

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, DECEMBER 8, 2011

The community was invited to meet Pat Thompson, new Interim Town Manager, from 6:00 to 6:30 p.m. in Town Hall prior to the meeting.

1. 6:30 p.m. Commencement.

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

2. Posting of agenda.

Interim Town Clerk Linda Lopez reported that the agenda was posted according to government code.

3. Minutes - November

Mayor Small asked for a motion.

Council Member Martin moved and Council Member Hunter seconded, to approve the Town Council Minutes of November 4, 2011 as submitted. Motion carried unanimously.

Council Member Hunter moved and Council Member Martin seconded, to approve the Town Council Minutes of November 10, 2011 as amended. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression.

Charlie Goodman, Sylvan Lane resident, was very surprised to see a new sign on Sylvan Lane that stated, "*cross traffic does not stop.*" The residents on Sylvan Lane have been coming to the Council for the last four years discussing the situation with the Lagunitas Road Bridge, complaining about sight lines. He contacted Ms. Whitlock from W-Trans in Santa Rosa that will be making a presentation on Sir Francis Drake/Lagunitas Road to the Council, and he is hopeful to have Ms. Whitlock study the intersection as well. He further requested that the sign be removed because it is an insult to residents.

Stewart Moody, San Rafael resident, is an admirer of Ross, and as the director of Green Sangha's Rethinking Plastics campaign, he is present to update the Town on the elimination of single-use plastic pollution in Marin County. Ross is a small town, with relatively few businesses using plastic packaging and shopping bags, but small items accumulate and grow large in number. Preserving the beauty of Marin communities is up to everyone. Zero waste is a goal adopted by the JPA on HSW, of which the Town of Ross is a member. Waste costs money and energy, fueling global climate disruption. At last count, Marin County sent 200,000 tons of garbage to RL in one year. While paper, organics and C&D debris represent the largest segments, plastics are a growing proportion of the waste stream. Plastics also pose special risks due to their high litter potential and contamination of composting systems, not to mention toxic abrasion, leaching, and off-gassing, and the imponderable legacy of non-biodegradability. Marin shoppers throw away an estimated 128 million plastic bags/year and 15 million paper bags. In numerous litter studies, plastics bags rank in the top three of most commonly recovered items. A recent study by the City of LA determined that more than \$300 million is spent yearly by taxpayers to clean up litter in the State of California. The cost of litter removal in neighboring San Rafael is

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approximately \$375,000 per year. In the Ross Valley, plastic litter is not only unsightly but also adds to flooding risk. In response, several Marin jurisdictions have instituted measures to reduce throw-away water bottles, plastic bags, and food service ware. Everyone watched with great interest when the County of Marin was sued for its bag-free-and-ban ordinance this January. In August, the Superior Court found in favor of Marin, and next week everyone will know whether the plaintiff will appeal. They are hopeful that this issue will soon be resolved. As the County's Agricultural Commissioner Stacy Carlson said, *"Sooner or later, common sense will have to prevail."* In preparation for that moment, they are asking councils in each municipality to direct staff to examine the model bag ordinance that passed at the County and the County's offer to support in enforcement. The Single-Use Plastics Advisory Committee - a multi-stakeholder group that met six times this spring - has done the major heavy lifting; preparing draft ordinances, staff reports, powerpoint presentations, and CEQA documents. An education team came out of that Committee and is prepared to assist with outreach to businesses as well as a very full plate of public presentations planned for this winter. An easy way to start is to proclaim Saturday December 17th, and every Saturday through April, BYO Bag Day.

Loraine Berry, Ames Avenue resident, noticed standing water in the culvert across the street from her home and believes there is a water leak. She expressed concern for mosquitoes during the summer months. During the winter months the ground is already saturated. She contacted MMWD as well as the Town and no one is addressing the matter. She further believed when it affects the neighborhood and Town something must be done.

6. Report from Mayor.

Mayor Small congratulated Ross School for the completion of the gym grand opening on December 5th. Ross School is interwoven in the fabric of the Ross community in so many ways and the new facilities now match the fine education received by Ross children.

Thank you to Ross Recreation Auxiliary for the Town's holiday lighting event. From the Branson Choir to the participation of the downtown businesses, it was an event enjoyed by all. She hopes this will become an annual tradition.

Much appreciation goes to the Ross Property Owner's Association (RPOA) for the lovely holiday decorations seen throughout downtown. They have also set up a collection barrel for Ritter House in the post office. Ross Fire Department is once again coordinating the Toys for Tots holiday program with the U.S. Marine Corp. Collection barrels are located in the Public Safety building.

Saturday, December 10th, is the 25th Annual Tour de Noel House Tour, a Marin favorite. It is well worth taking a few hours to visit four beautifully decorated homes with all proceeds going to local charities.

With the holiday season upon us, please be respectful of the 15 minute postal patron parking and postal employee parking. Finally, she would like to take this opportunity from her family to yours, to wish everyone a happy and healthy holiday season.

7. Introduction of Interim Town Manager Patricia Thompson/Town Manager Report.

Mayor Small introduced Interim Town Manager Patricia Thompson and indicated that she comes with 30 years of government experience, at least 25 as a Town Manager. She has been an interim manager four times in the last five years. Her expertise and guidance will enrich the Town and staff and ensure the residents a really professional step forward. Mayor Small

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thanked Interim Town Manager Thompson and believed someone was looking over the Town when she became available.

Interim Town Manager Thompson reported that in the last three weeks she met with staff, department heads and the Council. She also had an opportunity to meet Ross Rec Director Pam Riley and her staff as well as the new School Superintendent Chris Carter. She spent time with the Town's new Accountant Liz Ford and met with Ed Schuler who is from the Town's investment firm. On a good note their accountant indicated that they already assembled all the appropriate reports to turn over to the auditor, so in early spring they should have the audit completed. On Monday, she is meeting with the franchise group to review the rate request package from Marin Sanitary. She is also meeting with the Town's risk management authority through ABAG to review potential grants in regard to trees and sidewalks. She is working with Fire Chief Tom Vallee on the Community Protection Committee and reviewing the JPA as a potential opportunity with Ross Valley Fire. She is getting to know first hand what it is like to be a "hands on" manager in Ross. She also thanked Interim Town Clerk Linda Lopez and Senior Planner Elise Semonian for their assistance and cooperation over the last few weeks. She also thanked Public Works Director Bob Hemati for his excellent response in regard to the mini disaster on Lagunitas Road. She further looks forward to working with Ross.

8. Commending Loraine Berry for 15 years of service to the Marin County Commission on Aging.

Mayor Small commended Loraine Berry for 15 years of service to the Marin County Commission on Aging. Ms. Berry has not only been extremely active in the Commission of Aging, but always extremely active in the Ross community. Mayor Small presented Ms. Berry with a token of their appreciation.

9. Report from Public Works Director.

- **Sir Francis Drake Blvd/Lagunitas Intersection Project update**

Public Works Director Bob Hemati had numerous public meetings with Marin Art & Garden Center to discuss the final details, which has been reduced to doable items that will fit into the budget. Staff authorized Coastland Consultant and W-Trans to develop their final preliminary design to be reviewed by the Council in January.

- **Bolinas Avenue drainage and traffic calming update**

Public Works Director Bob Hemati sent RFP's (*request for proposals*) to several consultant firms and expects responses next week with interviews to start in January. Staff is working closely with San Anselmo's Public Works Director. There are many issues that contribute to drainage and traffic calming. In terms of the Seminary project, they are imposing a lot of remediation of the drainage system. Also, there is potential for a County contribution. It will be a foursome effort to make this a very efficient system.

- **Water Valve Leak – Lagunitas Rd/MMWD**

Public Works Director Bob Hemati investigated the water valve leak and contacted URS immediately. Staff explained that the bridge was not touched, but the underlayment under the road was washed away. Town Hydrologist Matt Smeltzer and Miller Pacific Soils Engineer were involved as well in regard to the compaction being according to Ross's specs. Staff further noted that MMWD is paying for all cost.

10. Report from Police Chief.

- **Citizen Classes**

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Police Chief Erik Masterson reported that informational classes were offered last month with the gracious offering of Ross School for their facility. Police Sergeant Gianfranco Campa and Police Officer Joshua Schulman taught the first class on I.D. crimes and theft protection. The next class will be on drug identification after the first of the year.

II. Report from Committee Heads.

Community Protection - Council member Hunter

- **Report on November 18th Community Protection meeting**

Council Member Hunter reported that the Kentfield Fire Protection District Board of Directors unanimously decided at their November meeting to reject the Town's proposal to form a JPA (*joint powers authority*.) The decision means that Ross will now move forward with fire consolidation plans with the Ross Valley Fire Department. The Community Protection Committee and Fire Chief Tom Vallee are working with Ross Valley Fire to develop cost sharing recommendations and a preliminary plan to handle assets and liabilities. The Community Protection Committee will continue to keep residents informed and provide updates at the Council meetings as the process moves along.

- **TAM update**

Council Member Hunter has been a recreational cyclist for years, but also has been interested in looking at bikes as transportation and begun to review bike sharing programs. He visited Minneapolis and they have a "Nice Rides Minnesota," which is a bike sharing program. Rather than use taxi cabs, he used the bike sharing program during his visit in Minnesota. In talking with Executive Director of Nice Rides, he found out the biggest name in the bike share world is Alta Bike Share in Portland. After conversing at some length with an individual in Portland, he found out that Alta Bike Share is a branch of Alta Planning & Design here in San Rafael. He met with the founder, Michael Smith, about recommended first steps and received a rough quote of what a feasibility study on a bike share program in central Marin might cost. The program would run from San Rafael out through Ross Valley and hook into the Ferry Terminal. It is in the neighborhood of \$25,000. The TAM Chair and Executive Director have agreed to put the issue on the January Executive Committee meeting agenda to see if some planning funds could be put towards the study in the near term. Due to the membership in TAM this is an opportunity to take the lead on a meaningful environmental and health issue.

General Government - Council member Martin

- **Report on December 1st General Government meeting**

Council Member Martin reported that last week the General Government Committee had its first Brown Act compliant meeting. Council Member Rick Strauss and Interim Town Manager Patricia Thompson participated. They drafted and adopted a state of purpose, which reads, "*The General Government Committee creates a public forum to consider issues related to the effective and efficient administration of the Town's General Government while ensuring it is responsive to the values and priorities of its residents. The General Government Committee provides an opportunity for developing policies, resolutions, ordinances, contracts, etc. for further discussion at a regular Council meeting. Other than recommendations, no official vote or action is taken at committee meetings.*" The next meeting is on January 26th at 9 a.m. They agreed to take a stab at defining what all committees are charged with and present at the next Council meeting and allow each committee the ability to review, reject or modify in order to have continuity. Those definitions could be part of his Council goal of drafting a Ross Town Council procedure manual.

Public Works - Council member Strauss

- **Report on December 2nd Public Works meeting**

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Council Member Strauss held a Public Works meeting to provide clarification in regard to the Sir Francis Drake Boulevard/Lagunitas intersection. A presentation will occur in January. He noted that the telephone pole at the sidewalk would be very expensive to remove and next month they can discuss relocating the pole. The consultants are taking everything into account and more information will be provided in January.

12. Report from Ross Property Owners Association.

Charlotte Levin, RPOA, discussed the back gate on Allen Avenue being locked at Ross School and residents desired the gate to be unlocked. Mayor Small agreed to contact School Board member Bob Dickinson in that regard. RPOA also expressed concern for lights being left on at the multipurpose room. Mayor Small agreed to investigate. RPOA hopes the residents of Ross are enjoying the decorations around Town.

13. Flood Control Report.

Council Member Martin reported that the California State Water Resource Board has not announced the awarding of its funding that should include the Phoenix Lake detention basin plan. The County believes the delay will not affect the awarding of that project. The County has also selected a consultant to work with San Anselmo concerning the replacement of several bridges for flood control purposes. After San Anselmo has the opportunity to meet with the consultant they will contact Public Works Director Bob Hemati and begin to look at the three bridges the County would like to replace in Ross.

14. Marin Sanitary Service update by Patty Garbarino, President, on food residential waste program.

Marin Sanitary Service President Patty Garbarino provided the Council with an update on the residential food waste program that was implemented in Ross this past March. Garbage truck drivers report participation is increasing and green cans are at the curb fairly consistently on a weekly basis. Yard waste tonnage has increased approximately 50% since the residential food waste program started, compared to the same period in 2010, but it is unclear how much of that is due to food waste being deposited in green cans and how much is due to the new weekly service. Prior to March, green cans were picked up every other week.

Outreach Coordinator Kim Shelby has been marketing the program to residents and pursuing outreach programs in the community and at Ross School. Overall, the feedback has been positive. Residents are reminded to place all food waste and food soiled paper products in their green cans. Food waste will then be composted, rather than deposited into the landfill.

Mayor Small opened the public comment on this item.

Loraine Berry, Ames Avenue resident, desired more than two cans for green waste. Marin Sanitary Service President Garbarino responded that a third green can is available, if so desired.

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

15. Report from Ross Recreation Director Pam Riley and discussion/approval of candidates for Committee membership

Ross Recreation Director Pam Riley presented Ross Recreation's annual report to the Town Council. Despite the poor economy, revenues exceeded those of previous years and enrollment numbers were up. Fiscal year 2010-2011 revenues came in just over \$1,000,000, and operating expenses were approximately \$933,000. Ross Recreation activities for last year included

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improving the website and on-line registration process, expanding outreach to Bacich and Kent schools, and revamping their preschools. Ross Recreation now has two licensed preschools at the Marin Art & Garden Center and St. John's Church, with seven teachers and 59 children participating. The summer camps at Kent Middle School and fall programs were very successful, with approximately 900 children participating during each session. Ross Recreation then requested that the Council:

- * Approve Slate of Board of Directors.
- * Keep the low lights outside the Ross Recreation office on in the evenings for the safety of staff and for evening meetings.
- * Keep Ross Recreation informed in advance of closures of Town facilities such as tennis courts and fields, so as to not jeopardize their programs.
- * Retain the same locations for the temporary fields for both T-Ball and Rookie and Farm League.
- * Consider new location for the dog park. Dogs should not be in such close proximity to the school and after school activities. For both health and safety reasons, it makes sense to move the dogs across the street by the post office or closer to the tennis courts.

Council Member Hunter asked Ross Rec if they are current on their insurance, regular reporting to the Town and Ross Rec's share of the maintenance cost. He noted that there is only \$12,000 of insurance shown as an expense. Ross Rec Director Riley explained that their insurance is based on salaries paid out, so it is based on their percentage of salaries incorporated and that is what the liability insurance is based on. She further noted that their insurance is current.

Council Member Hunter asked Ross Rec if their \$17,000 key fund from the tennis courts would be donated to the Town. Ross Rec Director Riley explained that the money is set aside for the tennis courts. She did not recall indicating that the key fund would be donated to the Town. Mayor Small explained that they had a conversation because the \$40,000 was not able to be included in that grant because they could not complete the project. They discussed some of that \$17,000 coming to the Town to help pay for that \$40,000. Right now, Ross Rec's estimation for last year is around \$4,100. At the time, the conversation was that Ross Rec was not sure of their annual expenses and wanted at least two years of annual expenses in their account. The other money outside of that could be available for the tennis courts. With the slip sheet system, it should be good for approximately 8 to 10 years. She suggested that the Council look at what is collected in 2012 and add that to the Ross Rec kitty. Then the Council can revisit this in May or June after the key collection to see how much money is collected and how much money could be contributed to the cost. The Town spent \$40,000 directly from the Town's general fund to pay for the cost because the project could not be completed within the grant. Ross Rec Director Riley did not believe there would be any problem and agreed to review in May or June.

Council Member Strauss asked Ross Rec about improvements to the field in regard to the gap between the new and old lawn. Ross Rec Director Riley received an estimated bill, so if that is agreed upon by the three entities it will be split three ways. Council Member Strauss asked if Ross Rec would consider using funds to help beautify the overlay plan for the downtown. Ross Rec Director Riley agreed to discuss.

Council Member Strauss asked Ross Rec if the lockers on the field could be relocated. Also, the T-Ball location is not the most ideal location and he was surprised to see all the chain link fencing. He further noted that they must consider a permanent or the most ideal T-Ball location. Ross Rec Director Riley hoped to have a T-Ball field installed before February and would appreciate any suggestions. Mayor Small agreed to add a discussion about the temporary T-Ball

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location to the January Town Council meeting. Ross Rec Director Riley believed it would be great to have space in the gym for the lock boxes.

Mayor Small 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 determine the temporary ball fields in January and agreed to approve the slate for the Ross Recreation Board of Directors for fiscal year 2011-2012.

Mayor Small asked for a motion.

Council Member Martin moved and Council Member Strauss seconded, to approve the slate of candidates for the Ross Recreation Board of Directors for Fiscal Year 2011-2012. Motion carried unanimously.

Council Member Martin commended Ross Rec Director Riley and staff for providing this Town with wonderful recreation amenities.

Mayor Pro Tempore Russell suggested looking into what Ross Rec actually is and possibly consider a 501(c)3. Ross Rec Director Riley noted that there is an interest in becoming a 501(c)3.

16. Consent Agenda.

The following four items will be considered in a single motion, unless removed from the consent agenda:

a. 6 Hill Road, Request for 2nd One-Year Time Extension, No. 1769

Matt and Courtney Seashols, 6 Hill Road, A.P. No. 73-172-05, R-1:B-10 (Single Family Residence, 10,000 Sq. Ft. Minimum Lot Size), Medium Low Density (3-6 Units/Acre). Request for a second one-year time extension to February 11, 2013, for the project approved February 11, 2010, for a variance, design review and demolition permit for a significant remodel and small addition to an existing residence. The project involves modifications to each elevation of the residence and a change to the roofline, which would increase the maximum ridge height by 5 feet. A covered entry is proposed within the front yard setback (25 feet required, 6 feet proposed). The project also includes modifications to the roof of the garage, located within required setbacks (25 feet required, 0 feet existing and proposed), which would increase the maximum ridge height by 3 feet. The applicants propose a 217 square foot addition to the north side of the residence and new second floor decks on the south elevation. The landscape plan includes approximately 185 linear feet of new, terraced, retaining walls, ranging from 1 to 5.5 feet in height. The applicants propose to create a new lawn area within the south side yard and modify existing terraces within the southeast corner of the site, within required setbacks. The site grading includes 76 cubic yards of cut and 123 cubic yards of fill.

Lot area	12,731 sq. ft.	
Existing Floor Area	23.5%	
Approved Floor Area	25.3%	(20% permitted)
Existing Lot Coverage	19.6%	
Approved Lot Coverage	21.8%	(20% permitted)
Existing Impervious Areas	41.2%	
Proposed Impervious Areas	46.2%	

The existing residence, garage and patios are nonconforming in setbacks. The project was exempt from the Hillside Lot Regulations in effect in 2009.

Mayor Small 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.

6 Hill Conditions:

Approve the requested time extension with the findings and conditions in the original approval dated February 11, 2010, and the following additional conditions.

1. The project shall comply with the Town Stormwater Management Ordinance, Ross Municipal Code Chapter 15.54. Prior to issuance of the building permit, a drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. Downhill neighbors will be provided with notice of receipt of the plan and an opportunity to review and comment on the plan. The plan shall be designed, at a minimum, to produce a net decrease in peak runoff from the site compared to pre-project conditions. The plan shall be designed, at a minimum, to produce no net increase in peak runoff from the site compared to pre-project conditions (no net increase standard). As far as practically feasible, the plan shall be designed to produce a net decrease in peak runoff from the site compared to pre-project conditions. Applicants are encouraged to submit a drainage plan designed to produce peak runoff from the site that is the same or less than estimated natural, predevelopment conditions which existed at the site prior to installation of impermeable surfaces and other landscape changes (natural predevelopment rate standard).
 - a. To meet the minimum no net increase standard, hydrologic/hydraulic analyses shall be prepared and submitted demonstrating that the post-development stormwater runoff rates meet the following standard: Total post-project peak flow leaving the site shall be not more than 50 percent of the pre-project construction peak runoff for the two year one hour duration storm, 75 percent for the 10 year one hour duration storm, and 80 percent for the 100 year one hour duration storm.
 - b. To meet the natural predevelopment rate standard, hydrologic/hydraulic analyses shall be prepared and submitted demonstrating that the post-development stormwater runoff rates meet the following standard: Total post-project peak flow leaving the site shall be not more than the estimate peak flow leaving the site under natural, predevelopment conditions (i.e., no impermeable surfaces present).
 - c. The hydrologic and hydraulic analyses shall generally conform to methods developed by the Marin County Department of Flood Control and Public Works.
 - d. The hydrologic analyses shall assume that existing natural areas have a coefficient of runoff, C, of not less than 0.7 and impermeable surfaces have a coefficient of runoff of not less than 1.0. It shall be assumed that the entire site had a runoff coefficient of 0.6 under natural predevelopment conditions.
 - e. For infiltration facilities to be accepted as part of the plan to meet the no net increase goals of this ordinance they must either be located on portions of the Corte Madera Creek floodplain where the USDA has mapped soils of an appropriate Hydrologic Soil unit, or they must be designed to infiltrate stormwater into an engineered fill, or both.

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

- b. Lagunitas Country Club, 205 Lagunitas Road, biennial review for compliance with use permit conditions. A.P. No. 73-211-40 and 073-221-01. Zoning R-1:B-A (Single Family Residence, 1-acre minimum lot size), General Plan designation RC (Limited Specialized Recreational/Cultural). Biennial review for compliance with use permit conditions.

Mayor Pro Tempore Russell asked for a motion.

Council Member Martin moved and Council Member Hunter seconded, to approve the biannual review and determine that the use remains in substantial compliance with the terms and conditions of the conditional use permit. Consent Calendar Item “b” as submitted by staff. Motion carried unanimously. Mayor Small abstained.

Mayor Small reconvened her position on the Town Council.

- c. Town Council action to approve a 5-year services contract with the Town of Fairfax for dispatch and records management services.

Interim Town Manager Patricia Thompson suggested in the future to have a signature line indicating that the Town Attorney has approved. The Council agreed.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve Consent Calendar Item “c” as amended by staff including a signature line for the Town Attorney. Motion carried unanimously.

- d. Town Council action for approval of the agreement to share resources between the Ross Police Department and the Fairfax Police Department.

Interim Town Manager Patricia Thompson also suggested including in the future a signature line indicating that the Town Attorney has approved. The Council agreed.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve Consent Calendar Item “d” as amended by staff including a signature line for the Town Attorney. Motion carried unanimously.
End of Consent agenda.

- 17. Town Council discussion/action to appoint a Town representative to the Marin/Sonoma Mosquito & Vector Control District Board of Trustees for a two-year term to December 31, 2013.

Interim Town Manager Patricia Thompson announced that Iris Winey is interested in serving another two-year term, so staff recommended that the Council appoint Iris Winey to serve as the Town's representative to the Marin/Sonoma Mosquito & Vector Control District Board of Trustees for a two-year term to December 31, 2013.

Mayor Small 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 Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to appoint Iris Winey as the Town's representative to the Marin/Sonoma Mosquito & Vector Control District Board of Trustees for a two-year term to December 31, 2013. Motion carried unanimously.

18. Town Council discussion of easements, including reciprocal indemnifications, with Ross School over portions of Town property on Ross Common for pedestrian access and structures.

Interim Town Manager Patricia Thompson discussed the grant agreement with Ross School governing easements over portions of Town property on Ross Common. These easements were granted in 2009 to the School District as part of the Ross School renovation project. One easement provides for a pedestrian access walkway when School is in session and the other provides for construction of the stage, ramps, landscaped planter and accessory structures. The Grant of Easements spells out the rights and responsibilities of both parties for the use and maintenance of the easements. The document also provides indemnification provisions for the easement areas. In the case of the pedestrian easement, the District will indemnify the Town when the School has a planned activity and when the School is open to the public; at all other times, the Town will retain liability. In the structure easement, the District will indemnify the Town at all times except when the Town of Ross or Ross Recreation is using the stage or structure easement.

Council Member Strauss thought the School would be responsible when the School is in session, but during after school programs, who will be libel. His understanding from reading this document is that the Town would be libel. Town Attorney Greg Stepanicich responded that the School is libel at all times unless there is a Town or Ross Rec activity.

Mayor Small talked with former School Board President Ken Fineman and his understanding was that the School was going to hold all of the responsibility in session or out of session in regard to the stage, ramps and stairs. Only if there is a Town or Ross Rec function would the School not be libel. Mayor Small expressed concern for someone flying off the stage, ramps or stairs and landing on the pedestrian sidewalk, so the actual injury would occur when landing on the sidewalk. Town Attorney Stepanicich believed there could be a dispute that the stage was not properly signed or built to provide for efficient safety and that there is nothing wrong with the pedestrian pathway.

Council Member Hunter pointed out that the stage is an attractive nuisance. Town Attorney Stepanicich indicated that signage is very important and he must review how that is addressed going forward.

Council Member Martin noted that there is Senate Bill SB 264, which provides cities in California with immunity for their State parks provided that the rules are set forth as far as equipment and rules on the course. He then asked if there is any immunity the State provides with skateboarding in general. Town Attorney Stepanicich explained that criteria must be met in order to gain the advantages of that immunity. Those could come into play, but again it will be reviewed on a case-by-case basis. Regarding skateboarding in general, he is not aware of any immunities that would protect cities or towns from skateboarding on pathways or other facilities. The bill applied to certain types of skate parks with various types of controls.

Mayor Small asked staff if continued conversations are occurring with the School. Public Works Director Bob Hemati responded in the affirmative. Staff noted that they have an ongoing list of

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items. Mayor Small believed Jim Walton's list of items must be addressed in regard to preventing skateboards on the stage and ramp. Also, permanent signage much be posted. Public Works Director Hemati is meeting with the School Board Superintendent next week and agreed to address.

Mayor Small 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.

Mayor Pro Tempore Russell believed there was a sense that the stage was the School's responsibility and the pedestrian pathway is the Town's responsibility. There was never a focus on the fact that ramps immediately adjoining the stage would be this dangerous inducement. That is the history as to why it ended up how it did, so they must have proper insurance. At the end of the day, it does not matter whether it is the Town or School as long as insurance is in place.

Interim Town Manager Thompson noted that ABAG indicated that it is fairly common. The Town might be able to use city code violations and agreed to follow-up.

19. Town Council consideration/action on Circle Drive residents request that the Council acknowledge Park and Circle Drive are publicly maintained roadways.
Town Attorney Greg Stepanicich reported that after conducting extensive research and reviewing a number of historical documents submitted by Stephanie Smith Stein, it has been determined that Circle Drive and a portion of Park Drive are part of the Ross public road system. The Town did not accept Circle and Park Drives as public roads when the streets were created in 1915. However, a 1926 action by the Town ordering the paving of the streets pursuant to an assessment district established under the Improvement Act of 1911 effectively accepted the roadways into the Town's street system. Town Attorney Stepanicich explained that this is a unique situation that does not affect other streets in Ross, as streets that have been improved through assessment districts are all clearly in the public street system, such as Shady Lane, Laurel Grove and the lower part of Chestnut Avenue.

Mayor Small opened the public hearing on this item.

Stephanie Smith Stein, North Road resident, explained that the records would show that the residents bought homes under the premise that it is a Town owned street and appreciated the time to review.

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

20. Town Council discussion/action regarding available PEG funds for purchase of video equipment for Town Council chambers, and discussion/action regarding Granicus discount through June 2012 and of cost for initial software.

Barbara Thornton, Marin Telecommunications Agency (MTA) Executive Officer, discussed installing video equipment in the Town Hall chambers and purchasing a system to record public meetings, transmit the video for web streaming, and link video with agendas and staff reports. Two camera setup options were discussed: a single camera setup costing approximately \$10,000 and a multiple camera setup for approximately \$20,000 to \$25,000. The MTA currently has funds to pay for design costs and installation of either camera setup. The single camera setup would be oriented to the dais, while the multiple camera setup would allow more interesting visuals, with shots of people speaking from a podium and giving presentations. The Town would

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pay for the video recording and web streaming system. Upfront costs range from \$5,525 to \$6,800, depending upon multi-city discounts that are currently available if other Marin cities choose to sign up. Monthly fees would cost approximately \$261 to \$290, again depending on other cities' participation, and would be waived until July 2012. The towns of San Anselmo, Fairfax, and Larkspur are also considering installing video equipment in their town hall chambers. Video recording would require someone to operate the cameras. While the single camera setup could be operated by a staff person, the multiple camera option would require a professional operator at a cost of \$75 per hour.

Mayor Small clarified with the PEG (*public education & government*) funds being available that would cover all of the video camera cost and installation. MTA Executive Officer Thornton responded in the affirmative. MTA gets franchise fees from cable providers and PEG fees. Microphones are not covered. MTA indicated that funding would be for items under the media center because it generates revenue for the media center. They have \$70,000 and hoped to spread it out over three or four cities interested in the near term.

Michael Eisenmenger, Community Media Center of Marin Executive (CMCM) Director, has installed such system in Mill Valley and San Rafael. They built out the media center and master control facility themselves. He is very comfortable doing this type of work. The cameras would be small and most wiring could be hidden. He provided information to the Council on Sausalito that uses a single camera system. The drawback is that there is one camera for everything and one camera would not capture public speakers as multiple cameras would. Also, an operator must operate the multi camera option, which provides better video coverage. Whether single or multiple cameras it will be sent live to their facility in San Rafael and transmitted to Channel 27.

Mayor Pro Tempore Russell asked if the Town could upgrade from a single camera to multiple cameras in the future. CMCM Executive Director Eisenmenger responded in the affirmative.

Council Member Martin asked if a monitor could be installed within the system, so the public could view the Council's documents. CMCM Executive Director Eisenmenger responded that a monitor or projection system could be installed. Mayor Small asked if the projection screen is included in the PEG funds. CMCM Executive Director Eisenmenger explained that a projection screen is not included in the PEG funds. Also, there are liability issues in regard to a monitor or projection system and recommended hiring an outside contractor in that regard.

Council Member Martin asked if Mac computer users have any problems with this system. CMCM Executive Director Eisenmenger noted that flash is used in order to provide a larger format. Granicus representative indicated that they have 30 years of experience, 12 years in webcasting with more than 900 customers. They are changing the way citizens interact with government. They create an integrated public record and provide upcoming events, agendas, and archived videos. Residents can subscribe to RSS feeds. Residents are able to skip to certain agenda items and review supporting documentation. Within the next two weeks agendas and attachments will be available on the iPad. He further noted that "Silverlight" must be downloaded on Mac computers.

Mayor Small desired an explanation on the upfront cost of \$6,800. Granicus representative explained that the upfront cost of \$6,800 is used to turn the agenda into html and place on the web, web design, training for the indexing and other professional services in regard to setting up the viewing page on the website in order to create a more efficient process.

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Mayor Pro Tempore Russell asked if this system would put the Town's recording secretary out of business. Granicus representative responded that the minutes would become more action oriented rather than verbatim.

Mayor Small noted that discussions have occurred in the past and this has been placed on the agenda since PEG funds have become available along with discounts, so there is an opportunity to gather funds from another source.

Council Member Strauss noted that comments were received from various residents in regard to the importance of residents participating in government and continuing the informal Town Council meetings with members of the public able to speak from their seats. He then asked the Council who are they really reaching out to with this system.

Mayor Small appreciated all staff reports being stored online, which is an advantage with this system. Interim Town Manager Patricia Thompson has used granicus with other cities, but the Town must understand the feel of the community before moving forward.

Mayor Small opened the public hearing on this item.

Peter Brekhus, Winship Avenue resident, explained that Ross must keep it simple. This is very expensive. He asked if this program would make the Council perform better. He recognized that this is a nice, new technological toy and most are eager to embrace new, but he is old-fashioned and not eager to embrace. All the other cities have such a system, but the Town of Ross is not like other cities. There is certain appeal to being television stars. This may detract from the communities participation in government. It is contrary to the idea of participating in Town government. In terms of this being helpful, he believed from a meaningful standpoint this would never be of use and the Town Council minutes is what should be relied upon. He does not know if this would add to the Town's efficiency and did not believe it is worth the cost.

Peter Nelson, Circle Drive resident, believed this suggestion is long overdue and would benefit the entire Town. It would encourage participation and foster a sense of encouraging opinions. The idea of being on the record and available for others to view would encourage positive participation. In terms of cost, it has a potential to be cost savings. Minutes can be more streamlined rather than verbatim, so he believed it would be a very positive system for Ross.

Stephanie Cook, Shady Lane resident, stated that this would be the best vehicle for transparency in government and for residents to participate. The search process would be easier. With voice recognition software it would enable those that are unable to attend the meeting the ability to watch and locate information. She further noted this is how most government is headed and noted her support.

William Nicholson, Garden Road resident, discussed acoustics in the Council Chambers, which are terrible. He pointed out that only half of what is stated by the Council is heard by the audience. The Town will be faced with an expenditure of funds to install such system and he rather spend funds on improving the acoustics in the room with a microphone system.

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

Mayor Small supported installation of a video system, although acknowledging that it may be best to move slowly and install a single camera setup that could be expanded later, which will

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provide one additional tool to reach out to the Ross community and enhance government transparency. Council Member Martin agreed.

Council Member Hunter opposed the proposal since it ran counter to the Town's tradition. The general plan talks about maintaining small Town character. They have excellent minutes and audio history of all their meetings. He took this to the RPOA (*Ross Property Owners Association*) as the liaison, and the RPOA group was unanimous in stating that what the Town needs is audio. It is in part about the money, but it is also about tradition. Ross has always been a unique Town. For years and years Ross did not reach out to other communities, which has changed over the last couple of decades, but Ross still has those things that are idiosyncratic and unique to Ross. He believed the Town does not need this system and it would be wrong to do so. If residents want to participate in Town government, then they must attend the Town Council meetings.

Mayor Pro Tempore Russell believed this is an opportunity for greater access. He feels the same as the Nicholsons that microphones are of critical importance. Expenses for the sound system, which need to be developed, would be a separate cost not included in the video system. He suggested that staff work with MTA Executive Director Thornton to develop more specifics to be approved in January or February. Council Member Hunter pointed out that when a part of their heritage is given up, it is gone forever. He reiterated the unanimous opinion of the RPOA that the Town did not need this because it runs counter to the character of the Town. He further believed the priority is an audio system.

Mayor Small talked to many residents when she campaigned for a seat on the Town Council and there was support for such a system. All equipment is paid for with PEG funds. Audio and microphones are not part of the expense. MTA Executive Director Thornton noted that only media center equipment would be covered under the PEG funds, so microphones would be independent of that.

Granicus representative explained that they are a San Francisco based company and willing to continue the discount through January/February in order to provide the Council additional time to consider and figure out what is best for the community.

Mayor Small believed this could end up being a benefit to staff. MTA Executive Director Thornton noted that the Sausalito Town Clerk loves granicus. Mayor Small recommended that staff contact other cities that use such system in order to receive input. She further noted that if considered at all, they would not be looking at more than a single camera.

Mayor Pro Tempore Russell desired more feedback from the community.

The Council agreed to continue the discussion to its January meeting in order to provide community members an opportunity to share their views on this issue.

21. Town Council consideration of Marin Art & Garden Center, 30 Sir Francis Drake Boulevard, request to waive application fees for an application to amend the C-C District zoning regulations to add "environmental conservation" uses to the permitted uses.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council charge \$500 to cover the Town cost to process the rezoning and waive \$4,500.

Council Member Hunter recommended that the Council consider waiving the full fee because it is for a good cause and due to Marin Art & Garden Center's economic situation. Mayor Pro

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Tempore Russell agreed that using for an environmental purpose is something they all support, so he did not understand why the Town would charge a fee. The Council agreed to waive all fees.

Mayor Small 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 Small asked for a motion.

Mayor Pro Tempore Russell moved and Council Member Strauss seconded, to waive the application fees for the Marin Art & Garden Center for an application to amend the C-C District zoning regulations to add “*environmental conservation*” uses to the permitted uses. Motion carried unanimously.

22. No Action Items:

a. Council correspondence received

- * Resident near Branson expressed concern for ongoing parking problems on the tennis courts. Staff will contact Branson school.
- * Redwood project - changes to approved plans without neighbor input. Staff agreed to discuss the issue of staff approval of design changes with the Advisory Design Review Group
- * Staff will address signage on Sylvan Lane
- * Staff will contact MMWD in regard to the water leak on Ames Avenue

b. Future Council items

- * Intersection
- * Temporary T-Ball location
- * Parking problems on tennis courts
- * Municipal Tax

23. Discussion of the five Town Council goals for FY 2011-2012 developed at the Town Council retreat and the implementation of these goals.

a. Development of right-of-way regulations

Mayor Small had nothing to report.

b. Development of Council procedures

Council Member Martin presented an outline for a procedures manual for the Council at the General Government meeting. He received good direction and will continue using the General Government Committee as a sounding board. In general, the manual will be pulling from a number of other cities and towns, will be a document that future council members can reference in terms of the role of a council member, powers and responsibilities, running Town meetings, guidance and interaction with Town staff. He further hopes to have a document by the end of the calendar year.

c. Development of overlay landscape plan

Council Member Strauss hoped to present a schematic plan to the Council in January.

d. Fire consolidation

Council Member Hunter announced that the next meeting will be held on January 9th, 2012.

e. Post-emergency permitting and nonconforming structure regulation review

Mayor Pro Tempore Russell along with Senior Planner Elise Semonian prepared a preliminary

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draft on the ordinance for dealing with post-emergency permitting, which they plan to discuss with the Advisory Design Review Group in February. In terms of nonconforming structure regulations, Senior Planner Semonian is working on a draft as well, which potentially will be brought to the ADR Group in February and hopefully discussed with the Council in the spring.

Council Member Martin recused himself from the next two agenda items in order to avoid the appearance of a conflict.

- 24. 126 Winding Way, Amendment to Variance, Design Review, Hillside Lot and Demolition Permit and Construction Completion Deadline, No. 1736**
Douglas and Miranda Abrams, 126 Winding Way, A.P. No. 72-091-14, R-1:B-5A (Single Family Residence, 5-Acre Minimum Lot Size), Very Low Density (.1-1 Units/ Acre). Continued public hearing on a request for an amendment to approved plans for design review, hillside lot permit, variances, tree removal permit and a demolition permit to allow: 1.) the addition of a spa and spa equipment in the area of the master bedroom patio (40-foot setback proposed); and 2.) basement exception and after-the-fact request to delete a condition of the January 2011 approval that limited grading, improvement and use of the understory areas. The applicants request the basement exception to retain and further improve: 1.) 127 square foot wine cellar/pantry at the main level; 2.) 456 square foot exercise room, office, bathroom and laundry room in the underfloor area; and 3.) 76 square foot mechanical room under the main level addition. Total floor area of 4,661 square feet was approved in January 2011 and total floor area of 5,244 square feet is proposed.

The Town Council will also consider the applicants request for additional time to complete the project without accruing construction completion penalties (construction completion date October 2, 2011).

Gross lot area	54,108 square feet
Net lot area (less road easement)	44,201 square feet
Existing/Approved/Proposed Floor Area	8.2%/10.6%/11.9% (15% permitted*)
Existing/Approved/Proposed Lot Coverage	7.0%/9.2%/9.2% (15% permitted)

**The slope of the lot is 35.3%. The 2009 Town Hillside Lot Ordinance guidelines recommended a maximum floor area of 4,223 square feet based on the gross lot area (not deducting the roadway easement area). The current Town Hillside Lot Ordinance floor area would permit a maximum floor area of 3,285 square feet. The existing residence is nonconforming in number of stories (2 permitted) and covered parking (2 spaces required).*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council require an additional condition for a tree bond prior to issuance of any building plan modifications for the site to ensure replacement trees are planted if trees die after project final. Staff further recommended that the Council approve the application based on site visits, the staff report, information contained in the project file and subject to the findings and conditions outlined in the staff report.

Doug Abrams, applicant, suggested that the bond not be required for the trees. There was some trenching that took place for PG&E to install a utility line that ran from the street to the house. Contract Building Official Phiroze Wadia requested, post conditions of approval, to place all utilities underground. PG&E came out and indicated where the panel is located and did not allow one 90-degree turn, so there was no flexibility. Potentially some smaller roots were cut

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around 12 or 15 ft. from a tree, which is a concern. In his email he pointed out that Condition No. 24 allows the Council up to three years to require additional landscape screening. Also, the other part is that the trenching was really done as an accommodation for the Town, he did not have to place the utilities underground, but felt it was a good idea, which ended up being far more expensive than anticipated. In the last two weeks or so, he planted twenty, 48-inch box live coast oaks. Seven more will be planted, including one, 72-inch box live coast oak. He feels they are doing extensive plantings in anticipation for some trees dying. He further noted that they managed to save four heritage oaks approved by the Council for removal.

Senior Planner Semonian explained that the applicant has violated a number of provisions of the Town's tree ordinance by not securely fencing off trees at the non-intrusion zone for the duration of the project, trenching near protected trees, storing construction materials near trees and excavating and grading near trees without an arborist present. Any damage to the trees may not appear until after construction is completed. Staff desired some protection in place and that is why staff is recommending that the Council require a tree bond.

Mr. Abrams explained that he removed five trees and planted 27 trees. He preferred to plant five additional trees now and move forward. He further agreed with staff's recommendation of excusing the 210-day delay for the garage redesign.

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

Council Member Hunter is comfortable with the staff report with the exception of requiring the bond. He would rather have Mr. Abrams plant the additional trees now. Mr. Abrams agreed to plant the additional trees required. The Council agreed.

Mayor Small asked for a motion.

Council Member Hunter moved and Mayor Pro Tempore Russell seconded, to approve the application at 126 Winding Way subject to the findings and conditions outlined in the staff report, excluding the requirement for a tree bond, and instead requiring Mr. Abrams to plant six additional 48-inch box trees. Motion carried unanimously. Martin absent.

126 Winding Way Conditions:

Approve the finished basement areas and spa, subject to the following conditions of approval for the project:

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on December 10, 2009, as amended on January 13, 2011, and amended on December 8, 2011.
2. Six additional 48-inch box trees shall be planted at the site.
3. The applicant is on notice that the construction completion date for the project was October 2, 2011, and construction completion penalties are accruing. Any expansion of the project is at the applicant's risk and construction completion penalties may not be waived in the future by the Town Council.
4. The spa is approved as shown on the "Spa Submittal Plan" dated October 15, 2011. Spa equipment shall be soundproofed as much as feasible. The equipment must comply with

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the Town noise regulations. The building department must approve plans before work continues on the spa and spa equipment.

5. The plans submitted for the building permit shall be reviewed by Carey & Co. to ensure that the project continues to comply with the Secretary of Interior Standards for Rehabilitation. Prior to project final for the project, the applicant shall submit a letter from Carey & Co. to the planning department verifying the project was completed in compliance with the Secretary of Interior Standards. Prior to issuance of any after-the-fact plans to modify the exterior of the building, the applicant shall submit a deposit to cover the cost of an independent historical consultant, retained by the Town at the applicant's expense, to peer review the Carey & Co. reports and the proposed exterior changes to confirm they comply with the Secretary of Interior Standards for the treatment of historic property. The applicant shall revise the plans as necessary to address any concerns raised by the Town consultant.
6. Prior to project final, the applicants shall submit evidence from a licensed surveyor that confirms the as built location and top of wall and bottom of wall elevations for all new site walls to ensure they were constructed in conformance with the approved plans.
6. The applicants shall submit an updated construction schedule to the building department within 14 days.
7. The applicant shall obtain an after-the-fact revocable encroachment permit for the rock wall work within the Winding Way right of way from the Department of Public Works and a revocable encroachment permit for all other work within the Winding Way right of way. The permit shall include such plan as required by Pubic Works staff. The permit shall be recorded at the Marin County Recorder's Office prior to any additional construction in the right-of-way. Any improvements constructed on adjacent sites shall be removed if written permission for the work is not obtained from the applicable property owner(s) and submitted to the Town. The applicant shall record the document prior to project final.
8. The Building Official may apply provisions of the historic building code to the project as necessary for the approved design.
9. A construction management plan shall be submitted prior to issuance of a building permit showing the work schedule, storage, travel routes, tree protection, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans. Construction vehicles should follow Canyon Road to Winding Way and return by the same route to minimize traffic impacts on Winding Way.
10. No grading is permitted without a grading permit approved by the Town. Grading activity is prohibited between October 15 and April 15.
11. The pool equipment and any other exterior mechanical equipment shall be placed in a soundproof enclosure, insulated, and/or vented so that its operation is not heard from adjacent sites.
12. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety:
 - a. A street number must be posted {minimum 4 inches on contrasting background}
 - b. All dead or dying flammable material must be removed as per RMC Chapter 12.12
 - c. A new hydrant shall be installed, per the Fire Marshal

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- d. Sprinklers are required.
- e. The applicant shall clear all brush impinging on the access roadway.
- f. The Roadway shall have a vertical clearance of 14 feet.
- g. A 24 hour monitored alarm system is required.

The fire chief may make exceptions to preserve the historic character defining features of the property.

13. A grading and drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. Off site runoff shall be limited to existing conditions. The drainage plan shall comply with all recommendations of the Town Hydrologist. The project engineer shall certify that the drainage plan was installed according to the approved plan prior to project final.
14. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
15. No brightly colored temporary fencing is permitted where it may be seen by neighbors or the public.
16. The landscaping shall be installed in accordance with the approve landscape plan prior to project final.
17. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from downslope sites). No up lighting is approved.
18. The applicants shall comply with all requirements of the Marin Municipal Water District for water service prior to project final. Landscaping shall comply with the MMWD water-conserving landscape ordinance.
19. The applicants shall pay required Town fees of \$3 for every cubic yard of off-haul resulting from this project. Final off-haul amounts shall be calculated by the project civil engineer with calculations submitted to the Director of Public Works prior to the project final.
20. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
21. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.

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22. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
23. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
24. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE.
25. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

Mayor Pro Tempore Russell rescued himself from the next agenda item in order to avoid the appearance of a conflict

25. 98 Shady Lane, Variance No. 1824

Lulita and John Reed, 98 Shady Lane, A.P. No. 73-052-37, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3 - 6 units per acre), Flood Zone A (1-percent annual chance floodplain). Request for approval of lot coverage and setback variances to allow construction of the following: 1.) new 11 foot by 27 foot swimming pool and spa within the rear yard setback (40 feet required, 8 feet proposed) and north side yard setback (15 feet required, 12 feet proposed); 2.) pool equipment shed within the north side yard setback (15 feet required, 0 feet proposed); and 3.) relocation of a fountain within the north side yard setback (15 feet required, 1 foot proposed) and rear yard setback (40 feet required, 13.5 feet proposed). The project would include removal of the 35 foot by 18 foot swimming pool under the rear yard lawn, abandoned by the prior owner. New drainage swales and an infiltration trench are proposed to reduce peak runoff from the 100-year 1-hour design storm to below existing conditions.

Lot area	7,511 square feet
Existing/Proposed Floor Area Ratio	32.6% (20% permitted)
Existing Lot Coverage	31.0%
Proposed Lot Coverage	31.4% (20% permitted)
Existing Impervious Surface	47.9%
Proposed Impervious Surfaces	56.1%

Senior Planner Elise Semonian summarized the staff report and recommended that the Council deny the setback variance for the pool by making the findings that there are no unusual site circumstances and a swimming pool is not a substantial property right that necessitates approval of a setback variance. Staff further recommends that the Council review the project plans and the consider public testimony, and if the Council can make the findings in support of the project, staff provided conditions of approval, which are outlined in the staff report.

Jim Catlin, landscape architect, explained that they had two meetings with the ADR (*Advisory Design Review*) Group to address the neighbors concerns. They hired an acoustical engineer to review the noise issue and the basic finding is that noise intrusion from the pool would be below the ambient noise. They had proposed baffling fencing toward the neighbors house to the east and on the house itself, but it would be impractical due to the acoustical engineers findings of the actual ambient noise was greater than noise proposed for the pool. The main concern is the increase in impervious surface in regard to the proposal of the new pool in the lawn area. They worked with Town Hydrologist Matt Smeltzer who developed a scheme that meets the requirements of the Town's stormwater ordinance. In terms of the variance issue, there are two adjacent neighboring pools that are nonconforming and in the rear setbacks. Also, the neighbor to the east is also nonconforming and extremely close to the property line. He pointed out that the current condition of the yard itself has very slow draining and has a ponding issue, so the rear yard is unusable in the winter. A new pool would mitigate that situation and allow for much better drainage in the rear yard. He further noted that his client has a bad knee and exercising in a pool is the best form of physical therapy for him at this time.

John Reed, applicant, stated that the pool is for rehab purposes and he tried to receive input from neighbors and modified the plans to reach a consensus. They have asked to replace windows with double pane windows in regard to the neighbor on the east. Also, their neighbors home is on the market right now and they agreed to postpone construction until after the home sells. They have tried to be a friendly neighbor. They are a very quiet, reserve family and did not want to intrude on residents. Noise comes down to being a good neighbor and they moved the pool equipment to reduce noise impacts.

Mayor Small opened the public hearing on this item.

Patricia Bruvry, Sir Francis Drake resident, explained that her house is close to the setbacks, but it is 106 years old. It is 12 ft. from the fence, so she opposed this variance for a pool. Noise is a major problem. They planted trees for screening, but it just blocked her natural light. She has flooded twice and is very concerned about future flooding. There are so many pools in the area that it effects the flooding. She further objected to the Council granting a variance for a pool.

Frank Malin, Fernhill resident, stated this project highlights issues of stormwater maintenance and the Town plan. He believed the stormwater management ordinance has allowed the Council to approve more pools by having hydrologist retain fluid onsite. With a medium to heavy storm this model is meaningless. The estimate of impervious surface area is interesting because it did not account for two to three thousand cubic feet inside the pool. If all properties in the flood plain had a pool there would be more likely flooding. It is a pond in the winter, so it should not become a pool. The Town of Ross plan in 2007 under Section 2.4 states the following: "*Minimize the built area of a site to allow maximum amount of landscape and/or permeable surfaces.*" He pointed out that 40% of residents in Ross have pools and most Ross properties are nonconforming, so what they should not do is add more pools and lot coverage. He pointed out that this the most over built property in Ross. The Council should not be afraid to state, "*no*" to proposals that make Ross less beautiful, less green and less safe.

Stephanie Cook, Shady Lane resident, fully supports this project and believed the Council should approve. It is nice to see more and more new families coming to Ross. Ross is a vibrant rural community. They live on a busy intersection near a church. There are several accidents, children and activities. If sound and noise is an issue there are ordinances. There is no reason

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why children would not be laughing, giggling and making sounds. Noise should not be an issue. In terms of floods, her house was damaged. If they take a Google snapshot of Fernhill up to Shady Lane, 85% of the houses have pools. Also, the Reed's have an existing pool. If they studied the proposal, they will be doing flood mitigation by removing the previous structure of the pool that is containing water.

Mark Goldstein, Winding Way resident, encouraged the Town Council to clarify under what circumstance variances for setbacks are to be allocated. There have been proposals to add fountains, trampolines and swimming pools right against the setbacks. They are developing a practice for all to use the full land without concern for neighbors, setbacks and distances. There is a reason why setbacks are established in order to provide a buffer between properties. Ross properties are becoming over developed and if setbacks are not respected they will have an urban environment.

Jack Domet, Shady Lane resident, indicated that no one has ever complained about noise coming from his pool in the two years he has lived at his home. His children enjoy the pool immensely and favored the Reed's proposal.

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

Council Member Strauss believes this property has accumulated impacts. There is little land for children to play if a pool is added. There is no covered parking. The house was expanded at one point and to grant this variance would be wrong. He is unable to make the findings since this will increase the lot coverage.

Council Member Hunter stated on its face they cannot make the findings, but he continues to go back to the fact that there is a pool structure in that backyard. It has not rained in two weeks and it is still mushy. The existing impervious surface number is incorrect due to the existing pool. Without a pool there is a nice play area. On the other hand there is a pool in the ground, and the impervious frame bothers him with holes in it.

Mayor Small noted that several pools were in place before the setback requirements. The problem is that she would not authorize such a pool. The Council should not be held responsible for the backyard being marshy because the pool was never removed and soil was brought in. The Council should not be held accountable for the current situation and ignore all of their setback requirements and add a pool in a place that does not fit. The previous homeowner did not handle the situation appropriately. Sometimes properties are just not made for a pool. Whether there was a pool present or not, there is not a pool. She cannot ignore the staff report. She further added that there is not a strong reason to approve this variance.

Mayor Small asked for a motion.

Council Member Strauss moved and Mayor Small seconded, to deny the variance request at 98 Shady Lane based on the findings outlined in the staff report. Motion carried unanimously. Russell/Martin absent.

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

- 26. 36 Glenwood, Amendment to Variance and Design Review Permit No. 1662**
John and Lisa Pritzker, 36 Glenwood Avenue, A.P. No. 73-131-30, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size), Very Low Density (.1-1 units per acre), Flood Zone

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A and X (creek is within 100-year floodplain). Amendment to plans approved by the Town Council on March 13, 2008, and amended at later hearings, for redevelopment of the site with a new residence and accessory structures. The applicants request the Town Council to rescind a condition of approval that required construction within Ross Creek to remove a potential barrier to fish passage within two years of project final.

Lot area	221,194 square feet
Approved Floor Area Ratio	11.2% (15% permitted)
Approved Lot Coverage	9.1% (15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council retain the condition as modified in 2010.

Council Member Hunter noted that the California Department of Fish & Game was very insistent that no equipment could be in the creek at any time and asked why it was acceptable for the Town to have equipment in the creek bed and not the applicant. It is very curious. Staff did not know specifics, but indicated that the creek was dewatered for the Town work. Council Member Strauss pointed out that they had equipment in the creek when bridge work occurred. Council Member Martin indicated that a permit is needed when work is done in the creek both from the California Department of Fish & Game and federal due to endangered species.

Senior Planner Semonian noted that agencies were willing to grant the permit, but the applicant did not respond with a signature for the Fish and Game permit because of conditions on the permit.

Council Member Martin explained that this work is part of the original condition of this project. Completion of this fish passage was a requirement before the project was final. Senior Planner Semonian explained that the original condition was amended to allow the applicant additional time to complete the condition.

Mayor Pro Tempore Russell asked staff if they could indicate if not completed within the two years, then penalties will accrue. Senior Planner Semonian is not certain. Since the project is completed, construction completion penalties would not apply. There would be nuisance abatement penalties associated with violating the condition of approval. Council Member Strauss suggested developing a mechanism to be in place for noncompliance. Mayor Pro Tempore Russell believed there should be some deadline to complete the condition.

Council Member Martin pointed out that the condition has not been met. He asked if the Council could rescind the prior decision and make it a requirement of the project. Town Attorney Greg Stepanicich explained that if there is no building permit, then construction penalties would not apply.

Blaire Buchanon, general contractor, complied with the California Department of Fish & Game language. Equipment is needed in and on the creek bed, which he is not allowed to do. Department of Fish & Game will not change the language. If he did manual labor to complete the work, it would be extremely inefficient and very costly, and believed more environmental damage would be caused to the creek. There will be much more erosion and more displacement of the natural habitat. He has considered himself a steward of the creek and takes the environmental concerns as seriously as he takes State agency permitting concerns and the cost for his client concerns of not to exceed as well as the neighborhood. He asked to remove both Phase 1 and Phase 2 from the conditions of approval. It is a two part creek restoration. Phase 1

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was culvert day lighting and Phase 2 was the fish barrier improvement. He asked to remove both phases because both phases were under one permit. Senior Environmental Scientist Richard Fitzgerald from the Department of Fish & Game would not modify the conditions, and by not receiving the permit to do that work in 2010 they lost their window of opportunity to bring in the heavy construction equipment needed to do the job efficiently. At that Town Council meeting, Council Member Martin indicated *"that something is better than nothing and please do something."* Moving forward, he looked at a way to separate those two phases and get the culvert day lighting as a separate permit through the Department of Fish & Game and have the fish ladder removed from the original description. The new Department of Fish & Game contact person, Tim Dodson, had no objection. He explained that it would be more efficient to bring in smaller equipment into the creek bed, and after a three month legal dispute the answer was "no," and the Department of Fish & Game would not make any changes. He did everything from the creek bank, which was more costly. He would have four weeks left if the permit is issued. Well, the permit was issued and he completed the culvert day lighting with full approval from the Town of Ross, geomorph and Department of Fish & Game on the 14th of October. They created a detention pond that passed all design review and he looked at that creek day lighting as something rather than nothing and felt he was in compliance with the last time he was before the Council regarding this idea. In working on Phase 2, the fish ladder, they looked at a third and previous design that was rejected by Mr. Fitzgerald. The new contact person, Mr. Dodson had no objection with the design. He already had the area landscaped. He asked that they look at a new design and that is when they looked at possibly removing the slab out of the culvert. Their engineer indicated that they could not remove that slab without substantial structural work to the boxed culvert because there were no footings. Then he went back to the third design that Mr. Dodson found acceptable, but heavy equipment is needed to go through finished landscaping. They must create a staging area to build the fish passage at a cost of \$465,000 to tear out existing landscape, remove all irrigation, remove PG&E finished pathways, remove header boards, and remove protection heritage tree zones to get access to that area to do this work. Heavy equipment is big enough to remove existing concrete and earthwork and bring in new boulders and materials back in to do the work. Not only is the cost an extremely high impact at this point to a finished site, but also the demoralization of the neighborhood would be beyond what is morally responsible to the community. It would require heavy staging of heavy equipment. It would take around 4 to 6 weeks next summer. He further asked the Council to consider removing the fish ladder, which is Phase 2 of the two part creek restoration because they tried very hard to create that scope of work, but ran into matters out of their control.

Mayor Small opened the public hearing on this item.

Sandy Goldman, Friends of Corte Madera Creek Watershed, pointed out that it is a violation of State and Federal law to have a barrier for fish passage. This was a condition of this project from day one. She appreciated the day lighting, but a barrier to fish passage impacts the long-term survival of the steelhead. It would be irresponsible to think this does not need to be done. She urged the Council to maintain the condition and allow the applicant more time to complete it. The steelhead must get to the spawning areas.

Stephanie Cook, Shady Lane resident, strongly disagreed with neighbors being demoralized by additional construction. Neighbors would be more demoralized about the possibility that the fish would be further threatened. This is a much bigger issue. The Town Council talks about keeping and protecting the creek. It is perfectly reasonable for applicants to follow the rules when living on a creek. She further believed an extension is appropriate, but the condition must be retained as staff indicated.

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

Council Member Martin put this into perspective and noted that it was October 2007 when Town Hydrologist Smeltzer issued a 6-page document giving a recommendation for watercourse protection improvements for 36 Glenwood. This preceded approval in March of 2008 by the Council for the project. He did not know why this was not addressed at the earlier stages of the project. The project itself is a huge project. It will be the biggest residential project this Town has ever had - 23,689 sq. ft. of development. The benefit to this community, the public and creatures that live in the creek was the improvements to the creek banks and elimination of any barriers for the passage of steelhead trout, which are an endangered specie and critical in this precious ecosystem then have, which is the San Francisco Bay Estuary. They must hold firm to this project being finished as approved and stand by the conditions of approval from 2008. Council Member Hunter agreed. Also, another major benefit is that the Town merged two developable lots, so the Town limited development as well.

Mayor Small pointed out when denied back in 2010 they knew there would be problems with the landscaping being done, so this is not news. In the same respect this project took a long time and it impacted the neighbors significantly, but that should not be a deterrent from holding the applicant from what was originally approved. That is not justification. She supported staff recommendation. Council Member Strauss agreed as well.

Mayor Pro Tempore Russell agreed with the previous comments, but would allow for additional time, but after such deadline there should be penalties. Mayor Small did not want to do anything to the condition that would create any type of situation that the Town would have to involve lawyer fees to ensure that it is completed. Senior Planner Semonian recommended extended to October 14, 2013, to allow the full dry season. The Council agreed.

Mr. Buchanan explained that his client is living in his property and does not want to see his brand new landscape torn apart because the Department of Fish & Game would not issue the permits in a timely fashion. Senior Planner Semonian noted permits were issued, but conditions were attached that the applicant did not accept. There is a new Fish & Game representative that indicated he could be more flexible regarding the conditions.

Council Member Martin believed there is a moral responsibility on the part of the applicant to complete this work. Council Member Hunter stated that this applicant has always demonstrated a willingness to play by the rules and it seems it would be very difficult to impose some sort of a mechanism at this point, so he recommended extending to October 14, 2013. Mayor Pro Tempore Russell agreed to extend in order to complete.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to deny the request to delete the condition at 36 Glenwood, but modify the condition to allow the applicant until October 14, 2013, to complete the fish passage work. Motion carried unanimously.

27. 60 Baywood Avenue, After-the-fact Variance No. 1846
Reza Rae Pourian, 60 Baywood Avenue, A.P. No. 72-021-15, R-1:B-20 (Single Family Residence, 20,000 sq. ft. minimum lot size), Low Density (1-3 units per acre), Flood Zone

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X (area outside the 1-percent annual chance floodplain). Request for approval of after-the-fact lot coverage and setback variances for the following: 1.) hot tub partially within the rear yard setback (40 feet required, 36 feet proposed); 2.) play structure within the north side yard setback (20 feet required, 8 feet proposed); and 3.) play shed within the rear yard setback (40 feet required, 20 feet proposed).

Lot area	15,165 square feet
Existing Floor Area Ratio	23.4%
Proposed Floor Area Ratio	23.4% (15% permitted)
Existing Lot Coverage	18.4%
Proposed Lot Coverage	19.2% (15% permitted)
Existing Impervious Areas	21.1%
Proposed Impervious Areas	21.9%

The existing parking structure is nonconforming in setbacks.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council advise the applicant if findings may be made to support the setback variances requested for the recreational structures. If the Council makes the findings to approve the request, staff recommends the following conditions of approval:

1. The applicant shall apply for an after-the-fact electrical permit for the hot tub area and shall supply all necessary engineering, building and electric plans as required by the Town.
2. The applicant shall submit all necessary civil and/or geotechnical engineer reports to demonstrate to the building official/director of public works that the existing structures are adequately supported on the hillside and that there is no risk of slope failure. Should the reports indicate that any of the structures are not adequately supported or are located in an area of slope instability, those structures are not approved.

Peter Brekhus, attorney representing owner, stated that his client bought the home with his brother and there was no mention of violations. Then he found out about improvements to potentially violate the ordinance. He had no knowledge or information that they were not in conformity. His client originally bought with his brother 20 years ago. His client has paid penalties for an after-the-fact variance. These improvements have been present for 30 years with no complaints. There is no impact on the community. There is a uniqueness about this parcel. He requested that his client be allowed to maintain the improvements. They agree with the condition in regard to landscaping. He further asked that the variance be granted and that the structures be maintained as they have for the last 20 or 30 years.

Council Member Hunter had no problem with the play structure, but the hot tub and shed are in poor condition. They should either be removed or fixed. Council Member Strauss pointed out that one condition would be to bring the hot tub up to code with railings.

Mayor Small agreed that there are no impacts to neighbors, but she wanted to make sure it is structurally sound and brought up to code, so it might be less expensive to remove the hot tub and shed. Council Member Strauss agreed it might be easier to remove the hot tub since it is not up to current code. He noted that the Council could deny or have the applicant come back with plans to improve. He had no objection to the play structure since it is not impacting anyone, but the hot tub is unsafe. Public Works Director Bob Hemati noted that the other issue is the stability of that hillside. Attorney Brekhus noted that a geotechnical engineer report would be very expensive.

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Mayor Small 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 continue the matter to allow the applicant an opportunity to consider their options.

Mayor Small asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to continue the matter at 60 Baywood to a date uncertain. Motion carried unanimously.

28. **10 Ames Avenue, Amendment to Variance and Design Review Permit No. 1794**
Bradley and Kristen Matsik, 10 Ames Avenue, A.P. No. 73-181-08, R-1:B-20 (Single Family Residential, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre), Flood Zone X (outside 1-percent annual chance floodplain). After-the-fact request for setback variance and an amendment to the October 14, 2010 and January 13, 2011, variance and design review approvals to allow: 1.) a play structure and trampoline installed within the rear yard setback (40 feet required, 5 feet proposed); 2.) rescission of a condition that required the driveway surface to be permeable paving to allow concrete; and 3.) approval of design modifications including a change in the form of the front porch roof and the garage doors.

Effective lot area	17,935 square feet
Existing Floor Area Ratio	22.5%
Approved/Proposed Floor Area Ratio	19.3% (15% permitted)
Existing Lot Coverage	27.5%
Approved/Proposed Lot Coverage	25.9% (15% permitted)
Existing Impervious Areas	38.5%
Approved Impervious Areas	28.7%
Proposed Impervious Areas	36.4%

The existing residence and garage are nonconforming in setbacks.

Senior Planner Elise Semonian summarized the staff report and regarding the variance for the play structures, staff recommends that the Council consider the public testimony and advise the applicant if findings may be made to support the setback variances requested. Staff also recommends that the Council approve the modifications to the design of the roof and the garage subject to the findings and conditions of the January 2011 project approval. If the Council would like to approve the solid driveway surface, staff would modify Condition No. 2 as follows: *"Prior to project final, the applicants shall submit a drainage plan for review and approval by the town hydrologist that demonstrates that the project will result in no net increase in the rate and volume of site runoff. Mitigation may be required to meet the no net increase standard. Upon approval, the project shall be considered complete as of October 21, 2011, the date construction was completed."*

Project Landscape Architect explained that to remove the entire driveway became cost prohibitive and most of the driveway was still usable and functional. As the project progressed, they decided to leave more than half of the driveway because it was still functional and perfectly usable. Due to cracking, a portion of the driveway did need to be replaced. They ended up

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removing the section of the driveway closest to Ames Avenue with the understanding to maintain their site water onsite. They developed an infiltration gallery under the driveway so there is 12-inches of permeable drain rock under the driveway with perforated pipe. They directed the roof water into the infiltration gallery in order to take up the amount of water that a porous driveway would have taken. The net runoff from the driveway as built is no different from the net runoff of an entirely porous surface. They reduced their net driveway by 2%. The new patio is slightly larger, but reduced the impervious surface in the area adjacent to the garage. They are very cognizant of balancing their impervious and pervious surfaces. They also have several oak trees on the site and to remove the upper portion of the driveway adjacent to the garage would expose the roots of a huge valley oak, so there are many considerations that must be taken into account in regard to the driveway.

Mayor Small desired an explanation of the drainage plan in regard to all the downspouts. If cost was a factor, gravel could have been used, so she desired to know what the drainage plan was regardless of the actual driveway covering. Project Landscape Architect responded that they would have had a regular porous pavement driveway with the standard profile. With the original drainage plan, all the original downspouts would have sheet flowed right into the ground or planting beds. They had to balance keeping water away from the foundation and keeping water from traveling off site.

Council Member Martin stated to handle a one hour duration it would hit capacity during a heavy rain storm. It is moved away from the foundation of the house, but they are pushing the water off site during a heavy storm. Project Landscape Architect explained that the infiltration gallery was very close to the possible capacity of that one hour, so it depends on the soils being saturated. They observed over the course of construction that this water percolates very well. They calculated the areas of the roof, impervious surface of the driveway and background, so they tried to get as close as possible.

Council Member Martin discussed cost and asked the cost estimate for the driveway replacement. Project Landscape Architect responded that the overall replacement cost for the pervious driveway was over \$40,000. Council Member Martin noted that there was a change to place slate on the roof from what was originally proposed, which increased the price. He wondered if there was a conscious decision to not do the stormwater improvements that were part of the project and instead do an aesthetic change. Project Landscape Architect felt they had a good alternative to handle the stormwater and stated that it was not a trade off on something else on the house.

Mayor Small stated part of the difficulty is that they did not come before the Council first. She added that staff works very hard developing conditions and so much thought is put into the project from both staff and the applicant and reviewing this after-the-fact puts the Council in a very tough decision.

Bradley Matsik, applicant, stated when they made the decision to make the change on materials it was a gradual decision over a period of a number of months. There were concerns regarding the oak tree. It did not occur to him that it was part of the condition of approval the entire landscape approval. He wanted better drainage and wanted to maintain as much permeable surface on the project as possible. The overall percentage of pervious surface has increased, so they certainly have better drainage. On November 5th they had a brief period of rain and the drain worked very well. He added that there was no intent to mislead or conceal anything from the Council. At the end of the day, they maintained the spirit of the conditions of approval,

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which was to maximize the impervious surface, making improvements to the lot and keeping runoff off the lot minimized.

Council Member Hunter pointed out that the permeable surface changed, but there were design changes to the house and the play area all along the back fence. He added that the Town has rules. Mr. Matsik indicated that the play structure was totally his fault. He placed the play structure away from the street in the corner for his kids to play and to be safe.

Tom Levine, project designer, discussed the garage changes and explained that the initial use for the door was for bicycles and the play area. Once they changed to a permeable surface it seemed more logical to have another garage door to have access. All they did was trade a door on the side for a door in front. There is still a totally usable one car garage as proposed. In terms of the change to the roof in front, it was to appear more attractive, but the porch coverage is the same. He further noted that the hip roof would show the slate more than several gables from the street.

Mayor Small opened the public hearing on this item.

Carland Nicholson, Garden Road resident, does not understand granting variances for play structures, especially this play structure since it is so close to the setback. A play structure is only used for a period of time and to grant a variance it means this play structure will be present forever. There is a problem in Ross because people by small lots and then want to fully develop the lots and there is not room with proper setbacks. When her children were small, she took them to Pixie Park to play because they also have a small lot.

Peter Nelson, Circle Drive resident, believed permeable driveways should be the focus in Town due to runoff. One common design is to have a filtration gallery where there is a base of rock, which serves underneath permeable pavers as a retention pond. Rather than having a 2% decrease it would be the 25% permeable surface. There is a pattern of not getting all aspects completed and following the rules. In terms of architects and professionals, it is not that unusual to state that if the plans are changed that they must be reviewed again. There are a number of issues presented and the permeable driveway cost is questionable.

Project Landscape Architect noted that the overall change in stormwater management improved, so there are many ways to skin this cat. Also, permeable pavers are not the be all end all to stormwater management. They clog easily, are difficult to maintain properly and do not always have that infiltration gallery. Just because the surface of this driveway is impermeable, does not mean that the permeability of the ground underneath has changed.

Council Member Strauss stated whether this solution went far enough or not he did not know, but ordinances are in place for a reason.

Mayor Pro Tempore Russell believes Town Hydrologist Matt Smeltzer basically interprets the stormwater ordinance in a way that is fundamentally undermined. When there is flooding that drainage is clogged, which does not help. The best way to mitigate flooding is to take away impervious surfaces. For him, they must change the stormwater ordinance or have FAQs of its interpretation of no increase in impervious surfaces, especially within the flood zone. They built a beautiful property and is very sympathetic to the arguments being made, but he comes from a different point of view that the work being done with Town Hydrologist Smeltzer is undermining the spirit of what was intended for the stormwater ordinance, which must stop. They must either change the policy or have a policy of no increase in impervious surfaces.

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Council Member Hunter noted that the Council was promised 28.7% and they have 36.4%, so he recommended continuing this project and have the applicant figure out how they will get to 28.7%. The Council agreed.

Mayor Pro Tempore Russell did not want to make the flooding situation any worse in this Town. Council Member Martin stated that was the purpose of the stormwater ordinance to develop very strong standards to reverse inaccurate situations.

Mr. Matsik pointed out that when they started this project the existing impervious area was 38.5%, and they ended up at 36.4%. They also added the infiltration drain, which contains a large amount of runoff. There is less impervious surface now than when the project started. He further noted that they went to some expense to add the infiltration drain. Council Member Hunter stated there were tradeoffs and part of it was to bring the impervious areas down to 28.7%.

Mayor Pro Tempore Russell asked staff if there is a way to place a time limit on the play structure. Town Attorney Greg Stepanicich explained that it would be permissible to set a time limit on play structures, but enforceability is very difficult. Mayor Small views play structures as a more temporary structure and desired input from neighbors because they are more impacted. Whereas with a permanent structure, she rather carry the burden of making a decision and not rest it on the burden of the neighbor because it really is the burden of what the Town's code is and policy. She further added that the neighborhood approved the play structure.

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 directed the applicant to return with a plan that reduces the impervious surfaces to what was approved when the landscape plan was approved. Mayor Pro Tempore Russell further believed "*no net increase*" should be interpreted as "*no net increase of impervious surface*" on the site.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to continue the matter to a date uncertain to provide the applicant an opportunity to return and demonstrate how they achieved the previous approved percentage. Motion carried unanimously.

29. Adjournment.

Mayor Small moved to adjourn at 12:10 a.m.

Carla Small, Mayor

ATTEST:

Linda Lopez, Interim Town Clerk