Rafael and CMSA, with Marin Sanitary Service Participation
 - Scope:
 - Identify the quantity and characteristics of commercial food waste in Central Marin
 - Determine pretreatment requirements
 - Evaluate existing CMSA infrastructure capacity
 - Determine methane gas production and power generation
 - Develop preliminary project costs and payback period
- Wastewater and Solid Waste Service Areas Map
- Improvements at the Solid Waste Transfer Station
- CMSA Processing Facility:
 - New facilities for on-site food processing
 - Underground mixing tanks
 - Industrial grinder – from mining industry
 - Tank mixing pumps
 - Paddle finisher, if needed
 - Digester feed pump
 - Odor control system
- Photograph of CMSA Anaerobic Digesters
- Photograph 750 kW Engine Generator

- Digester and Energy Production at CMSA:
 - CMSA has been in the digestion and energy generation business for 24 years
 - Wastewater solids produce biogas that is used in the cogeneration engine for 12 hours per day
 - Natural gas is purchased for engine fuel the remaining 12 hours per day
 - Food Waste and Grease digest to product biogas to offset natural gas usage
 - CMSA average energy demand is 550kW/hr
 - Excess engine (200kW +/-) capacity
- Benefits of Food Waste-to-Energy Program:
 - Feasible project with reasonable payback
 - A local renewable energy source
 - May qualify for PG&E and CEC grants
 - Increases CMSA's energy self sufficiency
 - Long-term rate stabilization for Ross customers
- Benefits- Diverts Wastes from Redwood Landfill:
 - Approximately 50% of the solid waste, after recycling, to Redwood Landfill is food waste
 - Project potentially diverts up to 16.5 tons per day of commercial food wastes
- Benefits – Maximizes Unused Capacity at CMSA:
 - Digesters have excess capacity
 - Input of food waste creates more biogas
 - Fully utilize existing CMSA 750kW engine generator with biogas
 - Export and sell excess energy – up to 200kW
- Benefits – Reduce Carbon Footprint:
 - Less CO₂ than landfill or composting
 - Less CO₂ from shorter truck halls
- Preliminary Capital Cost and Payback Period (updated)
- F2E Initiative Status:
 - CMSA Board approved 2009 work plan
 - Marin Sanitary Service and Mill Valley Refuse Service interested in participating
 - Presented project concept to Central Marin cities/towns
 - Pre-design work underway
 - Project success:
 - Participating of local restaurants, markets & institutions
 - Delivery of nearly containment free food waste
- Current Issues:
 - Compost vs. Digestion
 - Capture energy then compost
 - How to pay for Facility?
 - Board to consider in future – bond proceeds, grants, reserves
 - Contamination level
 - Must be clean
 - Can haulers cost effectively produce and deliver clean material?
 - Technology experimental or in its infancy?
 - Digestion and cogeneration are proven processes
 - EBMUD full scale, patented, operating facility (180t/wk)

- Dozens of similar studies currently being performed across US
- Next Steps:
 - Complete engineering pre-design in early 2010
 - Identify grant eligibility
 - Board decision on designing facility
 - Determine funding method
- Support and Opposition:
 - Support for Project Concept
 - Larkspur and San Rafael City Councils
 - Fairfax, San Anselmo, and Corte Madera Town Councils
 - Project Opposition
 - Ross Valley Sanitary District Manager
 - Ross Valley Sanitary District Board

Council Member Martin desired to know why Ross Sanitary District is opposed. Representative Dow responded that they discussed several reasons at various public meetings. Most questions were answered, so he is not sure why they are opposed. Their last concern was cost. This study was published at the end of 2008 and the cost was close to \$2.9 million with contingency fees, now the cost has come down to \$1.8 million. Payback is fast and there is ongoing savings to member agencies and customers.

Council Member Martin asked if there is a by-product after the food waste is processed and the methane is collected methane. Representative Dow noted that when wastewater is cleaned, all solids go into the digester tanks, which produces gas and the residuals are conditioned, treated and reused. The food waste is injected into the same digesters and co-digested with the wastewater solvents, so the residuals that come out of that process are essentially the same residual product right now. Volatile solids increase wastewater solids, and based on the EBMUD study, the net residuals from wastewater and food waste would be almost zero.

Mayor Pro Tempore Hunter asked how long EBMUD has been doing this. Representative Dow indicated that it was built back in 2003 to handle food waste and liquid waste. They used standard wastewater equipment and found out that a bigger mixing system is needed. Since 2003 they went through a lot of learning curves. EBMUD is processing about 180 tons per day of food waste and they desire to expand to 200 tons per day.

Patty Garbarino, Marin Sanitary Service President, explained that their goal is to get to zero waste and this plan will help significantly to achieve that goal. They only travel a half-mile to take material to the digester. Their carbon footprint is reduced and looks forward to grant opportunities. She noted that San Francisco treats then sends material to Vacaville and then to Fairfield. She added that they have solar installation and are looking at additional biomass. They are very excited about this public/private partnership. She further noted that consensus support for the concept from the Council would be appreciated.

Council Member Martin asked what would it mean to the average resident, would another container be needed for clean waste. Marin Sanitary President Garbarino explained that this is for commercial food waste only. In terms of residential food waste, they hope will be a part of either the green waste collection that occurs next year and be composted at Redwood or at their facility. Due to GHG effects of composting, especially in urban corridors, they

exacerbate the GHG effects, so permitting is almost impossible. No new permits for outdoor composting will be issued by the State, so indoor facilities will be the way to go.

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

The Council agreed in concept to support the plan and directed staff to bring back a resolution to the Council at their next meeting.

20. 7 Woodhaven Road, Variance, Design Review, Hillside Lot/Hazard Zone 4 Use 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), Very Low Density (.1-1 Units/Acre). Town Council consideration of the Town Attorney's opinion that the September 11, 2008, appeal by Dick and Patty Treadwell, is void because there is no right to appeal a Town Council decision. If the appeal is void, the applicant Steve Bode requests the original approval be re-instated for the full one-year term. The original approval was for the following:

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 4,861 square foot residence and attached two-car garage with a maximum ridge height of 28 feet; 2.) construction of a 1,140 square foot detached second unit above a two-car garage (700 square feet 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.) 469 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.

Existing and Proposed Conditions:

Effective lot area	73,216 square feet	
Present Floor Area Ratio	2.7%	
Proposed Floor Area Ratio	8.3%	(15% permitted)*
Present Lot Coverage	2.7%	
Proposed Lot Coverage	6.1%	(15% permitted)

* The hillside lot design standards would recommend a guideline floor area of 5,561 square feet. Total development of 6,055 square feet (not including mechanical area) is proposed.

Senior Planner Elise Semonian summarized the staff report and indicated that the Council should consider the chronology of events related to this project and decide on the appropriate duration for its planning approval. If additional time is granted, prior to the conclusion of the time period, the applicant may request a time extension from the Council of up to one year. As part of that time extension, the Council can choose not to grant the extension or to modify the approval.

Steve Bode, applicant, noted that communication went back and forth with the Treadwell's and their desire is to have the second unit removed. Also, by way of timeline, since dates were thrown around last meeting, he stated for the record that he made all due diligence to get this project going. It was approved on the 10th of July. On the 17th of July he was notified there was an appeal, so the actual time he had to work on his project was only seven days. He requested that the original approval be reinstated and be given the standard one-year minus the seven days, which would be 51 weeks. He further wants to complete this project and believed it will benefit the Town and neighbors.

Council Member Cahill clarified that the difference between the original approval and the appeal was the guesthouse. Mr. Bode stated that it was to take 495 sq. ft. out of the project. In conversations with planning, he asked their position on second units and staff did not want to lose the second unit in terms of the housing stock. As it stands now, to take 495 sq. ft. out of the project, he must redo the entire project.

Council Member Cahill asked what was done between the time the appeal was filed/heard and the time the project was reviewed until the time in which a request was asked to void the appeal. Mr. Bode stated he met immediately with Architect Hannum who indicated that they were talking about a new redesign. He started to design the house himself with AutoCAD because he was not prepared to pay another \$50,000 to redesign the project.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Phil Cecchettini, Wellington Avenue resident, pointed out that this subject property is being advertised on the Internet as "for sale" and desired an explanation. Mr. Bode responded in the affirmative. He is looking for an investor to help construct the project.

Dick Treadwell, Woodhaven Road resident, wrote a letter dated September 11, 2009, to Mr. Bode with a proposal, which he read into the record as follows:

"Dear Steve,

With reference to the action taken by the Ross Town Council at its meeting last night on your building permit application, we have the following proposal to make. We all know that your main purpose and intent is to maximize the value of your property by offering it for sale with an approved development plan and building permit, and we have no quarrel with this.

However, we honestly feel that the best way to achieve this value maximization is to consolidate and concentrate the allowable square-footage as determined by the HLO as interpreted by the Planning Department into one beautiful main residence and garage and to do away with the second structure. We really feel that the property's value would be enhanced by putting in beautiful landscaping and gardens in place of a second structure as all the second structure does is clutter up the building site and diminish the feeling of openness as viewed from the main residence. This we would accept and endorse. Please let us have your reaction to this proposal ASAP so we can all move forward.

Sincerely Richard and Patty Treadwell"

Carla Small, Duff Lane resident, noted confused in regard to this matter. At the last meeting Council Member Martin brought up an item that the Town Attorney was directed to review and thought the public would be given an opportunity to hear that additional information before responding. This project illustrates the ongoing problem with the concept of the HLO and second units. The purpose is to limit the mass being placed on a hillside. Those who

want more square-footage are adding a second unit. Although not on a hillside, an applicant was allowed to incorporate a second unit into their house at the last meeting. She was concerned that the Council has thrown out the purpose of the HLO out and are giving everyone a loophole to receive more square-footage.

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

Mayor Pro Tempore Hunter noted that the advice of the Town Attorney is that the appeal is null and void, so the decision before the Council is how much time should be allotted to Mr. Bode. Town Attorney Hadden Roth recommended reinstating the approval process to still be viable and then decide on the timeframe with regard to process.

Council Member Cahill recalled that that an additional two months would be defensible. Town Attorney Hadden Roth believed there should be three months and there should be a resolution. At a minimum, 60-days, and then the Council has the discretion to add to that time all the way up to one year. He explained that 60-days would account for the time lost between the original approval and the decision on the appeal. There was no direct action taken for the next 10 months. He further pointed out that Mr. Bode was offered an opportunity for an extension, which had expired. However, out of fairness, there should be the ability for an extension.

Council Member Skull agreed with Mr. Bode in regard to the 51 weeks. He wanted to give Mr. Bode as much time as possible since this was so poorly communicated.

Council Member Martin agreed with Town Attorney Hadden Roth's recommendation in regard to 60-days and at that point, Mr. Bode's project can come back before the Council for an extension. Council Member Cahill agreed.

Mayor Pro Tempore Hunter believes this has been so badly handled. It was a 4-1 vote to approve this project. They have not done a good job in terms of customer service. He suggested the formula offered by Mayor Strauss at a prior hearing and believed six months is appropriate. Council Member Cahill noticed in the minutes that Mr. Bode indicated that five months would be acceptable at the last meeting. Mayor Pro Tempore Hunter pointed out that another month passed, so six months would be appropriate.

Council Member Martin stated it was not fair to the public or neighbors. The issue on the appeal was that the elevation for the second unit came in the day of the hearing. The Council should not have made a decision at the time. With a clean record and clean testimony that vote might have been different than a 4-1 vote to approve. Mayor Pro Tempore Hunter agreed, but they did make the decision and they are taking steps tonight to avoid this issue in the future.

Council Member Cahill suggested that staff prepare a resolution for the next meeting, but determine the number of months at the next meeting in order to have a full quorum. Town Attorney Hadden Roth concurred.

Council Member Martin believes this gives the two parties an opportunity to talk again to reach a resolution before the November meeting. The Council suggested that a conversation

between Mr. Bode and the Treadwell's should occur. Mr. Bode felt they are continuing bad service with more bad service. He questioned how he could prepare documents for an approval that was voided. He believed the process was highly unfair. As far as meeting with the Treadwell's, they have been down that road. Fair is fair and that part of the process is well known. He further noted that a mistake was made and he should be made whole.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to direct staff to prepare a Resolution that would void the appeal and reinstate the original approval with a time period for commencement of construction to be determined at the next meeting. Motion carried 3-1-1. Martin abstained. Strauss absent.

At the request of Mr. Treadwell, the Council agreed to reinstate Mr. Treadwell's appeal fees.

Town Attorney Hadden Roth left the Town Council meeting at 9:29 p.m.

21. Town Council consideration of the appeal of David DeRuff, 3 Southwood Avenue, A.P. No. 73-152-09, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction and of Resolution No. 1674 acting on the appeal.

Town Manager Gary Broad summarized the staff report and recommended that the Council consider an appeal of David DeRuff of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction and of Resolution No. 1674, acting on the appeal. Staff further noted that the Council's action would be memorialized in November in Resolution No. 1674.

Council Member Cahill noted that Mr. DeRuff has a number of items that caused the delay and asked staff to respond. Public Safety Director Mel Jarjoura discussed the customized roof vent, which was an issue because it required consultation with a consultant. It is a mechanical system with a booster tube and it is a safety issue. Staff noted that it did take time for Town staff to consult with other agencies in order to approve the system. As to the drainage issue, a watershed was needed to make sure the culvert could handle water before and after construction, which took more time than anticipated due to consultation, but it was not an item within the house structure itself. Staff noted that a tree had to be removed as well. In regard to the basement ceiling, it had a full height ceiling instead of the 6.5 ft. permitted by the Council and the applicant was required to permanently lower the ceiling height and planning require a fixed structure that included structural removal to elevate the structure in the future. In staff's opinion, the flood was significant in the area and the basement itself is about 12 ft. lower than grade and there was a lot of water outside.

David DeRuff, applicant, hoped to move forward this evening toward a resolution. They set out to build an extraordinary home with the hope to live in it for a long time. They set out to do it as efficiently as possible, but had enormous carrying cost. The construction plan was 14 months. Many of the details planned and built caused extra time. They take full responsibility in regard to the copper gutter, stonework and so forth, but there were a number of other factors beyond their control. Starting with the flood. The flood did not come down Southwood, but underground flows were so significant that the basement was full. It

took time to drain. The four small pumps were overwhelmed. It was a significant event. The time penalty ordinance rules out winter conditions, but this was not a normal condition. With a great amount of effort and expense, they spent over \$50,000 recovering from the storm, rebuilding the banks and then continuing construction. The ground opened in places and changed. He feels there is a real impact. It was a reality of the situation that the engineering department had more pressing issues. The hydrology study requested by staff came up in April after their plan had been submitted, so another six weeks of work. This was not a normal winter. Also, the basement in their initial building plans approved by the Town in the summer of 2005 was very clear that they were proposing to build one level basement floor and a drop ceiling per the Council's direction at 6.5 ft. There were initials by CMC. They asked if heating the basement was acceptable and wrote an email, which stopped construction for six weeks. It was suggested that there was no impact to time, which he did not understand. They stopped construction and then picked it up later, which is an impact. In terms of roof vents, building code indicates that roof vents can be placed wherever convenient on the roof. They concentrated them in three different areas. Built handmade copper dormers for the roof vents and there is no code that governs that. A conversation went on for 18 months on whether or not it must be approved by the Council. He further noted that it is very hard to work efficiently when this is going on.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Kathleen Mahoney, Southwood resident, stated it was a pleasure to live next to this construction project. The DeRuff's were accommodating and provided plenty of notice in regard to construction. There was very little to no impact. A green screen surrounded the entire property. There were no noise impacts. The DeRuff's invited neighbors over for a party to show their appreciation for being patient. They were very generous and gracious throughout the entire process. She further noted that there was no public nuisance in her opinion on Southwood.

Town Manager Broad noted that Shady Lane resident John Kieckhefer emailed staff conveying that the DeRuff's were very accommodative and even lent out his generator during the flood. He did not know why the project took so long, but the impact was very minor and hopes the Council can reach a resolution.

There being on further public testimony on this item, the Mayor Pro Tempore closed the public portion and brought the matter back to the Council for discussion and action.

Council Member Skall stated at a minimum they have to eliminate 120 days, which is the time of the flood and when the Town was going through all sorts of issues.

Council Member Cahill agreed with the 120 days. It was a very bad period for all and it is not a negative for the building department, there was just a lot going on. It was clearly a natural disaster not intended to be covered by this construction ordinance. In regard to the basement ceiling, he appreciated the comments from Mr. DeRuff. It is an area where required installation had to occur and the installation was not in performance. Senior Planner Semonian noted that the Council desired a certain height for the basement and staff determined that a track dropped ceiling, which could easily be removed, was not appropriate to meet the Council condition.

Mr. DeRuff stated the original plans were not specific on how to build the ceiling, just that it had to be 6.5 ft. Council Member Cahill noted that the Town provided Mr. DeRuff a different idea as to what he could construct, and there was no specification on how the ceiling should have been built. He agreed to provide some relief in that area. In terms of the kitchen fireplace, he did not completely understand and desired staff input as to why it took 18 months for the roof vents to be resolved. Senior Planner Semonian explained that there was a disagreement between staff regarding whether the roof vents should be considered at a public hearing before the Council or approved at a staff level. She pointed out that the roof vents had already been installed when this issue arose, so construction of the project was not delayed by staff's actions. Mr. DeRuff initially proposed to install a dormer on the east end of the roof, but there was no response from staff. There was two months before there was a follow-up and he wanted to artistically cover the roof vents, and staff indicated that a dormer required the Council's review. So they decided to go with the copper dome. As time went on, they took all issues seriously in order to resolve matters. Even if already built, time was wasted in responding to the request and this issue kept coming up over and over again.

Town Manager Broad stated that the construction completion ordinance specifically indicates that late design changes are not an excuse for construction delays. This is the sort of item the Council is trying to avoid. Also, it is very tough to quickly respond to design changes. Staff further noted that it takes time when staff is trying to work with neighbors to resolve a situation. Council Member Cahill had a very hard time including neighbor interference. Council Member Martin believed the ordinance is valid, and it is an important objective. The intent of the ordinance is not to burden people with excessive funds. There is a balance. Staff is burdened with many responsibilities and responded well to this project. Flood impacts everyone. Mr. DeRuff is asking for one-month time for the flood and he supported three months.

Mayor Pro Tempore Hunter support five months. He has worked with Ross Town staff for six years and believes they are the best staff in the business. After the flood occurred, staff did a fabulous job, but there is a good case to be made that there was an awful lot to be done. There was the flood and engineering delays, so he would include the neighbor interference as well. It has been balanced perhaps by emails and testimony tonight, so he favored five months. Council Members Cahill and Skall supported five months, which is 150 days.

Mr. DeRuff appreciated the Council's consideration. Every issue is valid and in terms of process this is a lot of money. Council Member Cahill indicated that it would be \$107,000. Mr. DeRuff did not believe the impact to the Town or his specific neighborhood was significant. He then asked the Council, if possible, to continue this discussion. He understands there is some precedence to take this matter to the finance committee. He has no idea how to pay \$107,000. He requested either continuing the matter or referring the matter to the finance committee to further discuss and then bring the matter back to the Council. Town Manager Board noted that the finance committee meeting would be an open public meeting.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to continue this resolution for deliberation at the Finance Committee and then bring the matter back to the Council. Motion carried unanimously. Strauss absent.

22. Town Council discussion of its five Town Council goals for 2009-2010. The Council identified the following five potential goals at its August 2009 Town Council workshop.

a. Downtown plan (Strauss)

Town Manager Gary Broad met with Larry Reed and they looked at the parking lot design for the parking lot between downtown and the Post Office. They talked about the construction period and how to potentially move ahead with drawings.

b. Public facilities (Cahill)

Council Member Cahill invited the Council and public to provide staff with their goals for the Civic Center and Ross Common and any specific ideas for improvements. Examples of goals may include: create more adjacencies for a better working collaboration for administrative employees, keeping administrative functions closer to public safety functions, or employing green building practices. Examples of specific ideas for improvements may include rebuilding the entire Civic Center, moving some or all functions to MAGC, moving Council Chambers or remodeling or expanding Town Hall. As the Town develops ideas they will seek input from residents on their views of various options. Ultimately, they will bring the best options back to the Council for its review and direction.

c. Flood control (Martin)

Council Member Martin stated they are beginning to address some flood issues that have aggravated life in Town for many years, which must be a priority. They Army Corps must handle the rainwater and the surrounding Towns must take the initiative and act as a model. They all must be more aware and begin to care for the creeks in order to reduce the flood impact in the future.

d. Hillside lot ordinance review (Skall)

Council Member Skall announced that a community workshop is tentatively scheduled for October 29th at 7 p.m. to review the Hillside Lot Ordinance (HLO). This ordinance has such a significant amount of concern with the public, so the Town will employ the services of a professional facilitator to help guide the discussion.

e. Unfunded liabilities/pensions (Hunter)

Mayor Pro Tempore Hunter met with Town Manager Broad and most cities have three areas of exposure in looking at unfunded liabilities: 1) pensions; 2) retiree medical; and 3) accrued leave. Ross does not offer medical and the accrued leave is funded so the only exposure is pensions. Miscellaneous employees are \$111,820 and Public Safety is \$1,560,000, so at present time, based on the current CalPERS Actuarial Valuation the Town's unfunded liability totals \$1,671,820. The Town's contribution this year is \$736,066. Because of precipitous drop in returns that CalPERS is earning annual contribution this is front and center for the Marin Managers Association (MMA) and other groups statewide. His intent is to stay informed as to their findings as he works his way through the Town's situation. He further noted that it is complex, but very interesting.

23. Town Council initial discussion of new Bay Area Air Quality Management District regulations requiring cleaner burning fireplaces, such as EPA-certified fireplace inserts or natural gas devices, to be installed in new construction or remodels. The Council will discuss potential additional Town regulations of

indoor and outdoor fireplaces to implement General Plan 2007-2025 Program 2.C “Adopt Wood smoke or Biomass Smoke Ordinance” at the October and November Council meetings. Additional regulations could include further restriction on indoor and outdoor wood burning fireplaces including their removal or replacement.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council review the BAAQMD regulations, receive public comments and discuss if more stringent local regulations of wood smoke and wood-burning appliances is necessary for indoor or outdoor fireplaces.

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

Mayor Pro Tempore Hunter agreed it is an important issue.

Council Member Cahill questioned whether any further regulation is necessary. The BAAQMD has already studied this issue in great detail for the entire Bay Area and is not sure the Town of Ross should reinvent the wheel or develop regulations that are more stringent or might further limit citizens from being able to enjoy their backyards. Council Members Skall and Martin agreed.

Mayor Pro Tempore Hunter desired closure on the outdoor fireplace at next month’s meeting.

The Council agreed to publicize the matter in “*The Morning After*.”

24. Town Council review of proposed planning department policy for processing applications and scheduling planning items for Council meetings.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council review the proposed planning department policy for processing applications and scheduling planning items for Town Council meetings. Staff noted that no Town Council action is necessary if the Council accepts the procedure outlined in the staff report.

Council Member Cahill discussed the relationship between applications going to ADR and then Town Council. ADR is scheduled for the fourth Tuesday of each month, and he felt it would be more efficient for applicants if ADR were scheduled a different time of the month. Senior Planner Semonian explained that ADR is requesting more information and staff is preparing full notices and staff reports for ADR meetings. It is too much material for staff to prepare within the two meetings dates. Staff agreed to consider rescheduling the ADR meetings to possibly the third week of each month to avoid the delay between meetings.

Council Member Martin asked staff the policy in regard to the public being able to access records. Senior Planner Semonian indicated that the public may access applications as soon as they are submitted. However, the public generally does not know of an application until notices are mailed out. Staff added that the public is always welcome to come into the office

at anytime. Also, notices are mailed out for ADR meetings, which gives a little more advanced notice of certain items.

Mayor Pro Tempore Hunter asked staff if 30 days is standard. Town Manager Broad indicated that 30 days is State law. Town Manager Broad noted at one time it was a 21-day period, since the process is geared toward moving applications through quickly. As proposed, it will make for a smoother and better process. Staff is very excited about this change. With this rolling timeframe, applicants will be able to submit material on a better pace.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Carla Small, Duff Lane resident, questioned if all information will be turned in 30-days before the public hearing. Mayor Pro Tempore Hunter explained that once all material is submitted then the matter is placed on the agenda. Ms. Small believed the public must be clearly educated in this regard because it is very confusing. Mayor Pro Tempore Hunter noted that an item would not be placed on an agenda until the application is complete. Senior Planner Semonian pointed out that she is human and mistakes may sometimes be made when reviewing an application for completeness.

Council Member Cahill believed if minor detail is missing, staff should have discretion in judging what material is required for an application so that an applicant is not unfairly delayed.

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

The Council reached consensus and agreed that planning items should only be scheduled for Town Council meetings after the applications have been determined to be complete, with all required materials submitted. Incomplete applications will not be scheduled for Town Council review. Similarly, items continued by the Town Council will be reviewed for completeness before they are rescheduled and not automatically placed on the next Council agenda. Staff and the Council believe the more formal review timeline will create a smoother process for both the applicant and neighbors.

The Council took a short recess at 10:29 p.m. and reconvened at 10:36 p.m.

25. **39 Fernhill Avenue, Amendment to Variance, Design Review No. 1661**
The Branson School, 39 Fernhill Avenue, A.P. Nos: 73-082-01, 73-082-12, 73-141-03 and 73-151-05, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size), Limited Quasi-Public/Private Service. Amendment to plans approved by the Town Council on June 11, 2009, for new entry columns near the intersection of Fernhill Avenue and Circle Drive. The applicant requests approval of modifications to the landscape plan, new lighting to illuminate the signage on the columns, and the addition of lights at the top of each column, which would increase the height of each column to 11.5 feet. Tree removal permit to remove the elm tree located to the right of the entry columns.

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

Council Member Cahill asked staff if the lighting complied with the Town regulation. Senior Planner Semonian indicated that she believed the lighting complied with the regulations, but that down lights could certainly be specified.

Council Member Martin stated that the elm tree is stressed due to the lack of water. Senior Planner Semonian noted that the Town Arborist had inspected the trees the day of the hearing and indicated that the tree has poor form, was probably stressed from lack of water, and she did not object to its removal.

Branson School representative desired the tree to be removed since it is in the middle of a hedge and that particular elm tree is within a 74-foot radius of already diseased elm trees. Also, they are further willing to entertain a down light configuration, if so desired.

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

Council Member Cahill had no objection. He desired, as a policy only, to approve down lighting for outdoor lighting.

Council Member Martin wanted to preserve the tree and provide the appropriate amount of water, so the tree can thrive. He felt it is bad precedent to remove any type of mature tree.

Council Member Skull had no objection to the plans and supported down lighting as well.

Mayor Pro Tempore Hunter appreciated Council Member Martin's comments in regard to the tree. He also believed the down lighting is a good idea. If the tree has a chance of surviving, especially if it received the appropriate amount of water, he wanted it preserved. Branson School Representative pointed out that their arborist stated that due to the tree being located in the middle of the design plan that it would end up with a disease and should be replaced with a maple along with the three street trees. As far as a continuance, that is a bigger problem due to the extent their project is 95% complete and a continuance would be more costly. They want to proceed with work. He asked the Council to think about ways to move forward with a decision. The diameter of that tree is around 12 to 14 in. and it is 25 ft. tall. The replacement will not be as tall, but a big presence will be known. They intend on planting one tree, but if the elm is removed they would, at staff's direction, plant three 48 in. box street trees.

Council Member Cahill felt it would be much more attractive if they moved forward with their design without elm tree, but he also hates to remove mature trees. Council Member Martin reiterated that it is bad precedent to remove mature elm trees.

Mayor Pro Tempore Hunter agreed to move the project as presented given the fact that they will replace the elm tree as well as plant three street trees.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve the Branson School project with the findings and conditions outlined in staff report with an additional condition that the lighting on the columns be down lighting. Motion carried 3-1-1. Martin abstained. Strauss absent.

Conditions for 39 Fernhill:

1. This approval allows for modifications to the entry structure, landscaping and new lighting as proposed on the plans dated September 2009 except as otherwise provided in these conditions.
2. No uplighting is approved. The columns may be lit by low-wattage lighting that is directed downward.
3. The tree removal request is approved. The applicant shall plant at least three 48" box size trees (species to be determined by the Public Works Department) along Fernhill Avenue (exact locations to be determined by the Public Works Department). The applicant shall be responsible for irrigating the trees until established.
4. The unimproved areas in front of the entry, within the right-of-way, shall be landscaped to preclude parking.
5. The location of the stop sign and street markings shall be reviewed and approved by the Public Works Department prior to installation.
6. A recorded revocable encroachment permit may be required from the public works department for all improvements within the Town right-of-way.
7. The project shall be subject to all conditions of the September 11, 2009, Town Council approval.
8. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. No extension of the construction time is granted by this approval and the proposed modifications shall fall under the existing building permit for the project. 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. As detailed in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
9. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
10. 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.
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.

26. 21 Fernhill Avenue, Variance and Design Review No. 1753

Brian and Rachel Wells, 21 Fernhill Avenue, A.P. No. 73-091-37, R-1:B-20 (Single Family Residence, 20,000 sq. ft. minimum lot size), Low Density (1 - 3 units per acre). Proposal for redevelopment of the site including applications for design review, variance, demolition permit and second unit permit. The project includes demolition of the existing residence and construction of a 4,082 square foot new residence, 469 square foot detached garage, 160 square foot pool house and landscape improvements including a 16-foot by 32-foot pool. The exterior materials for the French country style residence include cement plaster siding, slate roofing and painted wood windows and doors. A floor area ratio variance is requested for 541 square feet of a 613 square foot, attached, second unit. A side setback variance is requested to permit 25 square feet of terrace area within the west side yard setback (20 feet required, 16 feet proposed). Setback variances are requested to maintain the play structure within the front yard setback (25 feet required, 16 feet proposed) and east side yard setback (20 feet required, 10 feet proposed).

Lot area	27,802 sq. ft.	
Existing Floor Area	13.5%	
Proposed Floor Area	16.9%	(15% permitted)
Existing Lot Coverage	11.1%	
Proposed Lot Coverage	9.7%	(15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the application subject to the findings and conditions outlined in the staff report. Staff noted that additional letters were received in support of the project since the staff report was prepared. She allowed the Council time to read a letter received by the owner of 15 Fernhill.

Greg Johnson, architect, discussed the key components. They met with ADR and the overall sense was favorable. They reduced impervious surfaces, reduced the lot coverage and reduced the FAR to 15%. They have special circumstances in terms of needs for locating the second unit above the garage. They are balancing needs of the family and the location of the second unit above the garage in the front yard or back yard. They reduced the square-footage within the building as much as possible. The delineation of that space has been made very clear. In terms of the one variance for the small encroachment of the patio into the side yard, they will modify to not encroach into the side yard setback. They believe as stated in the staff report, the findings can be made for the 1.9% variance request. The project has wonderful merits to it. They will do a rainwater collection system in terms of cisterns under the structure of the garage. As a goal, they would like to achieve 60 or higher in terms of the Green Point Rating system. Even though it is not a requirement, he is using such rating system on all his projects throughout the Bay Area for sensible design and taking advantage of some innovations, which would include solar. The project received unanimous support from the neighbors and there is very little impact. It is a design they all can be proud of. It is

very symmetrical and hopefully the Council can justify the findings. He further noted that he is available to answer any questions.

Council Member Cahill noted that the Council received a letter from Charles and Petula Almond voicing support on the condition that landscape screening occurs between the two properties. Architect Johnson indicated that at the back of the property an oak tree fell down and screening will fill that void.

Brian Wells, owner, indicated that he is completely open to working with the neighbors and the Council. He did walk the property line and when they moved there was no screening and since then there are 56 English laurels between 8 and 16 ft. tall and 8 to 9 tall shrubs in between. Besides that they have three trees between 20 and 25 ft. and 14 queen palms. He suggested adding what is appropriate, and believed they did screen their property. It is important to remember they are talking about moving the house over 18 ft. and only raising approximately 5 to 6 ft.

Council Member Martin desired clarification in regard to a pigment in the concrete. Architect Johnson explained that it will not require any maintenance and it provides that old world look with simply fades. Rachel Wells, owner, believed the initial color is a muted grayish color. Senior Planner Semonian presented the Council with photos depicting the proposed materials for Council consideration. Architect Johnson noted that over time it tones down. It does not get dark or black. It settles down. It is very similar in color to the home across the street.

Council Member Martin expressed concern for the height of the garage. Architect Johnson stated they were creating a structure in terms of proportions that worked up with the house. There is so much growing that in another year it will not be visible.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Wendy Posard, representing the Almond's, presented photographs of the screening to date. It is wonderful that the Wells are interested in working with her client, which is a good source of communication and they are very enthusiastic about that and excited about a dark slate roof. As far as the dark windows, at night dark windows can become a light or lantern that shines back on the property. They appreciated that the Wells' felt additional planting will make a dense barrier and in essence block visual view from her client's property. In addition to the letter submitted tonight, they offered to help pay for the screening. They desired an evergreen deciduous screen to complete a barrier between properties and reduce the visual line of sight significantly. They offer to help pay for the screening and wish to be respected in terms of additional plantings.

Architect Johnson clarified that they propose dark framed muted windows, not dark windows.

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

Council Member Cahill felt the design is beautiful. The issue is the patio variance, which he felt it is not much of an issue. If that design were altered it would take away the symmetry.

Similarly, the play structure variance is acceptable. He then asked if the fireplace is EPA approved. Mr. Wells responded in the affirmative. Council Member Cahill noted that there is consideration to add pervious driveway material and desired an explanation. Mr. Wells stated that any new pavement would be cobblestone and depending from a budgetary standpoint, they would do the entire driveway. It is a question of when and in terms of budget. They want to work with the Town and do what is right. Mrs. Wells desired grassy pavers, but that must be further considered.

Council Member Cahill asked about the balcony in the back and noted that at times they have dealt with second floor balconies when adjacent to other property owners, but in this case it is quite a distance away, so he is comfortable in that regard. The main issue is the FAR variance. It is 540 sq. ft. over. He suggested removing the pool house, which would take it down to 380 sq. ft. and that is 1.9% over the allowable FAR. Looking at the floor area for each of the two floors, to meet FAR they must reduce 190 sq ft. out of each floor and that could be accomplished by moving back each dimension a couple of feet, but it is a tight design. He feels there may be some room to go over the FAR, but is interested in hearing from the Council.

Council Member Skall noted that he along with Council Member Cahill arrived at the property at the same time, not knowing each other would be present at that time, so he has a similar opinion of what Council Member Cahill has voiced. The FAR should be flushed out, but there may be extenuating circumstances to make it feasible.

Council Member Martin concurred with the comments previously stated.

Mayor Pro Tempore Hunter loves the design. While the FAR is high, the lot coverage is down considerably, so that can be factored in their deliberations. The variance in the side yard should go away. They must treat each and every exception to the rule carefully and he did not see the findings. He had no objection to the play area. Seeing the landscaping that has already occurred, which is extraordinary, his sense is that the applicant will screen the garage and work with the neighbor. He believed that is a two-sided fence arrangement and the Almond's have to do their part as well. On the basis of having a separate second unit within the building, it does give the Council some justification. He is very nervous about this second unit allowance without having any regulations to back it up. If they do decide to move forward on that basis, it must be addressed as a policy discussion. He could support the project with the one exception of the side yard setback.

Council Member Cahill felt the side yard setback is very small and has virtually no impact. The purpose of the impact is to protect adjacent neighbors and there is no adjacent neighbor, so he can make the findings. It is also quite important for the design. Unless they remove part of the program there is no good way to reduce the FAR. The real problem is the second floor with all the bedrooms. It will not work to reduce the first floor without the second floor. They should be very careful about not going over the FAR and one way to alleviate the problem is eliminating the pool house. It would bring it down so the FAR variance is less than 2% over.

Council Member Skall stated that the fact that this design is so special, to tweak the outside seems to be a shame. The Town is getting a tremendous benefit from this project. It will be a

tremendous addition and that should be a factor in their discussion. He further favored eliminating the pool house. Council Member Martin concurred.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve the application for 21 Fernhill Avenue with the exception of the pool house, including the findings and conditions outlined in the staff report. Motion carried unanimously. Strauss absent.

Conditions for 21 Fernhill:

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 approved plans. Plans submitted for the building permit shall reflect any modifications required by the Town Council.
2. The proposed pool house is not approved.
3. No modifications may be made to the second unit to remove the kitchen or provide access between the unit and the main residence without prior Town Council approval.
4. The project shall comply with all requirements of the Marin Municipal Water District and Sanitary District, including payment of any connection fees and compliance with the MMWD Landscape Ordinance 385.
5. Additional evergreen screening landscaping shall be provided at the southeast corner of the site to provide taller screening of the residence from 14 Norwood.
6. Project development shall comply with the requirements of the Ross Valley Sanitary District.
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 ANY CHANGE.
8. All roof runoff should be dissipated on site.
9. All costs for town consultant, such as the town engineer, review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
10. The finished structure shall be no taller than 30 feet, measured from the existing grades. Plans submitted for the building permit shall provide elevations for the roof ridges and floor levels. A surveyor shall string the foundation location. Written verification of the highest ridge elevation shall be wet stamped by a licensed surveyor.
11. Any exterior lighting 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. Up lighting of trees or structures shall be prohibited.
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, including the following: a) sprinklers are required; b) a 24-hour monitored alarm system is required; c) all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property; d) the street number must be posted (minimum 4 inches on contrasting background), e.) the access roadway must have a vertical clearance of 14 feet; f.) all brush impinging on the access roadway must be cleared as determined feasible by Public Safety; and g.) a Knox Lock box is required.
 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.
 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. Failure to secure required building permits and/or begin construction by October 8, 2010 will cause the approval to lapse without further notice.
 18. 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. **15 Fernhill Avenue, Variance and Design Review No. 1751**
Charles Almond, 15 Fernhill Avenue, A.P. No. 73-091-36, R-1:B-20 (Single Family Residential, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre). Application for variances and design review for a remodel and addition to the existing residence. The project involves demolition of the detached guest house, garage and trellis, as well as the mudroom and bathroom on the west side of the residence. A new garage is proposed, with a bedroom above the garage, within the west side yard (20 foot setback required, 3.75 feet proposed). A second floor balcony is proposed on the north-facing elevation of the new bedroom. The project involves new landscaping, including new plants and modification of the driveway and patio areas. Patio areas are proposed within the west and east side yard setbacks (20 feet required, 5 feet proposed). The pool equipment would be relocated within the west side yard setback (20 feet required, 5 feet proposed) and rear yard setback (40 feet required, 5

feet proposed). Exterior modifications include a new slate roof, reconstruction of dormers, and replacement of several windows and doors.

Lot area	17,764 sq. ft.	
Existing Floor Area	23.4%	
Proposed Floor Area	22.6%	(15% permitted)
Existing Lot Coverage	19.0%	
Proposed Lot Coverage	14.7%	(15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council consider the project and any public comments and determine if it supports the project as proposed or if the project should be modified. If the project should be modified, the Council should give the applicant direction on modifications and continue the item to a future hearing.

Wendy Posard, architect, explained that her client has five children and desired to fix the second floor. There is a second staircase that accesses a single bedroom. After the ADR meeting, they significantly reduced the proposed square-footage. They wanted a house healthy and sound that worked for the family. In discussions with ADR, both adjacent neighbors voiced concerns and at that time the Gamble's only concern was the accuracy of the floor area numbers. They decided to remove the cottage and reduce the square-footage and lot coverage. Both parties desire zero visual impact. The gesture by her client to literally plant a visual screen on both properties alleviates the problem of visual impact. They took a strong hard look at the design review criteria. It meets the letter and spirit of the Town design criteria. This proposal seeks to minimize bulk and mass and match the character of this house. The modifications would match the existing ridgeline and mix of hip roofs. They removed the dormer that was originally proposed to face 21 Fernhill. They chose to hide half of the second floor mass under the roof with a 15 foot plate height from the grade. They took the Ms. Buckingham's lead at the ADR meeting by taking the dormers and matching them with the other dormers on the front of the house, which is a great improvement to the design. Ms. Posard reviewed other projects approved within setbacks in the neighborhood. 14 Norwood had approval in 2003 and it required setbacks into the side and rear yards. Existing setbacks are 14.6 ft. on the side and 12 ft. on the rear. They also proposed to demolish an existing garage and construct a new garage with a bedroom and bathroom above it. 4 Norwood was approved in 2000 and the new second floor was approved within a setback. 15 ft. was required and the existing condition now is 10 ft. 5 Norwood was approved in 1996 and required a setback of 20 ft. and existing now is 7 ft. Most importantly the Gamble's were approved for the same project as what her clients are requesting. She presented visual examples of those properties for the Council's review. They tried hard to comply with the design criteria of the Town. They wanted to preserve the natural features and scale of the existing residence and preserve existing conditions. They are matching all existing materials and adding a new black slate roof. They worked hard to make appropriate architectural expressions by continuing to add to what is already present. They used wood and stone over manufactured material. In terms of landscaping they are working diligently with the neighbor and have good open communication. They pushed the garage back to break up the front elevation. They were encouraged by staff to improve the design of the garage and remove the satellite dishes and make it more compatible with the residence. They are asking for exceptions, but believed that the special circumstances applicable to the lot, including its smaller lot size, the proposed screening, their efforts to maintain a

historical structure and a design in keeping with the existing residence and the development on the street would justify the request.

Mayor Pro Tempore Hunter opened the public hearing on this item.

Brian Wells, Fernhill resident, desired to know the accurate number in terms of FAR. He stated that by moving Mr. Almond's livable space to his property line may increase the value of his home, but in reality it hurts the surrounding community. He is more than willing to work with the applicant. He submitted a picture of how the Gamble residence looks from their site and outlined his concern that all the screening in the world would not help even if the structure is 23 ft. away. In regard to moving the garage back 10.5 ft., he would hear their vehicles even more. In terms of adding a second story, the roofline of the garage is 13 ft. and they are proposing to take that roofline from 13 ft. to 20 ft. and then dropping it straight down. In terms of screening, he invited staff to review what landscaping is on his property now, which looks good, but the applicant should plant screening on his side as well. This is not personal and he wanted to be a good neighbor and is willing to consider more ideas, but was opposed to the current plan.

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

Mayor Pro Tempore Hunter noted that Architect Wendy Posard does great work. The elevation is very attractive, but too close to the neighbor and it is too much too close. It has a lot of charm, but the project architect is very skilled and must develop another design to make this work. There is too much bulk and mass near the property line.

Council Member Martin liked the design and preferred the approach of restoring this house. He agreed the hard issue is that 3.5 ft. setback on that one side. He suggested going with a one-car garage rather than a two car garage and reconfigure that second level space to work as a master bedroom. There might be some room to maneuver and accomplish what is desired. It would be in the range of 10 or 12 ft. Mayor Pro Tempore Hunter noted it is not up to the Council to redesign. Town Manager Broad noted that a variance would still be required in that regard.

Council Member Skall believed it is an interesting idea. He is in favor of going with a one-car garage, if the applicant is open to that suggestion.

Council Member Cahill stated it is a beautiful design, but just right adjacent to the neighbor. They cannot make findings to add additional space to a second floor well into the setback and only within 4 ft. of the neighbor's property line. The plan does show plantings on the applicant's property to screen as well. He did not like the idea of going for a variance for a one-car garage. They must review an alternative design that did not add additional height above the garage.

Architect Wendy suggested that they return to ADR first before coming back to the Council. Also, they took into consideration the sound in regard to the driveway and parking location.

Mayor Pro Tempore Hunter asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to continue this item to a date uncertain. Motion carried unanimously. Strauss absent.

28. Correspondence – Email concerning bicycles on pathway

Town Manager Broad agreed to forward the matter to the Chief. Council Member Martin recommends signs on both ends discouraging bicycles on the path.

29. Other Business - None

30. Adjournment.

By order of Mayor Pro Tempore Hunter, the meeting adjourned at 11:46 pm.

R. Scot Hunter, Mayor Pro Tempore

ATTEST:

Gary Broad, Town Manager