

June 9, 2011 Minutes

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, JUNE 9, 2011

1. 5:45 p.m. Commencement.

Present: Mayor Chris Martin; Mayor Pro Tempore Carla Small; Council Member Scot Hunter; Council Member Rupert Russell; Council Member Rick Strauss; and Town Attorney Greg Stepanicich

2. Posting of agenda.

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

3. Open time for matters pertaining to the closed sessions in agenda item 4.

Diane Rudden, Willow Avenue resident, discussed Closed Session Item 4a in regard to the Town Manager's evaluation and RPOA noticed that the Town Manager was evaluated in February and asked if this is a continuation or if this is a new issue being addressed? She then read a letter into the record from resident Iris Winey as follows:

"I am writing on Gary Broad's behalf as I had the opportunity to work with him last year and was quite impressed with his knowledge of Town operations and efficiency. During my run for Town Council I had numerous questions on concerns that needed to be addressed. I met with Gary over the course of several months for no less than an hour and a half each time. The first time I met with him I had 30 questions that needed answers and he was able to answer 28 of them. The last two answers were emailed to me the following day. Gary was extremely knowledgeable about Town operations and had his "pulse" on each and every situation. He was available at my convenience and never rushed a meeting. He listened, provided background information when needed, and was very attentive. He is a man of action and gets things done for the Town. As a resident of Ross, my interest lies with the Town running smoothly and efficiently with as little upset to residents as possible. I believe Gary serves us well as Town Manager. His performance should be judged over the course of a year's time, not based on one or two incidents...everyone makes mistakes from time to time. If you have questions, please feel free to contact me.

*Best Regards,
Iris Winey"*

Peter Nelson, Circle Drive resident, has experience working in New Hampshire in regards to small towns and observed a lot over the past few years and has been very impressed with the Town's efficiency.

4. Closed Sessions:

a.) Personnel Matters, Government Code Section 54957(b.)(1.), Town Manager evaluation.

b.) Labor Relations - Government Code Section 54957.6 related to MOU negotiations between the Town of Ross (Gary Broad, Town Manager, Town Representative) and the Ross Police Officers Association.

5. 6:30 p.m. Open Session. Council will return to open session and announce actions taken, if any. Mayor Martin indicated that there was no reportable action.

June 9, 2011 Minutes

Council Member Hunter expressed concern for the extensive agenda before the Council and suggested continuing a few items to the July Town Council meeting that are not time sensitive.

Council Member Strauss pointed out that other towns and cities have a policy that all regular meetings end by midnight, unless there is 3/4-vote taken to extend the meeting. He recommended making an evaluation at 11:00 p.m. Town Attorney Greg Stepanicich stated that the only issue is timeframe on development permits in regard to taking action. Otherwise it would be a majority vote by Council to continue matters.

6. Minutes.

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Martin seconded, to approve the minutes of the Ross Town Council meeting on May 12, 2011 as amended. Motion carried 4:1. Hunter abstained.

7. Demands.

The demands were met.

8. Open Time for Public Expression.

Martin Rosen, Lagunitas Road resident, has been pleading with Council for four years to place a marker on his driveway so he does not kill a child. His vehicles have been hit twice by vehicles. He continues to write letters to the Council asking for a red line.

Diane Rudden, Willow Avenue resident, requested that the Council place an item on the agenda next month in regard to the Street Tree Committee. She wanted to know when they meet and if minutes are available. She also desired clarification in regard to whether the Mayor sits on the committee as a member of the community or the Town Council. Mayor Martin, his wife and another Council member's wife serve on the committee and she questioned a conflict of interest. She also asked if the Tree Committee directs Town staff. She further noted that more information is desired.

Ken Fineman, Walters Road resident, thanked Mayor Martin who inherited a mess. The Brown Act has not been followed. The Mayor has spent extra time revisiting issues that prior Town Council has not adequately addressed. Also, much business that could be done at the committee level is not and hopes that will change. Two of the four standing committee's have never met. This is a diligent and thoughtful group, who certainly make sure all points of view are heard. Much of the work done by the Council is unknown or unappreciated by Town residents. He then thanked Mayor and other like-minded Council members to make this bucolic Town a better place. He further appreciated how hard the Council works, their diligence and fairness.

Barbara Call, Redwood Drive resident, discussed lack of interiority, honesty and responsibility. She is shocked about what has occurred in this small town. Lack of people doing the job they were hired and elected to do. Unless elected officials own up to their mistakes this will never get better. To blame others or make excuses is not appropriate with regard to the death of the valley oak tree statements such as: *"it wasn't my responsibility"* or *"it was dying anyway"* or *"the schoolhouse was a declining storage shed."* There is a lack of honesty and integrity. The Council must think carefully about protecting the three heritage trees from a

June 9, 2011 Minutes

similar fate. She is spending thousands of dollars to protect those trees from being destroyed. They have been subjected to the same abuse as the valley oak trees. All the damage has not yet been done, more damage can occur from grading, drainage, excavating, and increased use. She did not want these trees to become another statistic. She further hopes the Council changes their plans to subject the trees to further abuse.

Charles Goodman, Sylvan Lane resident/former Mayor, stated that they all know what happened and the question is what will they do about the issue. The fact that \$6,500 was spent to demolish a historical structure without public hearing or Town Council discussion is appalling. There was controversy when former Public Works Director Mel Jarjoura would not sign for payment. As Town Manager, if Gary Broad ordered the removal without proper approval then he should be terminated. If a Council member or Council members directed staff, then one or both should resign. Later tonight general services tax will be discussed and the Council will want to put that back in place and expect the community to support after what they see is a waste of Town funds and Town assets.

9. Report from Mayor.

Mayor Martin reported that as they are all aware, the Fourth of July is around the corner. The Town is planning to have the annual parade and picnic on the Ross Common on Monday, July 4th. Unfortunately, as of this date, Chief of Protocol Roseanna Lourdeaux has received only one entry for the parade. If more parade participants are not forthcoming, there will be no choice but to cancel it. Parade participants are encouraged to register by June 15, 2011, by contacting Cynthia Wollam at 672-1142 or CIWOLLAM@aol.com. Whether or not there is a parade this year, there will be picnicking and festive events on the Ross Common with hot dogs and other food, music by the Goat Island Griddlepoppers, and Fourth of July games and races.

The Ross Valley Sanitary District is proposing to raise its sewer rate for all Ross Valley residents effective July 1, 2011. In 2008, your rates virtually doubled. This new rate increase will show up on your annual property tax. The Sanitary District is proposing a 34% increase for Ross residents, or an increase of \$177, thus making the total annual assessment for Ross taxpayers \$697. Unfortunately, the proposed increase, under California law, is very difficult to stop, since it requires opposition from over 50% of the owners of the affected properties within the 45-day period after the Sanitary District announces the proposed rate boost. Opposition must be filed on or before June 28, 2011. To effectively protest against the proposed rate change, a written notice must be sent to the Ross Valley Sanitary District at 2960 Kerner Blvd., San Rafael, CA 94901. Such notice must: 1) state opposition to the proposed rate change; 2) identify the affected owner(s) of the property for which the protest is being entered; 3) include the address and/or the assessor's parcel number of the affected property; and 4) be signed by the affected property owner. Emails will not be accepted.

On behalf of this Council and the Town, he would like to extend a warm welcome to some new Ross residents. Lt. Gov. Gavin Newsom is moving to Ross with his wife, Jennifer, their daughter, Montana, and their soon-to-be-born son. Both Gavin and Jennifer grew up in Marin County and attended local schools. Lt. Gov. Newsom, a former member of the San Francisco Board of Supervisors and a two-term Mayor for the City of San Francisco, is probably aware that three seats on this Council will be up for election next year. Perhaps we can persuade him to represent the people of Ross. Welcome to the Newsom Family!

The Town Council and the Town of Ross also would like to congratulate the graduating

June 9, 2011 Minutes

class of Ross School. This is an important first step to their future. Everyone is proud of the graduates and wishes them well with their endeavors and continuing education.

10. Report from Town Manager.

- **Public Works Director/Building Official Recruitment Update**

Town Manager Gary Broad reported that they have a strong candidate for the Public Works Director/Building Official position. Staff hopes by the next Town Council meeting to have a new staff person joining them.

- **Town Office Remodel Update**

Town Manager Gary Broad indicated that the top candidate for the Public Works Director/Building Official position has an extremely strong background related to project management. The first business matter will be to take over management of the Town Hall office remodel. Having looked at this with Town Engineer John Moe, it makes sense to do informal bidding and go out to at least three contractors for the entirety of the job, which will address insurance and meet the legal requirements for a municipality. Staff received a phone call from a contractor that Mayor Pro Tempore Small spoke with that expressed great interest, so staff might find contractors already working in the community or nearby. Staff is optimistic to get started this summer.

Mayor Pro Tempore Small asked staff if ADA will be a problem with accessibility to the Town Manager's office being located in the back. Town Manager Broad agreed to review and make sure it does not raise any new issues. It will be discussed with the Town Attorney in order to comply with the law.

II. Report from Committee Heads.

Public Works - Council member Small

- **Public Works Committee Update**

Mayor Pro Tempore Small reported that the Public Works Department is currently working on five projects. The Bolinas Avenue drainage and safe routes project, Corte Madera Creek left bank stabilization/Lagunitas Road intersection HSIP grant, Southwood Avenue overlay and Laurel Grove creek bank and culvert repair.

A significant amount of time was spent discussing Bolinas Avenue drainage. There are many components to moving forward that include regional issues as well as funding sources. It was determined that John Martin, 73 Bolinas Avenue will coordinate a community meeting for Bolinas Avenue residents to discuss options and realistic goals. The Town will continue to work towards a county solution before authorizing a more detailed hydrology and hydraulic study. The safe routes grant project is currently scheduled for 2013.

The Corte Madera creek left bank stabilization project should take approximately two weeks to complete and is scheduled for completion in August. Currently everything is on schedule, with bid deadline of July 8, so in July, the Council can review and hopefully award contract. Costs are estimated at \$206,000.

Sir Francis Drake/Lagunitas Road intersection HSIP grant continues to be on schedule for summer 2011-12. Consultant interviews for project are scheduled for Wednesday, June 29.

Southwood Avenue will receive an overlay in the next several weeks on the Town owned portion of the road and the Town will ensure the project does not conflict with either the

June 9, 2011 Minutes

PG&E or MMWD projects on Ivy. This project should be completed in several days and residents will have prior notification.

Laurel Grove creek bank and culvert repair have a new bid deadline of June 23. Sylvan Lane residents continue to have concerns with the impact of the new bridge in safely departing their lane. Town Manager Gary Broad is going to have Traffic Consultant David Parisi review possible options.

Finance - Council member Russell

- Finance Committee Update

Council Member Russell reported that on June 3, the Finance Committee met and did a preliminary review of the current state of financials and proposed budget for next fiscal year that starts July 1. They intend to have another meeting within a few weeks to review again financials that will be close to year end and being able to have better insight or fuller insight as to what makes sense for the budget next year with respect to new budgetary constraints. In reality, revenues are flat and expenses are increasing. There is less income from transfer taxes and building permits. They are more or less on budget with respect to current fiscal year, but it will be nip and tuck. They must spend more time reviewing going forward and that is the reason for another meeting later in June. They are missing out on some reimbursements from governmental authorities and a few unplanned retirements have had a significant financial impact. The overall message is that they must be more careful in their decision-making as to the financial ramifications. They do not have an open checkbook as in the past and not as many projects can be undertaken. At times demands and facilities will get more stretched in the future.

Community Protection - Council member Hunter

- Transportation Authority of Marin (TAM) Update

Council Member Hunter attended a lengthy meeting and there is a request by SMART that TAM and the County help out to make up the shortfall for the initial operating segment (IOS). In terms of the IOS that will run from downtown San Rafael to Santa Rosa, there is a shortfall of \$21 million dollars. The Metropolitan Transit Commission (MTC) agreed to contribute \$10 million, if Sonoma contributes \$3 million and Marin contributes \$8 million. Right now all funding for SMART comes from sales taxes, Measure Q. At the present time, of the sales tax revenue, Sonoma is contributing 63% to Marin's 37%. Working with staff and MTC it was agreed that this 8/3/10 split was fair. Money that SMART proposes to use is new money not money that has been budgeted before. The \$6.5 million will come from a state/local partnership and the other \$1.5 million which is part of a new federal bike and pedestrian grant that has been granted to the County of Marin, and the Council will give that money directly to SMART or to TAM and then make the \$1.5 contribution. The \$10 million from the MTC is major money at a very tight budget year. It is a major boost to Sonoma and Marin County. The contribution by TAM is within the Authority and vision of the agency, which is to develop multi model projects. SMART passed in Ross with 54% positive vote for Town of Ross. Next meeting is on June 23 and he plans to vote in favor unless he hears otherwise from the Council.

12. Report from Ross Property Owners Association.

Charlotte Levin, RPOA, expressed concern for the lengthy hours of the Council meetings. No one is at their best in the late hour and it discourages residents from attending meetings and possible candidates from running for a position on the Town Council. Residents requesting

June 9, 2011 Minutes

variances are the last on the agenda and not fair that such important issues are discussed at the late hours. They believe making the meetings shorter would be best for everyone.

13. Report from Ross School.

Mayor Martin noted that School Board President Elizabeth Robbins called and apologized for not being able to attend, but provided a report. The project completion date has been pushed back due to the rains for the Ross School to mid October and the playground will be completed by mid August. In terms of landscaping plans, Jim Walton's project update with information about replacing the oak tree in front of the kindergarten playground has been sent out earlier this week and will be available online. The School's architect is completing revisions to the Common restoration plan in order for the Town to proceed with its preliminary study. A Joint Town Council/School Board meeting will be scheduled to discuss the Common restoration and outstanding construction and landscaping items. Scott Mahoney has been selected as the new superintendent/principal and starts July 1.

Mayor Pro Tempore Small attended the School Board meeting last night and found out that they made the determination to give that responsibility to the tree over to the construction team to move forward. In discussion with President Robbins today, they agreed that they will add the matter to the agenda in regard to what they intend on finally doing since no comment could be made. Also, she expressed concern that such decision was given to a construction team or individuals that are not residents of Ross and do not have the emotional attachment to that tree. President Robbins agreed to bring it back to review one more time.

14. Flood Control Report.

Mayor Martin reported that a limited amount of funding was received that will allow the Army Corps of Engineers to evaluate 18 measures Stetson Engineering and the County are recommending upstream of the Lagunitas Bridge as well as limited environmental and engineering work required for these projects. The Army Corps funding for the project will run out in October of this year. Recognizing that Army Corps Unit 1-4 project is a vital component of the flood control solution for Ross Valley that the County has been working on, the County through the Public Works Department is organizing a briefing for the staff of the Western Region Army Corps of Engineers about the Ross Valley flood control plan. The County intends to make the same presentation in Washington to key budget staff. They are trying to get money devoted to this project for next year at a time when Congress is not forthcoming with earmarks for this type of funding. He invited all to look on the website for the County and Google: "*Ross Valley Flood Control*." Key on "*Flood Zone 9*" and see the capital improvement plan the County proposes, which includes turning Phoenix Lake into a detention basin during major storms. The website also has an excellent 80 minute video presentation on the history of Corte Madera Creek by Laurel Collins who is a stream geomorphologist. It is a very thorough presentation with historical maps and modern maps are used as well as newspaper articles with overlays to show how the creek develops in pre-historic times to mid 1800. The next Flood Control Advisory Board meeting will be Monday, June 27 at a location yet to be announced.

Council Member Strauss attended the meeting in San Anselmo and the video is excellent and appreciated the news articles.

15. Consent Agenda.

June 9, 2011 Minutes

The following four items will be considered in a single motion, unless removed from the consent agenda: Item D was pulled and continued to the next meeting.

- a. Town Council consideration/ adoption of Resolution No. 1741 authorizing renewal of Community Development Block Grant Cooperation Agreements with the County of Marin.

Mayor Martin asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve Consent Calendar Item “a” as submitted by staff. Motion carried unanimously.

- b. Town Council consideration/adoption of Resolution No. 1742 extending the Marin County Abandoned Vehicle Service Authority Registration Fee until April 2012.

Mayor Martin asked for a motion.

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

- c. Town Council consideration of issuing a special permit to Edward Dong/Ross School PTA fund raising campaign to allow an overnight “Campout on the Commons 2011” event for up to 40 families and about 120 participants, in the northwest portion of the Ross Common on Friday evening September 9, 2011 till Saturday morning September 10.

Mayor Martin asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve Consent Calendar Item “c” as submitted by staff. Motion carried unanimously.
End of Consent agenda.

- d. Town Council approval of policies and procedures for placing planning items on the Council consent agenda and planning application requirements, including neighbor acknowledgements and story pole requirements.

This item was continued to the next Town Council meeting in order for staff to further review with the Town Attorney.

Town Attorney Greg Stepanicich abstained from any discussion on the next item in order to avoid the appearance of a conflict.

16. Town Council discussion on the Town of Ross joining the Marin Energy Authority (MEA).

Mayor Martin reported that in January of 2010, this Council on a 3-2 vote opted to withdraw from the Marin Energy Authority (MEA) and not participate in the Marin Clean Energy (MCE) Program. Council Member Russell asked that this item be placed on the agenda tonight for discussion. At the time Ross withdrew from the MEA, Council members expressed a willingness to revisit participation in the future. Staff has provided the Council with minutes from past Council meetings, which related to the MEA discussion and actions. In addition, the Council has received a MCE update that was provided to cities and town

June 9, 2011 Minutes

managers this month. The Marin Clean Energy Executive Director is present to provide an update on the program and answer any questions.

Dawn Weisz, MCE Executive Director, reported that the MEA began providing energy to 8,000 customers in May 2010, and planned to enroll an additional 5,000 customers in 2011. MEA expects to add the remaining 70,000 customers in 2012. MEA had met or exceeded many of its first year goals. The carbon-free content of its power mix was 78% in 2010 and the state-certified renewable energy in its mix was 27%, exceeding the State requirement for 20% renewable energy. MEA has not had any difficulty in attracting bids for renewable energy supplies. MEA has paid off its original loans and retired its loan guarantees by refinancing \$2 million of debt. Also, the Authority has built up \$2 million in reserves. MEA provides two electricity options for its customers – a light green option that has 27% renewable energy content and a deep green option that is 100% renewable energy. Light green rates are competitive with PG&E rates, while the deep green option costs an additional one-cent per kilowatt hour (kWh). The Authority also recently launched a “*net metering*” program that pays a property owner for any additional electricity his/her solar panels produce over the amount the house or building uses each month. MEA pays the retail rate plus one-cent per kWh for excess solar energy.

Council Member Russell clarified if Ross joined MEA, Ross would not be guaranteeing any liabilities. Executive Director Weisz noted that there is no requirement to guarantee any liabilities. When they formed MEA, they have specific language in the JPA agreement that ensures that debts and liabilities of MEA are separate from the debts and liabilities of member agencies. The issue was researched and it is the approach taken by most JPA's. She further added that the Town of Ross was never asked to provide a guarantee, but the County of Marin did offer a guarantee as well as Fairfax and that was sufficient to get MEA off the ground.

Council Member Strauss desired more information about the loan that was paid off. Executive Director Weisz explained that it was a refinance. When they initially started, MEA had \$750,000 provided from three individuals and a \$950,000 loan from a bank with a guarantee from the County of Marin and an additional amount of about \$200,000 was partially backed by Fairfax. All loans were paid off and refinanced into one lump sum from the bank. She further reiterated that the Authority has \$2 million in reserves.

Executive Director Weisz explained that they support local community programs. They offer \$500 rebates to customers who participate in Energy Upgrade California. It provides rebates for retrofits for residential customers. Energy Upgrade California funds cannot be used for audit or permit fees. The intent is that the \$500 will help off set the cost. They also approved funding for the installation of five electrical vehicle-charging stations. Two stations were installed near San Rafael Town Hall. San Anselmo and Belvedere are next in line.

Mayor Martin opened the public hearing on this item.

Loraine Berry, Ames Avenue resident, expressed concern for the cost and asked if they are able to identify which electrons are coming into her house and whether or not they are green. Also, she has had solar on her home for the last 20 years and asked if she will receive a credit in that regard. Executive Director Weisz responded that they would need to help determine the cost difference. There is a call center and an 800 number that residents can

June 9, 2011 Minutes

call or login to a website for information and view a comparison. This program is set up that one can opt-out and that can be known in advance. Two notices are sent 90-days before enrolled about the program as well as additional information. The overall bill is less for some or higher, which depends on what tier and rate class. There is a pretty complex rate structure. In terms of electrons, no one follows the electrons. The electrical grid is a big pool like a water reservoir. Nobody keeps track of where the molecules end up. What is tracked is where the electrons come from going into the pool. Compliance reporting is done to verify where electrons are coming from. California Independent System (ISO) tracks very carefully on the front end how much energy their customers use. The fact that Ms. Berry is already generating she would be a "net-metering" customer. MCE net energy metering program works the same, except they pay one-cent per kilowatt. Credits are never eliminated. They allow customers to cash-out. She then clarified that customers will still receive a PG&E bill, just MCE will be a new line item on the bill.

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

Council Member Strauss noted that this was reviewed over one year ago and the Council took a cautious approach. After reading more in the paper, more information is needed to seriously consider. He wanted to know the differences (between PG&E and MCE) and desired real numbers for households to share that input with the community. If an action is taken, then it must be broadcasted out to the community. It would be good to inform the public and find out if there is a will for the Council to take action. Previously, he discussed going out for a vote, which may still be an option.

Mayor Pro Tempore Small stated since this was commented on previously with so much community input, she asked if this should be a separate meeting in itself in order to be separate and make sure the public understands.

Mayor Martin noted that PG&E is not active. They were spending money lobbying towns and cities to knock MCE down. Also, they did have an election and PG&E had the audacity to place Prop 16 on the ballot that would have eliminated Community Choice Aggregation projects like this from ever being proposed in California, so they would have eliminated competition. Marin County and Ross voted that initiative down. This gives a choice and he believes the residents of Ross should have that choice.

Council Member Russell believed green choice is appropriate. He would vote in favor when this is placed on the agenda for action.

Council Member Strauss recommended that this matter be broadcasted to the public for input.

Council Member Hunter recalled that the Council had two primary concerns with MEA at the time. One with the opt-out provision that requires ratepayers to actively opt-out to avoid being automatically enrolled in MCE, and a financial concern with the Authority's viability and business plan. Also, a majority of Ross residents testifying at earlier Council meetings were against staying in MEA at the time. For this reason, he supported putting the issue on the November ballot as an advisory vote, at an estimated cost of \$2,500 - \$4,000. MEA is inline with his personal values. This must be publicized. This should be an item on a future agenda and if discussed in July it would leave open the option to place it on the ballot.

June 9, 2011 Minutes

The ballot would be a recommendation since the MEA bylaws indicate that governing body of the different member entities are the ones that make the decision. He further believed this would provide input to move forward.

Mayor Martin agreed to add the matter on the next agenda as an item action in regard to approval and/or election.

Mayor Pro Tempore Small desired clarification in regard to the refinance. Executive Director Weisz responded that there is \$2 million outstanding. Mayor Pro Tempore Small asked Executive Director Weisz to provide actual examples of bills to show the several different tiers and how that would work out on light green and deep green. Executive Director Weisz responded in the affirmative.

Council Member Russell desired a Powerpoint presentation from MCE for next month. Executive Director Weisz agreed to come back in July with the material requested.

The Council desired more community input and agreed to further discuss the issue at its July Council meeting. The Council will consider at that time whether or not to join MEA or put an advisory vote on the ballot.

Town Attorney Greg Stepanicich reconvened his position on the Town Council.

17. **Town Council review of the status of a \$5,000 contribution from the Ross Historical Society to the Town of Ross in 1993 for a “fund for the maintenance, future repairs, and associated work as needed on the Old Ross Schoolhouse” and Council determination whether there is any remaining balance which should be returned to the Ross Historical Society.**

Town Manager Gary Broad provided the Council with documentation from the Ross Historical Society in regard to the \$5,000 contribution in 1993 to the Town of Ross for work on the Old Ross Schoolhouse and at that time requested that money be set aside in a separate fund, and the Town created the School House Fund. Invoices for work done to the schoolhouse were also provided to the Council for their review. In the budget ending June 30, 1996, there is an expenditure of \$2,816 that correlates very closely to the invoice for various work on the schoolhouse. On June 30, 1997, the School House Fund, after adding interest and deducting expenditure, there was \$2,561 in the School House Fund.

The Town financials then show the \$2,561 was transferred from the School House Fund into Ross Common Fund. Staff spent time with Town Accountant Paige Rothman reviewing old Town financial documents, which were provided to the Council for review as well. On page 6, which is the budget for 1997-98, it shows after \$2,561 was transferred into Ross Common Improvement Fund there was then \$16,700 in the Ross Common Improvement Fund.

The next few pages show a transfer out of the Ross Common Improvement Fund of \$16,500. That happened in two separate checks, one in the amount for \$15,000 and another for \$1,500. The Public contribution Common Fund shows on May 31, 1998 two items are listed - Ross School capital in the amount of \$1,500 and Ross School capital in the amount of \$15,000. Staff was unable to find any invoice to further explain what was going on. Two checks were made out to the Ross School Capital Campaign. One for \$1,500 signed by Council Members Mary Delanty Brown and Charles Goodman with the name "Thalheimer" written on the upper

June 9, 2011 Minutes

right corner. The other check was made out to Ross School Capital Campaign for \$15,000 signed by Council Members Mary Brown and Charles Goodman with the name "Goodman" written on the upper right corner. Staff reviewed Council minutes around that period to see if there was any indication as to what was happening with that \$16,500 total payment to the Ross School Capital Campaign.

Staff provided 1998 minutes where staff found under "Demands" that Council Member Goodman moved for approval of the demands, which included those two checks from the Ross Common Fund 5684 and 5685. There is no reference to indicate why that transfer was occurring. Unrelated to this, staff talked to Public Works Superintendent Robert Maccario about ongoing maintenance of the Old Ross Schoolhouse and there was ongoing maintenance that occurred through 2007 that included painting, replacing windows, and other repairs. There is no easy way to track who did the work or how expenses were charged. It would require a lot of staff time to find invoices, if at all possible.

Mayor Martin opened the public hearing on this item.

Charlotte Levin, Ross Historical Society, stated that on the June 6 meeting, the Ross Historical Society unanimously concurred that Moya will abide by whatever financial decision is made regarding the Old Ross Schoolhouse as long as adequate safeguards are in place to preserve the historical structures in the Town of Ross.

Ken Fineman, Walters Road resident, requested that the Town Council get to the bottom of what was being debated by Council Member Strauss and Town Manager Broad in regard to the Ross Valley Reporter article. He wanted to understand from the Town Manager, if he acted alone, and if not, then who told him to do so. The answers were not forthcoming and desired that these questions be directly asked again. The Ross Historical Society, the citizens of the Town and Richard Hoertkorn deserve answers.

Robert Small, Duff Lane resident, agreed with Mr. Fineman that the Council owes this Town answers to those questions and to rebuild an exact replica of what that school was and what it meant to the history of this marvelous community.

Public Works Superintendent Robert Maccario objected to pointing fingers. He picked Nerviani Inc. to demolish the building. He did not know there was a 3-foot foundation and did not know it was registered to the Ross Historical Society. He has been working in the Town of Ross for 20 years and that building was very cute and nice, but in the wrong location. Discussions occurred for years in regard to what should occur with the building, but it cost \$30,000 to move that building. They probably spent around \$5,000 during that time in regard to maintenance. He believes in committees, openness, fairness and transparency. Whether it is the Tree Committee or Building Committee, he physically tore down the structure. He offered to bring it to his home in case someone wanted it later, but it was too expensive. They tried to peel it apart, but there were termites in the roof, graffiti on the inside, and holes in the floor. He constantly replaced dead bolts. It was historic and an opportunity for public input should have occurred, but arguing over who did what will not solve the problem. The same thing will occur from the oak tree, which was killed from construction. They must all live and work together, so a better process is needed.

Barbara Call, Redwood Drive resident, appreciated Public Works Superintendent Maccario's comments. She pointed out that there is lack of responsibility and sloppy

June 9, 2011 Minutes

accounting. There is lack of responsibility for following the proper procedure in regards to the Old Schoolhouse. If indeed it was a problem building something should have been done, but not by individuals who took power into their own hands without following the rules and proper procedure. She agreed they must live together and following proper procedure.

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

Mayor Pro Tempore Small indicated that this has been a painful lesson, but in order to move forward and in looking at some of the buildings in the community, she knows they have an issue with a historical building in Natalie Coffin Greene Park. Instead of giving money back to Ross Historical Society, she wanted to invite the Ross Historical Society to help the Council look at that building and start to set money aside to renovate that building. With their help, assistance and expertise, they can help the Town make sure they are able to do what needs to be done and put forth money towards that end. She is not sure if it can be budgeted in one or two years, but she wanted to learn from this lesson and move forward in a positive manner.

Council Member Strauss believed that is a terrific idea. He agreed a mistake was made. There is a civic lesson that can be learned and Mayor Pro Tempore Small's thought is a great suggestion. That was reviewed back in 2004 in regard to rehabbing that structure, and it is a structure worth saving, so they must take another look.

Mayor Martin stated that the Council must agendaize items and have public meetings in order to have public involvement. They recently had a State grant for their parks fund in the amount of \$226,000 that the Town sat on for eight years. He remembered about four years ago talking about that cabin at the park near Phoenix Lake. The cost was around \$25,000 and it is a pity that they did not put that into consideration when spending that park money. They were in a pinch to spend the money and whatever accounting or disclosures they must put issues on the table. Clearly the lesson going forward is abiding by the Brown Act, having public meetings, bending over backwards to be transparent on issues and involving residents in Town. He agreed that it is not productive to place blame on people, but they must move forward in a positive direction involving the community. The Tree Committee is a volunteer committee and if they have to do some cleaning up on how they operate that can be done, but trees are important to this community and getting volunteers to spend their time to increase the tree canopy is positive and that item will be agendaized at the next Council meeting so there is no question when the Tree Committee meets. Again, he believed they must go forward in a positive and aggressive way. Council Member Russell concurred.

Council Member Hunter agreed that Mayor Pro Tempore Small's suggestion is a positive one. He agreed to go back to Ross Historical Society and find out their feeling on saving that building at Natalie Coffin Greene Park.

Mayor Martin agreed that they will try to work together and preserve the historical buildings in Town.

The Council agreed to propose to the Ross Historical Society that any unused funds from their 1993 donation be used to restore a historic building in Natalie Coffin Greene Park.

18. Town Council discussion of Chapter 12.24, Planting, Alteration, Removal, or Maintenance of Trees, as it relates to the recent loss of a Valley Oak in front of

June 9, 2011 Minutes

the Ross School on Lagunitas Road and recommendations for future replacement tree planting and maintenance of trees.

Mayor Martin explained that after hearing public testimony during open time for public expression at the May 12, 2011 Town Council meeting, Council members asked that the loss of the stately Valley Oak tree be placed on the agenda. He did not believe there is a staff report for this agenda item, only Chapter 12.24 of the Ross Municipal Code, entitled Planting Altercation, Removal or Maintenance of Trees and roughly 60 email pages and arborist reports, which he provided for the record.

Before he opens this issue up for the Council and public discussion, he would like to observe that protection and preservation of Ross's tree canopy is firmly mandated in their municipal code, which states, *"The Town of Ross recognizes the importance of trees to the community's health, safety, welfare and tranquility. Ross is acclaimed widely for the beauty and grandeur of its urban forest, and much of the Town's admired and valued ambiance derives from its arboreal canopy. In addition, the trees offer windbreakers, provide erosion control, reduce runoff, act as filters for airborne pollutants, reduce noise, provide privacy, release oxygen, and prevent landslides through their extensive root systems. All trees provide these functions for the property on which they are growing. Trees of significant size and maturity and areas with extensive tree cover perform these functions for all persons living in their vicinity. These resources must be prudently protected and managed."* Ross's General Plan, is the most vital planning document and blueprint for Ross's future. It also recognizes the importance of protecting and expanding Ross's tree canopy and enforcing property tree maintenance and replacement procedures. The 200 year-old mature valley oak in front of the kindergarten plan area was one of the Town's most regarded trees. The tree was a landmark and etched in the memory of many, many generations of children who matured under its graceful branches that provided shade and peace. He was one of those children. Tonight, they are going to examine if Ross's existing ordinance and its administration are adequate to protect the Town's trees. They are also agendized to make a recommendation for replacement tree plantings.

Senior Planner Elise Semonian believed the tree removal code could be improved. A tree protection plan is not required on projects that do not require Town approval, such as the school project. The Town could require plans for all projects, tree protection bonds, and make contractors aware of tree protection requirements. Staff is not present at the site at all times to protect the trees and requiring owners to post bonds would be a good incentive to preserve trees and penalty for failing to protect them. The Town had arborist Becky Duckles looking at the school tree and in regard to the discussion of conflict of interest, it would have been great to have two arborists on this job. Town Arborist Duckles checked the construction site frequently and did a better job monitoring the site than anyone staff has seen on other construction projects. Staff further believed an extra set of eyes would have been useful and assistance with following up on recommendations, particularly when the town received so many emails with concerns about the construction.

Mayor Martin wanted to understand the tree protection plan in place. Senior Planner Semonian explained that the school had a tree protection plan that was monitored by Town Arborist Duckles.

Becky Duckles, Town Arborist/School Arborist, agreed it was not a good idea to be the arborist for both the Town and Ross School. There was a tree protection plan that was printed on the plans and the contractors followed all measures specified. They brought in a layer of mulch to disburse weight of equipment allowed for access during the first phase and

June 9, 2011 Minutes

hand digging for footings found no roots on top 18-inches due to the layers of asphalt. The asphalt essentially protected the root zone for many years. There were many layers of different materials such as sand, mulch and asphalt. When excavation was done they found one vital root that was 4-inches in diameter and it was protected and preserved. The roots were not in the zone above the old A/C paving. Watering was done during the dry season last summer. Once they determined there was asphalt paving in the area, they allowed more activity in that area because the asphalt paving absorbs the weight of any activity above and protects the roots. The tree had been in decline for sometime and it died this winter. It never came out of its dormancy. Investigation done from a private consultant firm looked at the tree and their finding was that the tree had been dying for five to seven years. Tree protection was in place and it was followed and supervised. She would have done everything the same. She protected the tree to the best of her ability. She has never had a complaint and regrets the loss of this tree since she was the advocate for the tree.

Mayor Martin discussed the tree protection plan and asked if it the school or the contractor was her client. Town Arborist Duckles noted that her client was the School District and the tree protection plan provided conformed to the Town of Ross to the extent it could give the limitations on the site. The protection zone at times could not be honored to the extent desired because there was no access to do work approved by the plans and demanded by the State Board of Architects for schools. The construction area was very limited. Mayor Martin sees that this project started well before construction started, so it was in a pre-development stage when the architect was generating plans. Town Arborist Duckles was provided an idea in regard to the footprint and then they discussed the impact and determined appropriate measures. Mayor Martin believed there was an opportunity prior to commencement of construction for her to give the school guidance in avoiding certain trees as far as placing footings that could jeopardize the health of the tree. Town Arborist Duckles did her best. They always referred back to the mandates of the soils, energy, and architect for the State Board of Architects. They demanded certain aspects. Mayor Martin noted that trees could have been jeopardized when dealing with soils and so forth. Town Arborist Duckles noted that anytime there is a native oak in an urban situation, the trees vitality is being compromised. They had to try to work within that and provide mitigations as well as possible under those circumstances. The tree was in the kindergarten playground.

Mayor Martin pointed out that the asphalt area did not cover the whole playground, it was basically a walkway as shown in the photographs. He visited that site and was aware of the lack of protection back in April of 2009. As a new member of the Town Council and Public Works Committee, he was asked to review a large oak tree on Allen Avenue that is dying due to its location of roots conflicting with footings that the building needed. He visited the site the day before his formal visit and noticed bobcats trenching the area and exposing the root. He asked Fred Kreitzberg who is an internationally regarded engineer to join him when they visited the building on April 10, 2009 to provide some advice in regard to the footing and came to the conclusion that he could not. In 2009, he expressed concern about preserving that kindergarten oak. He noticed heavy equipment being in the vicinity of the roots. Over a 1.5-year period he took photographs that were sent to Town Arborist Duckles, the School Board, school architect and the Town asking for protection for the trees. He exceeded his boundaries as a Council member and begged School Board members to assist. He saw compromising situations such as storing chemicals, and numerous trucks and equipment being stored in the area. The tree is dead, but he wants to see policies and procedures so this can be avoided throughout Town. He believed the conflict of interest issue is important to review.

Council Member Strauss observed what Mayor Martin reported and on most construction sites there are barriers in place, which was never done. He concurred with the Mayor's comments, but is not sure if they have any jurisdiction. Town Attorney Greg Stepanicich investigated the situation under the Chapter the Mayor just referred to and there is State law with respect to building and zoning laws, they do apply to local school districts. Provided the local school districts by a 2/3-vote override the Town's local zoning and building laws. Typically what they find in other communities is that tree regulations are contained in the actual zoning code. His conclusion to staff is that in this case, there was permitting authority of the Town to require permit for removal of the tree and to require mitigation.

Mayor Martin received a report from an arborist who used to take his child to the swings under the tree and he raised a number of issues and recommends that the Town hire a specialist to do dendrochronolgy, which is looking at the rings of the tree. The tree emits fluids that tell stress and history. He found this was a healthy tree and recommends that the Town do a forensic accounting to determine what killed the tree.

Mayor Martin opened the public hearing on this item.

Barbara Call, Redwood Road resident, witnessed the same as the Mayor in regards to bobcats and heavy equipment placed in the area of the tree. The tree was abused. She did not know if there was ever a protection plan followed. The school did not follow any protection plan when portables were placed on the roots of the redwood trees. They did digging, excavation, compacting and rotortilling without any tree protection. It is very important to preserve the redwood trees. The root system goes way out to Ross Common. In regard to the tree protection plan, she viewed on the website a \$100,000 fine if a tree is abused and leads to death and wanted to know who that would be against.

Town Arborist Duckles noted that there was a tree protection plan in place for the redwood trees and dozens and dozens of yards of mulch were in place for the redwood trees.

Loraine Berry, Ames Avenue resident, concurred with the comments made by the Council and is sadden by the death of the oak tree, which was very similar to the oak trees in her backyard. She didn't buy a particular house, she bought two particular trees and her house came with it. This is the third playground surrounding the oak tree. During the school construction project, she was frequently distressed by what occurred by the tree. She never noticed it dying for years as indicated. She supported the dendochronology as discussed by the Mayor. As a member of the Fiscal Oversight Committee, she believed the cost of the replacement of this tree should not come out of bond money nor should Ross School or the Town pay for it, rather the contractor or his insurance company should pay for the replacement tree, which should be replaced with the largest canopy available. Shade is needed for children's safety. She then asked in the future to notify the citizens when a tree of such stature is being taken down. The tree that bisected Ames Avenue was a beautiful landmark, which is also gone.

Eric Wagner, Tree Committee/Southwood resident, did work around the trees pro bono and his crew was up in that tree twice. He did notice some die back, so there was evidence of impact due to original construction. With respect to 2007-08, the tree exhibited a moderate canopy and did not show signs of decline up until this year when it failed. Possible damage

June 9, 2011 Minutes

due to construction could have been mitigated. Foundation footings could have been done with pier and beam, which is usually part of a tree protection plan. Following the tree protection plan, there is a tree protection zone that should not be breached. Mulch is the recommended solution in order to mitigate foot traffic. Trench plates are desired to mitigate heavy equipment then soil revitalization. Water was standing throughout most of the winter, so drainage was inadequate. Soils that are compacted and saturated lose gas exchange capacity, so the soil then becomes toxic and the tree essentially drowns and closes off. Valley oaks are intolerant and should not sit months on end in saturated soils. There is a big ring that is discolored and it smells, which is an indication that it probably drowned.

Diane Rudden, Willow Avenue resident, stated if in fact the tree drowned, then they must make sure the conditions are conducive to the type of tree desired. Also, they must remember to remove all of the old tree so the new one has the ability to grow.

Stanley Stern, Bridge Road resident, read a letter from Dennis Untermann into the record as follows: *"My name is Dennis Untermann, and I have asked Stanley Stern to read this letter as I am currently in the hospital. I am a Ross resident and member of the Tree Committee. I was raised in the family nursery business, West End Nursery, which I ran for many years. I am past President of the California State Nurserymen's Association, Redwood Chapter. I hold a teaching credential in landscape gardening and taught at the College of Marin for many years. I have spent the last 25 years designing and building some of the most beautiful gardens in Ross. Over the past four years I have watched the Ross School construction project. This year the beautiful oak in the play yard didn't leaf out and was pronounced dead. I read the article in the IJ and saw that the arborist said now that the tree had been declining for at least eight years. The diagnosis came as a post mortem. This is like saying, after death, "Oh, you were dying for eight years anyway." Four of those eight years were on the arborist watch as custodian of that beautiful oak tree. The arborist's job should have been to assess the scope of the construction work and the impact on the trees and take aggressive steps to preserve and protect the tree. Especially, if, as she now reports, the tree was four years into the decline, she should have been raising red flags and doing everything possible to give the oak the very best chance to survive. Instead, construction vehicles, equipment and materials camped under the tree regularly. Being in the landscape business, I know the precautions necessary for established trees. This oak's canopy was quite large we all know, so fencing around the drip line was not possible, but there was almost no barricading at all around the trunk of this tree during construction. Compaction of soil was evident. There was no excuse for leaving the moat of water around the base and crown of the tree all winter. Where was the drainage? No steps were taken to save the tree from the start, four years ago. It is my opinion, after watching the oak sit in a foot of standing water all winter long, that the oak died of root and crown rot.*

*Respectfully,
Dennis Untermann"*

Ann Brenner, Tree Committee/Winship Drive resident, stated that it is incredible sad to lose this tree. Photographs show that the tree protection plan was not enforced, as it should have been. Construction vehicles were placed around the tree. The non-intrusion zone was not followed, and at most, just a tiny fence was installed that did not meet the requirement. Photographs were submitted to the Council for their consideration.

Jennifer Leathers, Tree Committee/Norwood resident, also is sad to see this tree gone. It was a heritage tree and a landmark to the Town. Lumber and supplies were staged near the tree. A bobcat was used, not hand trenching. They wanted the tree replaced to something as close as possible and additional photographs were submitted to the Council for their review.

B.J. Martin, Tree Committee/Shady Lane resident, discussed the tree protection plan and the construction arborist report indicated that compaction was due to the *"constant patter of little feet."* There are more than 40 photographs of vehicles parked near the tree. Shading these vehicles as they were parked in the non-intrusion zone. The dumpster was parked near the redwood near Ross School. She then read into the record Ross's Tree Protection Plan in regard to violation penalties: *"Any person who fails to observe approved tree protection conditions shall be held liable for compensation to the Town in the amount of \$1,000 per day for each day up to \$100,000 per year."* She pointed out that this went on for years, so they are talking about \$300,000 of fees. She asked if any penalties have been assessed for these flagrant violations. The enforcing arborist was also the Town Arborist, so clearly there was a conflict of interest. How can the Town expect Ross residents to adhere to a tree protection standard that the Town Arborist is not adhering too? She desired to have the tree back, but short of that they made a list of appropriate mitigation as follows:

- Stump removal, lofting and amending of the compacted soil and raising the elevation at the tree site in the playground.
- Adding drainage components that will eliminate the pooling of water caused by the runoff of the newly elevated playground surface sheeting into the site when it rains.
- Adding an 18" concrete seat-wall that will further protect erosion and drainage problems at the site.
- Purchasing, freight and installation of a 10-foot boxed Quercus lobata.
- Removal of all root-damaged Allen Avenue Quercus lobata.
- Purchase and installation of eight stacked 24-inch boxed Quercus lobata for planting and masking on Allen Avenue.
- Purchase and installation for irrigation system for the 24-in. Quercus lobata along Allen Avenue.

Ken Fineman, Walters Road resident, was President of Ross School when this happened and no one feels worse than he does. They hired Becky Duckles because she was the Town Arborist and they did it in good faith since Ms. Duckles was familiar with the trees and plan and would make it smoother. None of them are experts in the field they hire experts for. He consulted the architect, project manager and Ms. Duckles to make sure they were doing it correctly. He was assured that they were moving forward correctly. He believed they were following proper protocol. The school made a mistake whether with the contractor or arborist or not taking emails as seriously as they should have. He apologized as a citizen and on behalf of the school. He agreed with all previous comments. The school should do whatever it takes to replace as close as possible with the type of tree that was damaged. He is happy to forcefully provide his opinion to the school to do whatever it takes so residents can enjoy a tree.

Public Works Superintendent Robert Maccario stated that when experts are hired, no one is an expert. They have 15-acres of oak trees and the best oak tree dropped a few years ago. No one is God. Also, they must remember if the person is working for the Town or anyone else, they should not be defamed in public. They were hired. The school and Town made a mistake. On October 3, 2007 he questioned many aspects. Tree trimming is a concern and must be considered. Several buy a home and prune their trees and then the tree dies. He recommended a bond for five years after construction in case the trees die. All trees are important and all should be protected. Near the portables, the redwoods were damaged. Trees have been damaged and they should not do the same thing twice. On April of 2008, he wrote the following: *"look at the scope of whole project; how tall will the new building be; will the valley*

June 9, 2011 Minutes

oak remain; what trees on Lagunitas side will remain; and the large valley oak in the playground should not be touched." Regardless of how much anyone tries there is always other aspects.

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

Mayor Martin discussed the recommendation from the Tree Committee in regard to mitigations. He asked if the Council is prepared to support that tonight. Staff recommended strengthening the tree protection ordinance by requiring a bond for tree protection. He agreed to work with the Town Attorney and staff to develop possible amendments to the ordinance if the Council sees that as beneficial. He also recommends that they determine what killed that tree. He has a few recommendations on forensic arborists who can do this, and just saying that the tree has been dying for years is not accurate. Craig Peterson called Steve Swain of UC Berkeley Cooperative Extension and asked how he determined that the tree was dying for the last five or six years and the determination was based on historical information that Town Arborist Duckles provided. They must remove any doubt, so he wanted to proceed with an examination before the trunk is removed in order to get a better understanding, which they all know was a lack of protection.

Mayor Pro Tempore Small stated that Jim Walton submitted their recommendation to the school, which will be reviewed. The Tree Committee turned in their recommendation to the School Board as well. There are similarities and great differences and there will be a difference in cost. The project manager is recommending a must smaller tree. She asked how much responsibility lies not on the School Board, but the contractor. Maybe the test is needed in order to determine penalties. Her attendance at last night's School Board meeting was not to leave the decision to the project manager. She is not sure the best way to move forward.

Council Member Hunter stated if they adopt the Tree Committee recommendations and present to the school, the contractor is an agent of the school, so it is up to the school to negotiate to have the contractor step up. He agreed with the Mayor and wanted to see the tree protection regulations re-written and firmed up so they do include as staff mentioned some projects that are outside of their purview to include a bond. Council Member Strauss desired a drip line and wanted to know the cost of a forensic study. Council Member Hunter agreed and the stump should not be touched until a determination is made. Mayor Martin wanted a hammer on enforcement. He assumed the study would be under \$3,000. Town Arborist Duckles believed it is a reasonable guess. Mayor Martin suggested a \$3,500 limit to proceed, which may be reimbursable. The Council agreed.

Council Member Russell suggested adding the matter to the Town Council's July agenda in order for staff to make specific recommendations. Senior Planner Semonian agreed, but the forensic study can move forward.

Mayor Pro Tempore Small asked if they agree to support the Tree Committee's recommendation because they expect answers within the next few days. She asked School Board President Robbins to agendize the matter again. Council Member Russell suggested delegating the matter to the Public Works Committee. Town Attorney Greg Stepanicich agreed that the Council can direct staff to exercise their authority with respect to a forensic study.

June 9, 2011 Minutes

Mayor Pro Tempore Small asked if staff could look at the Tree Committee's recommendations and discuss with the School Board. Town Attorney Stepanicich responded in the affirmative. Staff can proceed with the recommendations. Senior Planner Semonian agreed with the Tree Committee recommendations. Staff also recommended that the tree on Allen Avenue be removed immediately. Mayor Pro Tempore Small believed it is important that staff move forward.

Town Manager Gary Broad received a phone call from Valerie Pitts, the Superintendant of the Larkspur School District, who is also involved with the Ross School District. She indicated that they had their attorney look at this authority issue over the years and they believe the Town does not have authority over this matter. Staff desired a reference site for the Town Attorney to review, but nothing was received.

Mayor Martin noted that there is a moral responsibility. The tree has been such an asset and now it is dead. Back in 2009, he should have raised more of a concern with the media rather than hoping this tree was being protected.

Mayor Pro Tempore Small understands that Ms. Pitts will be reporting at the School Board meetings rather than Jim Walton and that is why the matter must come back to the Board. There is the moral issue, emotional issue, and the obligation to the community issue and that is why it will be placed back on their agenda.

Town Manager Broad added that Ms. Pitts did not indicate that the school was not interested, but did not believe they were legally obligated to do what the Tree Committee recommended.

The Council, after discussing the events that led to the recent loss of a cherished, 200-year old Valley Oak tree located in the kindergarten playground at Ross School, directed staff to spend up to \$3,500 on an independent arborist's study that would determine the cause of death of the tree. The Council also directed staff to present the Street Tree Committee's recommendations for tree replacement to the Ross School for their consideration.

19. Town Council review of current Town Conflict of Interest Code, Resolution Nos. 1613 and 1285, and discussion of amending the resolutions.

Mayor Martin explained that Ross is a small town and very reliant on consultants to objectively and correctly advise the Town on matters. Besides having a Town Arborist, they have a Town Hydrologist, Town Engineer and Town Attorney, and so forth they hire as consultants. The current conflict of interest code does not specifically address those consultants with the exception of the Town Engineer. The language is boilerplate that the State of California requires. Some towns go further and require that any consultant who provides services for the Town understand what a conflict of interest is and that they do not do any business with any private or public interests in the Town other than the Town. They work exclusively with the Town. The Town Hydrologist does private consulting and then reports to the Town on issues. He wanted to see some sort of wall where procedures are set whether the Town assigns a task to a consultant and assesses a fee on that task on the project applicant. The consultant should have no relationship with either defining their task or collecting money for their services. The Town will abolish any direct relationship between an applicant and Town consultant guaranteeing that they are objective.

June 9, 2011 Minutes

Council Member Russell believed it is important that the duty of that consultant is not to the applicant, but to the best interest of the community and Town of Ross and its laws. Mayor Martin agreed to work with staff and the Town Attorney on this matter.

Mayor Martin opened the public hearing on this item.

B.J Martin, Shady Lane resident, stated when concerns about the valley oak were emailed to what she thought was the Town Arborist, when in fact the Town Arborist clearly did not feel she had to respond to a citizen, she was confused.

Peter Nelson, Circle Drive resident, discussed the Town Engineer and his understanding is that when hired by a private individual there is an alternative engineer that the Town uses. The Town should not prohibit a party from taking on a private job, but in that case, specifically making sure there is not just one arborist or one engineer, so having an alternate would be appropriate.

Diane Rudden, Willow Avenue resident, discussed page 46 of the General Plan, where they talk about town specialist and trying to provide the technical review and recommendations as needed by Town staff, she asked if these individuals would be classified as consultants. Council Member Hunter believes that was along the lines of ADR to volunteer their time, so he did not believe that would apply. Mayor Martin agreed to clarify. Ms. Rudden expressed concern if someone is a consultant on Bolinas in San Anselmo, so there is that aspect as well that must be considered. It will make it very difficult for those to be a consultant around Town.

Ken Fineman, Walters Road resident, fully supported stronger conflict of interest rules, but consider if there is stricter conflict of interest rules, consider the current body of people. There will be handful of those affected right now. He recommended that they minimize the unintended consequences in regard to whatever plan the Council decides.

Loraine Berry, Ames Avenue resident, encourages the Town to adopt stricter policy because common sense is not clear to all.

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

Mayor Pro Tempore Small wanted to be careful about consultants because there are a few consultants that the Town Manager has worked with and they have a great understanding of the community. She did not want to be in a position where a resident hires a consultant and then the Town has to find an alternate. Several consultants have consistently worked with the Town and they have a stronger relationship, so that must be considered as well.

Mayor Martin noted that several towns and cities have ethic commissions to review, so the Town will develop creative ways to be very clear and protect the integrity of their consultants and laws.

20. **Town Council discussion of proposed resolution establishing standing committees and adopting general and specific rules pertaining thereto.**

June 9, 2011 Minutes

Mayor Martin explained that this will formalize the Council's standing committee structure and clarifies the authority and duties of those committees. This resolution sets forth requirements for standing committees to also ensure greater public access to Town matters as well as enable a better informed community. This is a first draft that can be further developed and modified according to the pleasure of the Council.

Mayor Pro Tempore Small appreciated this ordinance and believes it is beneficial for these committees to meet at least quarterly as well as have a structure and description of what they do. It also helps new Council members. She added that it will be real clear to the community if they want to attend, speak or have an interest. If all of this had been in place in 2007, they probably would not have had a lot of conversation that has taken place recently. She believes this is very important. Without two Council members at these meetings, it is an unofficial meeting, so she recommended having an alternate or allow the Mayor to appoint an alternate so the meeting can continue in an official manner, especially if only done four times per year.

Council Member Hunter asked staff why a committee cannot meet with only one Council member present. Town Attorney Greg Stepanicich noted that no rules provide for that to occur. If the rules indicate that a committee can act as a committee of one then it is possible. Staff must review alternates and whether that would be a third Council member in regard to the Brown Act.

Council Member Hunter believed it would be nice to standardize these meetings, but disagreed with the mandatory meetings. At times, on many of the committees there is not a lot that must be done and now they will be placed in a position of holding a meeting when nothing is on an agenda. He recommended codifying the standing committees and notice how members are selected in the beginning of each legislative year. He disagreed with requiring four meetings. He then asked about the enforcement mechanism in that regard. He further believed requiring meetings is controlling, unnecessary and unenforceable.

Council Member Strauss suggested having a retreat to discuss different topics and one suggestion is at every Council meeting under "Reports" to allow general discussion topics, so a concerned citizen can provide input rather than mandating. Also, it is important to have a procedures guideline for the Council and "how often" must be defined as well. Under Section 3a - Appointment of Committees, he suggested modifying the language to read, "*At the beginning of the fiscal year, the Mayor with approval of the majority of Council shall appoint two Council members to each Standing Committee and shall announce the appointments at an open and public Council Meeting. The Mayor shall appoint the Chairperson of each Standing Committee and may assign Council members to another standing committee at any time by the Mayor with approval by the majority of the Town Council.*" He further believed having an alternative is a good idea as suggested by Mayor Pro Tempore Small.

Mayor Martin stated that the number of mandated meetings is open to discussion. He wonders how the Vice Chair on both the Public Safety Committee and General Government Committee feel about not having a meeting this year. Council Member Russell believed there should be an expectation that there will be meetings of the committees, and leave that to the Chair of the committee in terms of when those meetings should occur. There should be an understanding that from time-to-time committees will meet. He desired some type of charter for these committees. There must be more definition about the nature of each committee. He

June 9, 2011 Minutes

believed it would be sensible to make it clear that committees do more than give advice, they make recommendations as well. Council Member Strauss concurred.

Council Member Russell stated if they have some definition around a particular committee then delegate to that committee to make decisions. It would be helpful that a committee can make decisions, perhaps add some parameters. Town Attorney Stepanicich agreed to review, but approving money must occur by three Council members. He must investigate whether that parameter can be given to a committee. Council Member Hunter believed a committee is a feeder system, but the decision is always made at the Council level. Town Attorney Stepanicich noted that it raises a fundamental decision. This is where it gets tricky to define whether a committee is advisory. He expressed concern for the requirement in the government code since money must be approved by a minimum of three Council members.

Council Member Russell felt it would make more sense for a committee to have a quicker decision making process. Mayor Pro Tempore Small stated that public works meets every month and the left bank stabilization project has been discussed. When the bid comes in it will then come to the Council and the Council will either award it or not. Staff and the committee have done all the legwork and then the final piece is brought to the Council. She would never want to award any contract at a committee level. Council Member Russell wanted to know the extent of that committee. Clearly public works has been making several decisions. Council Member Strauss suggested that actions must be defined because staff must know what decisions they can make relative to a committee, so more work must be done.

Council Member Hunter pointed out that as they define each committee a part of that is defining what can be done.

Town Manager Gary Broad agreed that it is critical to have a charter for what each committee does. Also, while a lot of the committees work is advisory and making recommendations, there is some decision making that occurs and that can be positive to the process, but it must be defined to the extent a decision is made. This is a great starting point. The task is to make sure everything is explicitly laid out. In regard to language about rendering advice to Town Departments, an effort should be to make that explicit as to what is forwarded to the Council, to the Town Manager or to anyone else. Staff has Brown Act questions and it would be great to have Town Attorney Stepanicich review. On the budget review, it mostly went to finance, and capital improvements when to public works, and whether it is a Brown Act violation if that goes back to the Finance Committee, so those must be reviewed to make sure they are properly taking into account conditions to not create a Brown Act situation. He wondered if there is an option to allow Council members to attend committee meetings to speak as a resident of the Town, or whether that is a Brown Act violation. Town Attorney Stepanicich noted if a Council member attends a committee meeting under the Brown Act they may only observe.

Town Manager Broad believed this will be helpful to have this flushed out. Staff and Council members and Mayor must think through the noticing of the agendas, minutes, and website posting and who will be the point person on these committee meetings. Staff desired clarity related to committee meetings.

Mayor Martin opened the public hearing on this item.

June 9, 2011 Minutes

Ken Fineman, Walters Road resident, read the introduction of the Brown Act into the record as follows: *"It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."* He is most passionate about this issue. Transparency is good. He pleaded with the Council not to make these meetings ad hoc. He further believed they must be mandatory.

Peter Nelson, Circle Drive resident, asked that consideration be given in regard to timing and scheduling of the meetings. Also, information should be provided on the website to give a framework. Consistency in terms of timing is desired and believed evening hours are better than morning hours.

Diane Rudden, Willow Avenue resident, believed mandatory meetings are not necessary because if nothing is happening then what is the point of having a meeting. Also, it would be wonderful to define the *"responsibilities."* She desired clarification on once a standing committee always a standing committee or does the Mayor and Town Council determine at the beginning of the year. If this is listed as an ordinance and then one committee no longer exists, she wanted to know what can be done to add or subtract such committee without redoing the ordinance. RPOA has tried to attend all of the Council meetings and this is going to make it so that they have to also do committee meetings. Public Works meetings are agendaized, but minutes are not available until the next meeting, so RPOA is having a hard time getting a handle on what is happening if all decisions are made at the subcommittee and not at the Town Council. RPOA does their best to keep on track, but there are only six members.

Stephanie Cooke, Shady Lane resident, appreciated Mr. Fineman's reading of the Brown Act because many forget the purpose and it is about transparency and open government. She appreciated Mayor Pro Tempore Small's suggestion of having some flexibility in regard to meetings and that an alternate can attend.

Public Works Superintendent Robert Maccario wanted to know if the Chair of the committee is speaking for the committee or for the whole Town Council. Also, if advisory is the committee advising staff or the Council? He believed both matters he discussed must be clearly defined.

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

Mayor Pro Tempore Small stated when reviewing minutes from the 1960s she noticed that these four standing committees were around, so it goes back a long time. She is all about transparency. She is not clairvoyant and they get entrenched in certain items. She is about having these meetings and about having an opportunity for the public to attend their meetings and participate. This is a very philanthropic and involved type of community. Residents want to know what is occurring so that is why she desired some sort of structure. Hopefully, the committees are more effective, which will make the Council more effective.

Council Member Hunter recommended revising Section 3, which is written more for a strong Mayor. The committees have always been a collaborative situation not a dictation.

June 9, 2011 Minutes

Meetings should be held at the discretion of the Chair. Also, after the Town Attorney researches the matter they will know if they can move forward with a committee if one of the two cannot attend. Also, in the past they use to list the four committees and if there is a report, then such report can be provided, if not, then indicate no report. He further recommended always having the four committees listed in the future.

Council Member Strauss wanted to discuss putting items on the agenda, which must be set between the Mayor and Town Manager. He is very pleased that a lot of this will be reviewed. He wanted to give his notes to the Town Attorney that must be reviewed by the Town in creating a document that describes what role the committees have and make.

Council Member Hunter noted that he made a committee report for public safety. They hired a chief and met to discuss consolidation. He as a representative of the Town has been doing such matters that have been well noticed and understood. Mayor Martin disagreed. He believed public meetings should occur to discuss. Council Member Hunter noted that they are now at a point to have a meeting.

Mayor Martin agreed that Section 3 gives the Mayor a lot of authority to make sure these meetings occur and that they function and that responsibility has to be assigned to the Mayor to take corrective action, otherwise what is the enforcement. He still believes in that language. Council Member Strauss recommended having the majority of the Council. Also, the \$775 assessment going forward, he wants to trust the Finance Committee to review. He has not seen the budget for the next year and that must come back to the whole Town Council. He further believed money matters must be acted upon as a whole.

Town Attorney Stepanicich stated a number of issues were discussed that he can report back on. In finalizing the protocol and rules, he would need more input on the nature of each committee and what the type of delegation of decision-making should be given to the committee. Mayor Pro Tempore Small recommended that each committee have a meeting in order to make recommendations and provide a description of their responsibilities to be reviewed at the next Council meeting. Town Attorney Stepanicich believed that would be very helpful.

Mayor Pro Tempore Small stated that the agenda must be as clear as possible and recommended listing each Council members name under the report rather than committee report. Then if that Council member also has a committee report, then at that time it can be provided in order not to confuse the public.

Council Member Russell desired guidance and examples of what other towns and cities currently do. Provide examples of what the usual authority is and then the Council can decide and give guidance in terms of what that committee does. It is hard to reinvent the wheel. Town Attorney Stepanicich viewed a brief description of the committee's role. Again, generally the committee's role is to make recommendations and provide advice. The concept of decision-making is a different component and will take some review. He can give the Council some parameters of where this can go. He did not want to address areas that the Council has no interest in doing. Decision making aspect is the trickiest part. Mayor Martin agreed to conduct some research about committee objectives and responsibilities. Town Attorney Stepanicich has a database at his firm to provide a starting point. He can also provide parameters of delegation on decision-making.

June 9, 2011 Minutes

Council Member Russell wanted to discuss at the next Town Council meeting. He wanted to get the process moving so there is great confidence among the public that they have an open and fair process. Town Attorney Stepanicich agreed to layout the parameters.

21. **Town consideration/adoption of Resolution No. 1743 opposing a proposed rate increase by the Ross Valley Sanitary District and directing the Town Manager to file a vote of protest in accordance with Proposition 218.**

Mayor Martin explained that Ross Sanitary District is proposing to raise its sewer rate assessment for all Ross Valley residents effective July 1, 2011. Taxpayers in Ross are facing a 24% increase in their sewer rate assessment that will increase per parcel. The total assessment to \$697. Keep in mind that back in 2008 the Sanitary District had already doubled that rate. There has been concern from a number of communities that this rate increase is not justified and that legal cost for the Sanitary District have been excessive. They keep expanding staff and they are not wisely spending the proceeds. It is argued that there has not been enough community work to persuade towns and citizens that this rate increase is justified. The Council agreed.

Mayor Martin opened the public hearing on this item.

Several members of the public agreed the rate increase is not justified.

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

The Council agreed to adopt a resolution opposing the Ross Valley Sanitary District's proposed rate increase. The Council determined that the District needs to further clarify its operational needs and describe its long-term capital investment strategy to justify the proposed increase.

Mayor Martin asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to adopt Resolution No. 1743, directing the Town Manager to delivery a letter to the Ross Valley Sanitary District in accordance of Prop 218 as a vote of protest against the rate increase. Motion carried unanimously.

22. **Town Council consideration/adoption of Resolution No. 1744 Making Certain Findings and Determinations in Compliance with Section XIII B of the California Constitution (GANN Initiative) and Setting the Appropriation Limit for the Fiscal Year Ending June 30, 2012.**

Town Manager Gary Broad summarized the staff report and recommended that the Council adopt Resolution No. 1744, affirming Ross's compliance with the GANN Initiative and setting the appropriate limits for the fiscal year ending June 30, 2012.

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

Mayor Martin asked for a motion.

June 9, 2011 Minutes

Council Member Strauss moved and Council Member Hunter seconded, to adopt Resolution No. 1744, making certain findings and determinations of compliance with Section XIII B of the California Constitution (GANN Initiative) and setting the appropriation limit for the fiscal year ending June 30, 2012. Motion carried unanimously.

23. Public Hearing: Levy Taxes/Assessment pursuant to Ordinance No. 582 of the Ross Municipal Code. Council consideration/action on continuing the FY 2011-12 municipal services tax at \$775 – a maximum of \$1,000 permitted.

Town Manager Broad reported that while the draft fiscal year 2011-2012 budget is still about \$150,000 in the red, the Finance Committee had agreed to sharpen its pencil rather than recommend a raise in the municipal services tax. Ross voters first approved the municipal services tax in 1984 and have since renewed the tax every four years. Staff further recommended continuing the FY 2011-12 municipal service tax at \$775, while a maximum of \$1,000 is permitted.

Council Member Strauss asked staff why it is being reviewed now and not with the whole budget. Town Manager Broad responded that transmittal forms must be turned in and their date this year is July 6th, so it is prior to the July Town Council meeting, so this cannot be delayed to be discussed with the budget.

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

The Council agreed to keep the Town's municipal services tax at \$775 per developed parcel, despite the fact that the Town is under increasing financial pressure from a combination of flat revenues and rising expenses. The Council sets the tax each year, up to a permitted maximum of \$1,000. The tax has been at \$775 for the past four years.

Mayor Martin asked for a motion.

Council Member Russell moved and Council Member Hunter seconded, to continue the FY 2011-12 municipal services tax at \$775 – a maximum of \$1,000 permitted. Motion carried unanimously.

24. Town Council consideration of adoption of Resolution No. 1745 enacting a temporary closure of the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on Friday, September 30, 2011.

Police Chief Erik Masterson summarized the staff report and recommended that the Council adopt Resolution No. 1745, enacting a temporary closure of the Ross Common for the annual Town Dinner for 4 p.m. to 10 p.m. on Friday, September 30, 2011.

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

June 9, 2011 Minutes

The Council agreed to enact a temporary closure of the Ross Common for the annual Town Dinner on Friday, September 20, 2011. The roadway between Lagunitas Road and Redwood Drive will be closed to all vehicular traffic between 4 p.m. and 10 p.m. on that day.

Mayor Martin asked for a motion.

Council Member Hunter moved and Mayor Martin seconded, to adopt Resolution No. 1745, enacting a temporary closure of the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on Friday, September 30, 2011. Motion carried unanimously.

25. Town Council consideration/action on supporting Herb Weiner, Mayor of Sausalito, as the next MCCMC President.

Council Member Strauss was contacted by Council Member Mike Kelly of Sausalito who nominated Herb Weiner, the Mayor of Sausalito, as the new president of MCCMC. He further noted that there will be a vote at the next meeting on June 22, 2011.

Mayor Martin believed he is an excellent candidate.

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

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Martin seconded, to support the nomination of Herb Weiner, the Mayor of Sausalito, as the new president of MCCMC. Motion carried unanimously.

26. Town Council consideration/action to adopt Resolution No. 1746 awarding the public works contract and authorization of expenditure for the Laurel Grove Drainage and Creekbank Projects bid.

Town Manager Gary Broad announced that the matter has been moved to the July Town Council meeting since no bids have been submitted.

The Council took a short recess at 10:54 p.m. and then reconvened at 11:03 p.m.

27. Town Council, sitting as Planning Commission, to consider Ordinance No. 624 An Ordinance Amending Title 18 "Zoning" of the Ross Municipal Code to Allow Certain Finished Basement and Attic Areas for Storage and Living Space. In summary, proposed Ordinance 624 would apply only to existing structures in residential zoning districts and would create a process for the Town Council to allow exceptions from development regulations, such as floor area limits, to allow finished attics and basements when they meet the following criteria: 1.) Area to be improved has an existing ceiling height of at least 5.5 feet. 2.) For attics, that no exterior changes are proposed. 3.) For basements: a.) Finished floor level must be above the base flood elevation. b.) Exterior modifications do not materially increase the visible mass of the building, are compatible with the design of the existing improvements, and do not create privacy issues. c.) There will be no net increase to the rate or volume of peak runoff from the site. 4.) The site has adequate water supply for

June 9, 2011 Minutes

firefighting purposes. 5.) The site has the minimum parking required for the zoning district. The Town Council may require additional parking, up to 4 spaces, based on the size of the residence, number of bedrooms, and the size and use of the attic/basement area. 6.) The project complies with the building code. 7.) Excavation, grading or cutting is limited to 50 cubic yards. The Town Council will also consider approval of a categorical exemption from the California Environmental Quality Act (CEQA). The full text of Ordinance 624 is available at the Town website.

Senior Planner Elise Semonian discussed a proposed ordinance that would make it easier for homeowners to finish attics and basements and use the converted space for living area. Under the draft ordinance, the Town Council would be able to grant exceptions from development regulations, such as floor area limits, in order to allow improvement of existing attics and basements. In order to qualify for an exception, a proposed attic improvement could not include any exterior changes to the house, including new windows or dormers. Basements could be finished if the existing ceiling height is at least 5.5 ft., and the floor is above the base flood elevation (*the height of the 100-year flood*). Basement improvements could involve exterior modifications that did not materially increase the visible mass of the building and were compatible with the existing design. Staff further recommended that the Council, acting as Planning Commission, receive public comment, discuss Ordinance No. 624, approve and recommend that the Town Council adopt the proposed Ordinance No. 624.

Mayor Martin asked staff if Town Hydrologist Matt Smeltzer reviewed. Senior Planner Semonian responded that he has not, but maintaining existing runoff is required as part of the conditions. Mayor Martin asked staff if there is any assessment on grading in terms of sensitive water tables. Senior Planner Semonian explained that excavation would not be permitted in flood zones or areas known for flooding.

Council Member Strauss discussed Section 18.12.050 on page 2, which stated, *"If the finished floor level directly above a basement is six feet or more above natural grade for more than twenty-five percent of the basement perimeter, such basement shall be considered as a "story"* and he believed the code is 50%, so this is more restrictive and asked staff if that is the intention. Senior Planner Semonian responded that 25% is the existing zoning code language that has to do with "story" requirements. If someone creates a third story this ordinance could provide an exception to the two story requirement. Council Member Strauss discussed the last paragraph in regard to Section 18.12.130 - Floor Area Ratio, that is underlined and believed the word, "basement" must be added to read as follows: *"Floor area shall not include finished basement space used only for storage with less than five feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs."* Senior Planner Semonian agreed. Council Member Strauss expressed concern for the following language: *"used only for storage with less than five feet of ceiling height"* since the code is 6 ft. 6-in. Senior Planner Semonian explained that the lower ceiling space could be exempt from floor area. Council Member Strauss clarified that some basements have been approved for storage at 6 ft. 6-in., and asked staff if that would be allowed. Senior Planner Semonian explained that they would have to come in for an exception. At 5 ft., an applicant would just need a building permit. If unfinished, applicants would not have to come in for the exception. Council Member Strauss discussed the cubic yards and believed that would allow a ceiling height of 5.5 ft., which would be two bedrooms, a bathroom and hallway, plus a stair and asked staff if that is the intent. Senior Planner Semonian indicated that is one of the biggest arguments against the ordinance is that it permits additional floor

June 9, 2011 Minutes

area. Council Member Russell stated this is finishing off space. It must be an existing basement space with a ceiling height of 5.5 ft. The bigger issue is essentially trying to get into code and be finished. 50 cubic yards is entirely arbitrary. The fundamental point is that there has to be an existing space that simply needs to be finished off. The other way to approach this is to indicate a maximum amount of additional habitable space that can be added through this process. Council Member Strauss asked if the intent is to add two bedrooms or a hallway. Council Member Russell stated if in effect that space is already present, then they are just allowing people to make use of it. Council Member Strauss is not sure the zoning, from his point, is where they intended to go in regard to changing the zoning adjacent to a neighbor. This will change a house in that neighborhood. Council Member Russell noted that visually it has no impact. This is an issue where they must strike a balance. Clearly, it is sensitive and they do not want to throw out the baby with the bathwater. They had a series of workshops and several were in attendance. The vast majority felt strongly the need to recognize that there are these spaces and why not make use of them and have parameters around that. There is a driving sense of fairness about this issue and how they balance it is very difficult.

Council Member Strauss suggested that the Council be cognizant of what they are trying to do and balance it out. Maybe 50 ft. is or is not the right number and maybe that is part of the parameter. Council Member Russell believed the fundamental point is doing it by reference, not to an arbitrary number, which may be the quickest and simplest way, but there may be people with huge homes with no neighbors where this space exists.

Mayor Martin asked staff what was the thought on restricting it to a percentage of FAR such as a 20% limit as far as size. Mayor Pro Tempore Small noted that a recommendation was submitted for 30 cubic yards and recommended a percentage of the total FAR. A lot of residents can benefit, but they must be careful about the unintended circumstances. If someone had a basement and it was their FAR, could they come back and ask for more. Senior Planner Semonian stated it is possible, but they would have to go through the Town Council and it is a rare circumstance that people use their basement for FAR and also have above-ground floor area that is less than what is permitted.

Council Member Hunter asked how the Hillside Lot Ordinance (*HLO*) is addressed. Council Member Russell responded that there is no difference. They could exclude the hillside areas since the hillsides present more issues. A large number of people felt they should be able to use their own space. The fundamental point is that it must be existing space and a basement must have some substance. At least 5.5 ft. and then it has to get to code. In reality, it must get to 7 ft. 500 cubic feet might allow 8 or 9 ft. if it is a really small space, which does not make sense. He tends to see it as being more sensible that they either approach from a maximum 7 ft. as finished space or that there is some total maximum portion to the overall habitable space. Council Member Hunter can see a situation where a new property is built to the maximum FAR allowed with an attic and crawl space. Council Member Russell noted that it only applies to space that was created prior to this ordinance.

Council Member Hunter desired clarification in regard to a two-year amnesty period. Council Member Russell explained that the rationale for amnesty was because they know several that have these spaces and are using them and it is much better to legalize and pay taxes. The community will benefit. Originally, it was one year, but then staff could potentially be inundated with applications and they wanted to provide staff enough time to

June 9, 2011 Minutes

go through the process and that is the reason for two years. They did not want to overwhelm staff.

Council Member Hunter understands waiving the after-the-fact fee, but did not understand waiving the normal fee. Council Member Russell noted that the inspection fee would not be waived. They would waive the penalties and just charge the normal fee. Senior Planner Semonian agreed it would be better to have a one-year amnesty and the Council could always extend.

Council Member Hunter pointed out that when the Council did the amnesty on illegal second units, only a few applications came in.

Mayor Pro Tempore Small discussed page one of the letter and since they are dealing with second units in another ordinance, should language be added to the "whereas" paragraph in regard to residential second units. Council Member Russell noted that this does not help anyone trying to create a second unit.

Mayor Martin opened the public hearing on this item.

Doug Abrams, Canyon Road resident, stated that the sessions were very well attended. As far as amnesty, no one would have any objection to one year. Everyone was overwhelmingly in support. There were certain specific objections and if they looked at the original ordinance that is three or four drafts ago, it is vastly different. In the spirit of the meetings, it was a good process.

Diane Rudden, Willow Avenue resident, believed there is an impact visually, since there is an impact in the fact that the housing stock can change in regard to a varied housing stock of small to large. Hillside lots should be excluded. The General Plan discussed past accomplishments and the HLO was tightened to limit the amount of buildable floor area. She recommended that the hillsides be removed since that was not the intent.

John Clarke, architect, stated that there is no change to the existing walls and no change to the appearance or proportion of the lot whether on a hillside or not. There are seven items on this list that one has to qualify for in order to receive an exemption and he believed ceiling height, excavation as well as parking will be difficult to comply. Most of these lots will be smaller lots. He is interested in seeing how many actually qualify. Several properties in the hillside area are existing and nonconforming and would make the lot undevelopable. The intent is to take advantage of their existing envelope. A lot of good work has gone into this list and it is worth considering all seven items listed.

Alanna Brady, Wellington Avenue resident, stated with this she could add two bedrooms in her basement and still only have a one car garage and one car driveway. She would have a five-bedroom home with only a one-car garage. Council Member Russell noted that the site must have adequate parking with the minimum covered and uncovered parking spaces, so there are requirements.

Peter Nelson, Circle Drive resident, believed the ordinance did an excellent job in regard to no changes visually with dormers or windows, so there is no impact in terms of other bedrooms, access and so forth. Also, in regard to basements, there is no magic number, but 50 cubic yards works with the intent.

June 9, 2011 Minutes

Les Sherman, Brookwood Lane resident, stated that there was overwhelming support and a lot of thought went into this ordinance. Rules do not permit the ability to change the exterior structure. There is no reason to limit the use of the interior space. He further noted that parking restrictions limit the ability for several to do this.

Stephanie Cooke, Shady Lane resident, believed one of the most important points is safety in regard to having more homes up to code, seismic or whatever the issue may be. There are so many houses that had real estate agents recommend changes and the codes were different. Several have built out attics illegally, and this provides an opportunity to bring the attic or basement up to code and the Town will benefit. If this is within the confines or under the house and does not visually change the appearance, then it will be very positive.

Dyanne Howley, Winship resident, believed several object, but will not attend since they do not want to be viewed as a "*bad neighbor*" and do not want the repercussion. She further believed it is not a comfortable position to be in. Mr. Abrams pointed out that it was his observation that on issues where residents have any grievance, the "silent" minority usually has the loudest voice.

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

Council Member Russell added that the package included examples of properties that were previously developed. The bulk of the homes would not fall within the exemption. He regards this as being a relatively minimal change and there will still be many that have to go through the variance process. This will create a streamline method for those making a minimal change. He further stated that several will still need to go through the regular variance procedure.

Mayor Marin asked if they considered limiting the amount of permits under this new procedure on an annual basis, which occurs on condo conversions in San Francisco. Council Member Russell noted that they could limit the number of approvals. Senior Planner Semonian added that 9-months between permits is the standard requirement for applications for building permits. Councilmember Russell indicated that in terms of applications, if needed, the Council can limit the number of applications submitted per month.

Council Member Hunter asked if any HLO individuals attended these workshops. Council Member Russell encouraged all to voice views in support or oppose and several that were uncomfortable still participated in the process. Detailed comments were presented, so there was a lot of opportunity for residents to participate. He further stated that the underlying process is to create a balance.

Council Member Strauss expressed concern for area that may be added. He is not sure if they should limit the amount of cubic feet. The HLO was developed to keep open space and restrict units and the housing stock was another concern.

June 9, 2011 Minutes

Council Member Hunter believed parking is a great control mechanism and staff's suggested language is appropriate. He is concerned about the HLO and is not sure how to make that fair. Council Member Strauss concurred.

Mayor Pro Tempore Small stated it gets down to balance. There is space that should be available to residents and it does exist, especially for those looking for additional storage. Then it must be balanced with the impact on a neighborhood. They must make sure the parking issues are absolutely stringently addressed. It could be a space used for an au pair. 70% of the letters are in support as long as it does not impact the neighbors. The dynamics are changing as well. She is not sure if parking is going to control the issue or if they should look at a percentage of the total increase to FAR. She does not want to necessarily see a 100% floor area increase or even 70%. The workshops have been great and everyone has done a great job, but they must think through as many consequences as possible.

Mayor Martin believed the big question is whether the Council is ready to act on this matter tonight or deliberate further. Council Member Hunter desired more deliberation. Council Member Strauss did not want to create the appearance that they are rushing this matter. It is about transparency in regard to Item No. 27 and Item No. 28.

Council Member Russell did not have a problem with however long it takes. Specific solutions must be offered in order to work around. He must have some guidance as to what one is trying to achieve before they start drafting. He has a sense that the Council is not confident or the matter has been fully vetted and it must be brought back. He desired defined areas that can be addressed.

Mayor Martin in general liked the ordinance. His only concern is about a situation where the FAR may be doubled and it would be excessive and it would create an impact. He is not sure the best way to modify the ordinance whether it is a percentage or reducing the amount of FAR. Council Member Russell stated this is an issue of excavation. Several around Town have a basement already used to store wine and if that is already finished off, he does not care how big that space is. When excavating a change is made, and the question is how much change is going to be allowed. He agreed to come back next month with an additional limitation. He suggested 50 cubic yards and a maximum percentage of 20%. Mayor Pro Tempore Small believes it makes it more acceptable in a hillside lot if they stay within a certain percentage.

Council Member Hunter wanted to review the HLO again. Council Member Strauss agreed that one-year rather than two years in regard to the amnesty period. He suggested 6 ft. 6-in. rather than 5 ft. Council Member Hunter stated that when coming in for additional space, applicants must fill that parking requirement as suggested by staff. He further believed they must build in discretion.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to continue the matter to the July 14, 2011 Town Council meeting. Motion carried unanimously.

28. Town Council to consider recommendation of Planning Commission and introduction of Ordinance No. 624 An Ordinance Amending Title 18 "Zoning" of

the Ross Municipal Code to Allow Certain Finished Basement and Attic Areas for Storage and Living Space.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to continue the matter to the July 14, 2011 Town Council meeting. Motion carried unanimously.

29. Town Council sitting as Planning Commission, to consider Ordinance No. 625 An Ordinance amending Municipal Code Chapter 18.42, Second Units, to add the following: a.) a discretionary review process to allow larger second units, construction of new second units on second stories, and two second units on a single family lot, all subject to design review; b.) a discretionary review process to allow a floor area ratio bonus for property owners who agree to deed restrict their second units to be affordable to very low income households, subject to design review; and c.) an amnesty period for property owners to legalize existing illegal second units.

Project Planner Christine O'Rourke discussed an ordinance that would allow the Council greater flexibility to review and approve second units. The proposed ordinance establishes a new discretionary review process that would allow the Council to grant exceptions to the existing second unit development standards and allow units up to 1,200 sq. ft., newly constructed units on second stories, and two second units on a lot, subject to design review. The ordinance also allows the Town Council to grant a 500-square-foot floor area bonus to property owners who agree to deed restrict their newly constructed second unit to be affordable to a very low income household. Deed restrictions would be in effect for 20 years. Hillside property owners would only be eligible for the floor area bonus if their lot is at least 20,000 sq. ft., has adequate water supply for firefighting purposes, and has the minimum parking required for the zoning district. Staff further recommended that the Council, sitting as Planning Commission, should receive public input, make modifications to Ordinance No. 625 as necessary, and recommend Town Council adoption of Ordinance No. 625.

Council Member Russell believed the attic and basement requirements should be applied to second units to the extent a second unit is a basement. He further believed it should be added for consistency as well. Project Planner O'Rourke responded in the affirmative.

Mayor Martin discussed the nine properties since 2008 and asked staff if all have been built. Project Planner O'Rourke agreed to review since those permits would have expired by now.

Council Member Hunter asked about second units, knowing that second units help fulfill the Housing Element requirements, he wondered for an existing second unit what would be the rationale for not allowing those. Council Member Strauss believes it goes back to the property and there may be an impact on an adjacent neighbor. In some cases it may be an impact and others will have no impact.

Council Member Russell stated that in terms of findings with attics and basements it addresses these issues. Primarily the issue is parking, which will address the underlying concern.

June 9, 2011 Minutes

Mayor Pro Tempore Small believed the impact of three different families on a particular area could be impactful. Some could be negatively impacted by noise and traffic. Project Planner O'Rourke explained that findings are included that it does not create a significant adverse impact.

Mayor Pro Tempore Small is concerned about bonus space on a hillside lot. 7 Woodhaven did not get built, but there was a lot of concern over that 1100-square-foot second unit. That particular second unit was excessive. She is concerned about the 500-bonus sq. ft. on a hillside lot. Council Member Strauss asked staff on any lot, is 500 sq. ft. the right number. Project Planner O'Rourke explained that it is up to 500 sq. ft. and findings must be made. Staff added that it could be less. The idea is to find a real incentive to convince people to move forward with a deed restriction. Staff further explained that if it is very restrictive the Town will not receive any.

Council Member Russell is confused as to whether approval is proposed to be done to go through the Council. Project Planner O'Rourke explained that State law requires a process whereby staff can approve second units and standards are specified. The exceptions are for applications staff cannot approve, if over 700 sq. ft. and want a second story or over two units. This creates an avenue for the Council to review. The Council would provide the exception, not staff. It provides an opportunity to make an exception and not provide a variance.

Mayor Pro Tempore Small noted that on page one of the staff report, if they meet Item Nos. 1, 2 and 3, then staff could approve. Town Attorney Greg Stepanicich noted that it is mandated by State law that it must be a ministerial process.

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

Mayor Martin agreed making this ordinance consistent with the attic and basement requirements make sense, so this matter should be continued as well in order for staff to make some modifications. The Council agreed.

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Martin seconded, to continue the matter to the July 14, 2011 Town Council meeting. Motion carried unanimously.

30. Town Council to consider recommendation of Planning Commission and introduction of Ordinance No. 625, An Ordinance Amending Municipal Code Chapter 18.42, Second Units, to Allow a Discretionary Review Process and to Provide Certain Exceptions to Second Unit Development Regulations.

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Martin seconded, to continue the matter to the July 14, 2011 Town Council meeting. Motion carried unanimously.

31. No Action Items:

June 9, 2011 Minutes

- a. Council correspondence received - Continued to next meeting
- b. Future Council items
 - * Attics and Basements
 - * Second Units
 - * MEA
 - * Street Tree Committee
 - * Death of Valley Oak
 - * Conflict of Interest

The Council continued Item No. 32 due to the late hour to the next Town Council meeting.

32. Discussion of the five Town Council goals for FY 2010-2011 developed at the Town Council retreat and the implementation of these goals.
 - a. Attic and basement regulations
 - b. Right-of-way regulations
 - c. Approach to future Public Safety facilities and organization
 - d. Downtown, including commercial district and interface with Ross Common and Lagunitas, signs and parking
 - e. Town and Marin Art & Garden Center relationship

Mayor Pro Tempore Small recused herself from the next agenda item in order to avoid the appearance of a conflict.

33. 191 Lagunitas Road, Extension of Time for Variance, Design Review, Hillside Lot/Hazard Zone 3 Use Permit No. 1725
Paris and Martha Royo, 191 Lagunitas Road, A.P. No. 73-211-06, R-1: B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Unit/Acre). Request for a second one-year time extension to May 14, 2012 for the project approved May 14, 2009, for a demolition permit to remove existing single-family residence, guesthouse, pool and cabana (5,471 square feet of floor area). Design review and hillside lot/hazard zone 3 use permit to allow construction of a new 2-story residence and basement level garage, swimming pool, and 1,116 square foot, detached, guesthouse/workout room. 1,603 cubic yards of cut and 1,671 cubic yards of fill were approved. A variance was approved to build a driveway structure and trellis within the west yard setback (25 feet required, 3 feet proposed). A tree removal permit was approved to allow the removal of 5 trees less than 18" in diameter. A Mitigated Negative Declaration of Environmental Impact was adopted for the project.

Lot area	136,289 square feet
Existing Floor Area Ratio	6,245 square feet (4.6%)
Proposed Floor Area Ratio	9.097 square feet (6.7%)*
Existing Lot Coverage	2.8%
Proposed Lot Coverage	4.0% (15% permitted)

**The Town calculated the lot slope as 33% in 2009. The 2009 Town Hillside Lot ordinance recommended a maximum floor area of 9,148 square feet.*

Senior Planner Elise Semonian explained that the approval was valid for one year and received a one-year time extension. Staff recommended that the Council deny the extension request since it is likely that the project does not comply with the current Hillside Lot

June 9, 2011 Minutes

Ordinance (HLO) floor area limits and the project does not comply with the current HLO side yard setback requirements.

Council Member Hunter indicated that he made the suggestion on moving forward and what he meant was that anyone in that same position whether it be first extension or second extension, they were approved or received their first extension under the old rules, and to change the rules mid stream is not fair. He further believed out of fairness, all should be treated the same. The Council concurred.

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

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to grant the one-year time extension at 191 Lagunitas Road with the understanding that no further extensions will be granted. Motion carried unanimously. Small absent.

Conditions - 191 Lagunitas Road:

The Council approved the time extension.

Mayor Pro Tempore Small reconvened her position on the Town Council. Mayor Martin recused himself from the next two agenda items in order to avoid the appearance of a conflict.

34. 18 Canyon Road, Extension of Time for Variance and Design Review No. 1655 Douglas Abrams, 18 Canyon Road, A.P. No. 72-031-27, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre) A second one-year time extension to May 14, 2012, for a variance and design review application approved May 14, 2009, to allow 1.) conversion of 216 square feet of garage storage space to living space within side yard setback (25 feet required, 8 feet proposed); 2.) expansion of master bedroom at main level and addition of two new bedrooms at upper level within front yard setback (25 feet required, 5 feet proposed).

Lot area (less road easement)	23,598 square feet
Existing Floor Area Ratio	13.2%
Proposed Floor Area Ratio	14.8% (15% permitted)
Existing Lot Coverage	10.7%
Proposed Lot Coverage	11.2% (15% permitted)

The existing residence is nonconforming in setbacks, maximum height, and number of stories. The project was exempt from the Hillside Lot Regulations in effect in 2009.

Senior Planner Elise Semonian stated that based on the previous discussion in regard to fairness, staff recommended that the Council approve the time extension.

Mayor Pro Tempore Small 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 Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve the second, one-year extension at 18 Canyon Road. Motion carried unanimously. Martin absent.

Conditions - 18 Canyon Road:

The Council approved the time extension.

Council Member Russell recused himself from the next agenda item in order to avoid the appearance of a conflict.

35. 5 Fernhill Avenue, Amendment to Design Review No. 1777

Albert and Kimberly Berger, 5 Fernhill Road, A.P. No. 73-091-04, R-1:B-20 (Single Family Residential, 20,000 acre min. lot size), Low Density (1-3 Units/Acre), Zone A (100-year floodplain). Request to amend an April 17, 2006, Town Council design review approval, which permitted construction of a new 3,869 square foot two story residence, attached 414 square foot two-car garage, and accessory structures. The applicant requests the Council to rescind a condition of approval that requires the entry drive to be surfaced with decomposed granite to allow the area to be resurfaced with pervious pavers. The project includes sloping the driveway towards new runoff retention areas in the existing landscape as a backup method to distribute run off.

Lot area	25,958 square feet
Existing/proposed Floor Area	14.9% (15% permitted)
Existing/proposed Lot Coverage	14.2% (15% permitted)
Existing/Proposed Impervious Areas	16.4%

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

Council Member Hunter asked staff if a culvert is present. Senior Planner Semonian explained that it is just a pond area for the water to percolate.

Mayor Pro Tempore Small asked staff if they are providing additional areas to retain water runoff than the previous plan. Senior Planner Semonian explained that staff did not believe the prior drainage plan was fully installed.

Michael Yandle, landscape architect, explained that it is a straightforward application to change the driveway into permeable pavers. This is a Belgard Subterra system with specific filler for those joints that goes over a specific drainage that allows the water to percolate. They developed systems in the center island area for retention as well as two separate areas that are gravel sump that will take water and move it into the corner of the site. The entire driveway surface will percolate on its own as backed by Town Hydrologist Matt Smeltzer. He added that 100% redundancy is built-in. The English oak will be removed and replaced with Quercus Rubra - Red oak, which is the tree that the Tree Committee preferred on Fernhill. They will plant two large Ascollano Olives to provide a buffer from the street and change the smaller palm to a taller Phoenix Canariensis - Date palm. He then provided photographs for the Council's consideration. He then added that if the Council feels the aesthetics is appropriate, the Town Hydrologist supports and findings can be made.

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

Judge Doug Moore, Shanley Lane resident, objected to amending the design review, which was approved four years ago after a full and complete discussion. His home flooded in 1982 with 57 inches of floodwater and again in 2005 with 42 inches of floodwater. He raised his house two feet above the flood plain and believed this is the 14th time he addressed the Council either in person or by letter since the 1982 flood about the piecemeal approach to drainage. He developed a good deal of the evidence in the Ross Valley floodgates and some of the damming evidence that would come out against the Town was related to this kind of piecemeal approach to drainage. This Town spent \$1.5 million, which is 35% of the total settlement of the Ross Valley flood case in contrast to San Anselmo. In 2006, he objected and argued with former Public Works Director Mel Jarjoura about the re-grading of the lot and he indicated that it was a vegetated swale as Town Hydrologist Matt Smeltzer states in his report that will handle the water coming off the house. After the house was built, the first winter the patio and eastern side of the property was inundated, so he questioned the science in parts of Town Hydrologist Smeltzer's report. Also, the Council is only present for a few years and then others are elected, so no one would remember "*Lake Madden*." Dr. Madden had a gravel circular driveway and every winter there was a lake and that was the retention basin for the water coming off the property. In the old days, plans were taking to neighbors. At 10:17 p.m. tonight he reviewed the report from Town Hydrologist Smeltzer, which he did not agree with it. There is a very marginal drainage system in that area, particularly on the south side of Fernhill.

Frank Malin, Fernhill Avenue resident, thanked the Town Council for being champions of flood mitigation in Ross Valley. The Council have been leaders in that regard, which he appreciated. He explained that lower Fernhill is a very flood prone area. They conduct a tremendous flow of water. Very small changes in the water situation can tip things over for the residences. 5 Fernhill for decades was an excellent detention basin. Lake Madden had ducks, but in 2006 the property was changed and a large house was moved forward and the driveway area was re-graded, so it was higher so no lake would form. Now all the water runs off, some runs down. It is very clear the experts who evaluated this maneuver in 2006 were clear that runoff would be less, but that did not happen. Preamble pavers will be placed over a very large area on this property. Plans by experts will show a convincing diagram showing how flooding is mitigated, but with large flows of water and sheeting of water, none of these models apply. He hopes the Council continues to be champions for flood mitigation.

Albert Berger, owner, explained that he has been renting in Ross since August of last year. His family has been looking for a place in Ross for several years. They were thrilled this property came on the market. They viewed this home as a forever type home for their family. Their children attend Ross School. They would never want to cause any additional harm to any neighbors and want good relations with their neighbors. The gravel driveway presented problems. The treatment is very uneven. There are varieties of different rocks. It has created damage to the home in terms of inside interior hardwood floors and tile, which are continually getting scratched. Safety is also a concern. He learned quickly that Fernhill is a very well traveled street in Ross. A surface like this provides an environment where his children cannot play sports or ride their bikes, so they found an alternative to meet flooding issues and make the home more enjoyable. He believed they found a surface to address all concerns. Studies were provided in the packet that the material works as good or better than

June 9, 2011 Minutes

what is present today. They received favorable findings from staff and the Town Hydrologist, so they felt this proposal is fair and equitable to all parties.

Council Member Hunter stated that in spite of the scientific evidence, he is very influenced by the testimony from the two neighbors. He also understands the children riding on the street. This is seemingly a small problem that can be a big problem. The Malin's and Moore's have suffered through the years, so he desired more thought on this matter.

Council Member Strauss is disturbed to hear that the gravel is not percolating, as it should since the Town Hydrologist noted that it would improve the situation.

Mayor Pro Tempore Small stated gravel is present now, but with decomposed granite, bicycles will work. She expressed concern for the neighbors. If runoff areas can be created in the landscaping as well as show how they are able to handle the additional runoff she would feel more comfortable moving forward. She is trying to find a solution where the runoff can be handled. Neighbors have been impacted by that change, so she is concerned about changing this condition.

Council Member Strauss stated on the other side there is an approved situation. Mayor Pro Tempore Small stated if the pavers work well, then it can be more effective than granite. She then pointed out that in 2006 when this condition was made, it was due to the overall concern about runoff and drainage, not based on scientific evidence.

Landscape Architect Yandle noted it is a LEED certified product and the best he has seen to date. There is a specific aggregate over a permeable base. At the end of the day, the goal is to not increase flow off of ones site and contain water onsite. If a product is percolating and backing it up with detention areas that are 100% redundant to that, then they have met the mark on retaining water onsite. He believed the Council must look at the science. No data supported increased runoff. Town Hydrologist Smeltzer verified their information and proposal, so that is what they must rely on. He further noted that the entire front of the property will retain water.

Council Member Hunter asked if a specialized contractor installs the surface. Landscape Architect Yandle noted that Belgard manufactures the product, but NPS (*National Paving Systems*) installs. He further that all information was in the submittal packet for the Council's consideration.

Mr. Malin expressed concern for the maintenance in regard to the cracks. Overtime, dirt builds up in the cracks. To make this property useful for children would be to remove the large grouping of plants in the middle, expand that area with old fashion grass and make the driveway area much smaller in volume and have it be regular gravel. He is not sure what is present now. He further believed clean gravel would be best.

Mr. Moore stated that drainage on the south side of Fernhill that goes into a catch basin and daylights out into the creek, backs up when it rains. This is more water traveling into that system that has no place to go when it rains.

Mr. Berger noted that provisions are included to treat as an impervious surface and if there was any blockage or debris, it still passed the test. At this point there is a tremendous issue of flooding, he felt this will help the situation since the current surface is not working.

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 Strauss feels there is enough knowledge in pavers that they are improving the situation. They are capturing that additional water onsite with 100% redundancy built-in. They are not making the situation worse. Landscape Architect Yandle noted that the plant will be removed from the center and grass will be added. He further noted that they are not increasing the flow off site. Council Member Strauss stated that given they are improving the situation, he guessed he would be in favor. Flooding is a regional issue and they must continue trying to make it better.

Council Member Hunter asked if there is a swale being created that is not currently present. Landscape Architect Yandle noted that Town Hydrologist Smeltzer suggested deepening the depth of the gravel so it becomes a retention area to either side. Council Member Strauss asked if the amount could be reduced. Landscape Architect Yandle noted that parking is a premium. Town Hydrologist Smeltzer calculated this as if it was asphalt. Council Member Strauss felt it would be a nicer yard with more green rather than so much hardscape.

Mayor Pro Tempore Small stated that the gravel must be maintained, so regular maintenance is needed. Part of the problem on Fernhill is that for many years there were ditches and trees and then the areas became filled in with parking places. Landscape Architect Yandle noted that Town Hydrologist Smeltzer's recommendation is that they over excavate that gravel with Class 2 permeable. He did the calculation and most is coming off the crown of Fernhill or down Fernhill. It will not be drainage off the driveway. Staff also suggested a trench drain off the entry gate.

Council Member Hunter stated that they have relied on Town Hydrologist Smeltzer for a long time and his advice has generally been good. It sounds as if this will be an improvement, so he would vote for approval.

Mayor Pro Tempore Small agreed. She understands this is very tough for all residents, but they have relied on Town Hydrologist Smeltzer and he has been very reliable in his studies and recommendations to the Town. In her short period of time she cannot think of any instance where the Town Hydrologist has led the Town down the wrong path. These are significantly different from other products she has seen. She would favor asphalt in front from the recommendation from Public Works Superintendent Robert Maccario in regard to drainage.

Mayor Pro Tempore Small asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to approve the Design Review Amendment at 5 Fernhill with the asphalt in front with all conditions and findings as outlined in the staff report. Motion carried unanimously. Martin/Russell absent.

Conditions - 5 Fernhill:

The following conditions shall be reproduced on the first page(s) of the plans submitted for Town review:

1. This approval is for paving the existing driveway area with pervious pavers, Belgard

June 9, 2011 Minutes

- Subterra Stone, and work within the right-of-way to connect the driveway to the paved roadway, plant new trees, and restore the drainage capability of the area between the site and the paved roadway.
2. There shall be no net increase in the rate or volume of site runoff. The project shall comply with the recommendations in the letter dated May 26, 2011, by Matt Smeltzer, P.E. Prior to any construction at the site, the applicant shall submit detailed plans to the town that incorporate the recommendations in the letter dated May 26, 2011, by Matt Smeltzer, P.E. The plans shall be reviewed and approved by the town hydrologist prior to construction.
 3. The applicant shall obtain a revocable encroachment permit prior to any work within the right of way.
 4. The proposed landscaping shall be installed prior to project final.
 5. The applicant shall pay all costs for town consultant, such as the town hydrologist, review of the project. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
 6. The surface and subsurface drainage facilities and catchment areas shall be inspected frequently and maintained throughout the project life.
 7. If the drainage facilities required to maintain no net increase in site runoff from the driveway paving are not installed or are not maintained, the Town reserves the right to rescind this approval and require the applicant to restore the gravel driveway surface.
 8. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 9. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
 10. No changes from the approved plans, before or after project final, including changes to the materials and material colors, 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. The applicant is advised that changes made to the design during construction may delay the completion of the project and will not extend the permitted construction period.

Mayor Martin and Council Member Russell reconvened their positions on the Town Council.

36. Adjournment.

Mayor Martin moved to adjourn at 1:37 a.m.

Christopher Martin, Mayor

ATTEST:

Gary Broad, Town Manager