

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JUNE 14, 2012

*A public reception was held at Town Hall prior to the meeting from 5:30 p.m. to 6:30 p.m. to honor retiring Fire Chief Tom Vallee.*

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.

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

3. Open time for matters pertaining to the closed session item in agenda item 4. None

4. Closed session.

a. Conference with Legal Counsel – Anticipated Litigation

Government Code Section 54956.9(b): One case

b. Conference with Legal Counsel – Existing Litigation

Government Code Section 54956.9(a): James Reis, Workers Comp Case

No. ABCF 536395

5. Open Session. Council will return to open session and announce actions taken, if any. No reportable action.

6. Minutes - April & May

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to approve the Adjourned Regular Ross Town Council Meeting Minutes of April 5th, 2012 as submitted. Motion carried unanimously.

Council Member Martin moved and Council Member Strauss seconded, to approve the Special Ross Town Council Meeting Minutes of Thursday, May 3, 2012 as submitted. Motion carried unanimously.

Council Member Martin moved and Council Member Strauss seconded, to approve the Special Ross Town Council Meeting Minutes of Thursday, May 10, 2012 as submitted. Motion carried unanimously. Hunter abstained.

Council Member Strauss moved and Council Member Martin seconded, to approve the Regular Ross Town Council Meeting Minutes of Thursday, May 10, 2012 as amended. Motion carried unanimously. Hunter abstained.

Council Member Hunter moved and Council Member Strauss seconded, to approve the Special Ross Town Council Meeting Minutes of Thursday, May 17, 2012 as submitted. Motion carried unanimously.

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Council Member Hunter moved and Council Member Strauss seconded, to approve the Adjourned Regular Ross Town Council Meeting Minutes of Thursday, May 24, 2012 as submitted. Motion carried unanimously.

**7. Demands.**

The demands were met.

*Mayor Small announced that Item No. 27 will be moved to the consent agenda and become Item No. 15e; Item No. 18 has been pulled regarding the bike lane on Sir Francis Drake; and Item No. 29 has been continued.*

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

**9. Town Council consideration/adoption of Resolution No. 1770 commending Fire Chief Tom Vallee upon his retirement.**

After 37 years with the Ross Fire Department, Fire Chief Tom Vallee is retiring. The community gave Chief Vallee a farewell celebration just prior to the Council meeting, and the Council followed with parting gifts.

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, to adopt Resolution No. 1770 commending Fire Chief Tom Vallee upon his retirement. Motion carried unanimously.**

**10. Report from Mayor.**

Mayor Small thanked five individuals, P. Beach Kuhl, Elizabeth Brekhus, Katie Hoertkorn, Jed Nelson and Barbara Call for stepping up to run for Ross Town Council and making it a real election. And Mayor Small thanked Ross Property Owners Association for organizing a candidate's night on short notice. It was well attended. After the election is certified, the Council looks forward to swearing in our three new Council Members, P. Beach Kuhl, Elizabeth Brekhus and Katie Hoertkorn.

As disappointing as it was that Measure C did not pass, the Town Council and Town staff are working hard to finalize a budget that covers the basic services for all our residents. Some have questioned why the Council is cutting from other areas since this was a Public Safety Tax. To clarify, up until this year, this tax was called a Municipal Services Tax and showed up on your property tax bill as a general purpose tax, a tax the Town has collected since the 1980's. This is no longer legal and the tax's use now has to be attached to a specific purpose similar to the Ross School Parcel Tax.

Since Public Safety is the largest cost to our Town Budget, it was most appropriate to identify this department as the recipient of these funds. But since it did not pass, the Council would significantly impact your public safety if the Council pulled \$642,000 from their budget. So in developing the Plan B budget if the measure did not pass, the Police and Fire Departments were asked to deduct \$440,000 from their budgets and General Government and Public Works were each asked to deduct \$100,000, totaling \$640,000. This was not a matter of addressing unrelated issues. The Council was just trying to ensure that no one department is rendered ineffective.

Although the Council is looking at placing a new measure on the ballot in November, the Council is not blind to the fiscal concerns of our residents. Although Measure C received the

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usual amount of yes votes in the recent election, it did not meet the two-thirds vote now needed. We understand as a Council that we must be as vigilant and fiscally responsible with your tax dollars without depleting your services. Our 2012-2013 budget will contain cost cutting measures; some may be temporary depending on the November election, but others will be permanent and incorporated into future budgets. This council and future councils, along with our Town staff, are committed to being fiscally-responsible stewards of your tax dollars.

In an effort to keep a focus on our downtown businesses, Mayor Small congratulated Anar Sandhir, owner of "A Touch of Class" drycleaners, for going green. At great expense they have invested in a non-hazardous material and substance called SYSTEM4 that is organic and environmentally-friendly. The Council wishes them continued success.

In closing, Mayor Small thanked Christine O'Rourke for her production of "The Morning After." She has worked on this publication with Gary Broad since its inception. She has also been responsible for helping the Town of Ross obtain grants and implement the General Plan. As a Project Planner, she completed our current Housing Element, along with many other projects. As she sits here tonight and listens to our budget cuts, the Town Council wants her to know how much we appreciate her contributions to our community.

### 11. Report from Interim Town Manager.

Interim Town Manager Patricia Thompson reported that Public Works Director Bob Hemati started the process of renegotiating the lease with the Post Office, which is up next April. The farmers market has been set up and a few problems are being ironed out. The first meeting of the Bolinas Avenue Citizen Committee addressing flood issues will occur next Tuesday evening at San Anselmo's Town Hall. Also, a neighborhood meeting on Fern Hill will occur on Monday night to discuss ongoing concerns about parking and pedestrian safety. She also met with new Town Manager Rob Braulik to go over administration of the Town. The last few weeks, staff has been working on the Plan B budget, which staff will report during the budget discussion.

### 12. Report from Committee Heads.

#### Community Protection

- Council member Hunter

- Public Safety update

Council Member Hunter attended the first meeting of the Ross Valley Fire JPA along with Mayor Small and Fire Chief Tom Vallee. Fire Chief Roger Meagor placed an emergency resolution on the agenda, which unanimously passed to provide the Town extra time to settle the budget before making a decision on the apprentice program. They also discussed another budget idea, a pension obligation bond, which will be discussed under Item No. 22.

- Transportation Authority of Marin (TAM) update

Council Member Hunter received funding for a feasibility study for the bike share program. The contractor to perform this study was chosen 45-days ago and an advisory panel has been formed. He will continue to sit on the advisory panel, as a private citizen, after the end of this month. It was a fabulous meeting. This will study the ability for the County of Marin to begin a bike share program much like Paris, Washington D.C. and Minneapolis.

#### Public Works

- Council member Strauss

- Public Works update

Council Member Strauss asked the Public Works Director to provide an update on the intersection. Public Works Director Bob Hemati received an updated schedule from Coastland

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Consultants. There is a concern about Indian remains. Staff is working with Caltrans consultants in regard to small excavation to satisfy the concerns, so most likely next summer.

Council Member Strauss asked about mapping in regard to the Indian remains. Public Works Director Hemati agreed to review. Council Member Strauss noted that there is a map for Murphy creek, which was relocated when the train came through. Public Works Director Hemati indicated that they must do their due diligence and a meeting will occur with all parties involved.

### **13. Report from Ross Property Owners Association.**

Charlotte Levin, representing RPOA, announced that candidate's night was very successful. The oak tree has been replaced with a cherry tree. It's the same tree planted along the Yoshino cherry for the annual cherry blossom festival in Washington D.C. Chief of Protocol Liz Welsh attended the June Board meeting and informed the RPOA about the lack of funds for the Fourth of July celebration. The Board unanimously agreed to make a generous donation to move forward with the festivities. They congratulated the new Town Council members and thanked the outgoing Council members for their dedication and service to the Ross community.

### **14. Flood Control Report.**

Council Member Martin updated the Council on the status of Army Corps of Engineers Unit 4 project, which of course is the removal of the fish ladder in Ross as well as improvements to the creek bed to increase its capacity in Ross from the fish ladder to the border of San Anselmo as well as improvements to increase the capacity of the channel that leads to Kentfield. This project was authorized by Congress in 1962 and since then all they have to show for it is about 18 reports the Army Corps of Engineers has done over time.

On May 24th, a meeting was held in the District office of Army Corps of Engineers in San Francisco with key members of the Corps staff involved with the Unit 4 project in Ross. He joined Supervisor Katie Rice, County Deputy Public Works Director Craig Tackabery, County Flood Control Director Jack Curley, San Anselmo Mayor Tom McInerney, and Tracy Clay also from the County of Marin. The purpose of the meeting was to get a briefing on the status of funding to complete the Unit 4 project, which is estimated to cost approximately \$12 million and is a key component of the County's \$130 million comprehensive flood control program.

Unfortunately, the response was murky. Required remaining environmental and engineering studies can partially be funded through 2012 funds, which are not obligated. Funding for any remaining environmental and engineering studies, along with project construction would have to be authorized specifically in the President's budget and approved by Congress. Funding to complete Unit 4 is being included in the Army Corps San Francisco District's 2014 budget submittal, which is due by the end of this month. To qualify for funding, the submittal must survive a few steps of review, including being accepted by the regional office of the Army Corps, and then the Washington office of the Army Corps. Each project receives a rating from the Corps, which is determined by a number of variables including population the project affects, life and safety concerns, cost and ability to complete the project within three years. Given that the 2005 flood of the Corte Madera Creek caused over \$70 million of damage in a significant area of land, flooding the public safety building in Ross, Fairfax and San Anselmo, makes a very compelling line of reasoning for this project. The Corps will work with the County to revise the project submittal, including risk assessment to accurately convey the justification for the project as reflected in its rating.

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The County will also confer with its Washington lobbyist to re-think strategy for Unit 4, including providing the Army Corps of Engineers Washington office with presentation of the County of flood control project, contacting key members of congressional appropriation committees, as well as our congressional representatives, and key individuals in the administration. This approach is quite different from the one the County has pursued in the past.

**15. Consent Agenda.**

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

a. Town Council consideration/adoption of Resolution No. 1771 Making Certain Findings and Determinations in Compliance with Section XIII B of the California Constitution (GANN Initiative) and Setting the Appropriation Limit for the Fiscal Year Ending June 30, 2012.

Mayor Small asked for a motion.

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

b. Town Council consideration/approval of reappointment of Teri Dowling to the Marin County Commission on Aging for a three-year term.

Mayor Small asked for a motion.

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

c. 33 Winship Avenue, Design Review and Demolition Permit No. 1808  
Chris and Mary Ann Neumann, 33 Winship Avenue, A.P. No. 72-153-09, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre), Zone X (area outside the 1-percent annual chance floodplain). Request for design review and a demolition permit to replace the shingle siding with horizontal wood siding. The project also includes modification to the windows north of the entry and deletion of one window on the north elevation.

Lot area (approximate)	5,500 square feet	
Existing Floor Area Ratio	36.9%	
Approved Floor Area Ratio	44.8%	(20% permitted)
Existing Lot Coverage	32.3%	
Approved Lot Coverage	32.3%	(20% permitted)
Existing Impervious Areas	56.6%	
Approved Impervious Areas	46.8%	

Mayor Small asked for a motion.

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

**33 Winship Avenue Conditions:**

The project is approved subject to the findings in the staff report and the conditions of the October 13, 2011, Town Council approval.

**d. 42 Fernhill Avenue, Exception to Variance & Design Review No. 1867**

Tim Wood, 42 Fernhill Avenue, A.P. No. 73-041-26, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1-3 units per acre), Zone X (outside 1-percent annual chance floodplain). Request for the Town Council to delete a condition of the June 8, 2006 Variance and Design Review approval that restricted improvement of the basement area. Basement Exception to allow approximately 400 square feet of basement area to be finished. No exterior changes are proposed.

Lot area	20,440 square feet
Existing Floor Area Ratio	28.9%
Proposed Floor Area Ratio	30.8% (20% permitted)
Existing Lot Coverage	18.7%
Proposed Lot Coverage	18.7% (15% permitted)
Existing/Proposed Impervious Areas	no change

*The existing residence is nonconforming in setbacks.*

Council Member Strauss believed going forward in review it is important for the Council to look at scale. He is not sure if the Council realized the impact by approving some of these when they do not consider the amount of off haul dirt. The Council must be cognizant of the fact that there may be unanticipated consequences of that ordinance that must be thought out in more detail.

Mayor Small asked for a motion.

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

**42 Fernhill Avenue Conditions:**

1. The approval allows the property owner to improve the existing basement area, as shown on the plans reviewed by the Town Council on June 14, 2012. A building permit is required.
2. The Town rescinds Condition No. 5 of the June 8, 2006, Town Council approval for the variance, design review and demolition permit, which precluded improvement of the basement area.
3. The floor area exempted under this approval shall not be traded off for non-basement floor area, or an addition with more apparent mass, in the future.
4. The applicants shall obtain a building permit to improve the area and the plans shall be subject to current code requirements for the proposed use of the space. If the use of the area is limited under the building code, the plans shall clearly note the use limits on the plans.
5. Sprinklers shall be extended to any new basement areas if they are not already covered by sprinklers.
6. The Building and Public Works Director may require any existing downspouts to dissipate on site, if they currently do not, to comply with the Town’s stormwater ordinance (Chapter 15.54).

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7. As provided in Title 15, Section 15.50.060, no building permit shall be issued within nine months of final inspection or expiration of an antecedent building permit.
8. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS.
9. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

#### **e. 7 Hillgirt Avenue, Variance and Design Review No. 1880**

Tony Curtiss and Marta Osterloh, 7 Hillgirt Avenue, A.P. No. 73-232-42, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1-3 units per acre), Zone X (area outside of 1-percent annual chance floodplain). Design review of 6-foot tall front yard fence made of wood and galvanized metal grid, 6-foot tall redwood driveway gate, 6-foot tall entry columns finished with bluestone and rock, and an 8' 6" tall wood arbor entry structure.

Mayor Small asked for a motion.

**Council Member Strauss moved and Council Member Martin seconded, to approve Consent Calendar Item "e" as submitted by staff. Motion carried unanimously**

#### **7 Hillgirt Drive Conditions:**

1. The proposed gates, trellis and fencing shall be designed and constructed in substantial conformance to the plans submitted for Town Council review and approved on June 14, 2012, except as otherwise noted in these conditions.
2. The wood and wire fencing shall not exceed 48" in height.
3. It is the responsibility of the applicant to ensure that the fencing is located on 7 Hillgirt and not within the right-of-way.
4. The project owners and contractors shall be responsible for maintaining Town roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
5. Failure to secure required building permits and/or begin construction by June 14, 2013 will cause the approval to lapse without further notice.
6. This project shall comply with the following recommendations to the satisfaction of the Department of Public Safety: 1.) a street number must be posted (minimum 4 inches on contrasting background); and 2.) a Knox Lock box is required.
7. 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

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file for a business license. A final list shall be submitted to the Town prior to project final.

8. 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.

**End of Consent agenda.**

**16. Public Hearings on Planning Applications – Part I.**

*Public hearings are required for the following planning applications. Staff anticipates that these items may be acted upon quickly with no oral staff report, Council discussion, or public comment. If discussion or public comment is requested for any item, the Council may consider the item later in the agenda under Public Hearings on Planning Applications Part II. The Council will act on each item separately.*

**a. 93 Bolinas Avenue, Extension of Variance and Design Review No. 1747**

Paul and Tori Steege, 93 Bolinas Avenue, A.P. No. 73-041-15, R-1 (Single Family Residential), Medium Density (6-10 Units/Acre), Zone C (outside 1-percent annual chance floodplain). Request for re-approval of an application for variance and design review for a project approved by the Town Council on July 9, 2009, but not constructed. The project would allow the following modifications to the existing residence: 1.) modification of existing dormers on the north facing roof ; 2.) new gable roof for existing carport and extension of the carport 8 feet towards the front yard; 3.) replacement of the existing porch with a new porch and second floor roof deck; and 4.) a new hot tub within the rear yard setback (40 feet required, 3.5 feet proposed) and east side yard setback (15 feet required, 3.5 feet proposed). The hot tub would be located on an existing deck that covers a seasonal stream contained in a concrete channel.

Lot area	6,400 square feet	
Existing Floor Area Ratio	1,943 sq. ft.	30.3%
Proposed Floor Area Ratio	2,037 sq. ft.	31.8% (20% permitted)
Existing Lot Coverage	1,393 sq. ft.	21.8%
Proposed Lot Coverage	1,487 sq. ft.	23.2% (20% permitted)
Impervious Surfaces	no change	

*The existing residence and carport are nonconforming in side and rear setbacks*

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.



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**Council Member Strauss moved and Council Member Martin seconded, to approve 93 Bolinas Avenue subject to the findings and conditions outlined in the staff report. Motion carried unanimously.**

**93 Bolinas Avenue Conditions:**

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

1. The approval is for the plans approved by the Town Council on June 14, 2012. The garage ridge shall not exceed 9' 6". 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.
2. All site drainage shall be dissipated on site and not directly to the watercourse.
3. 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.
4. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review.
5. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. 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.
6. Any portable toilets shall be placed off the street and out of public view.
7. The operation of the hot tub and equipment shall comply with the Town of Ross noise ordinance.
8. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
9. Failure to secure required building permits and/or begin construction by June 14, 2013 will cause the approval to lapse without further notice.
10. 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.

**b. 19 Woodside Way, Extension of Variance, Design Review and Demolition Permit No. 1816**

Todd and Julie Boes, 19 Woodside Way, A.P. No. 73-252-03, R-1:B-6 (Single Family Residence, 6,000 sq. ft. minimum lot size), Medium Density (6-10 units per acre). Request for re-approval of plans approved May 12, 2011, expired May 12, 2012, to allow a building permit to be issued for the project. The plans included approval of design review, demolition permit and variances to allow partial demolition of the existing residence, demolition of the garage, and an addition and significant remodel to the remaining structure. The project includes removal of the garage and southwest bedroom wing and demolition of walls, windows and doors on each elevation of the remaining residence. A new garage and two-story addition would be constructed. The applicants request a setback variance to locate a covered entry porch in the area of the existing entry, maintaining the existing encroachment into the northwest side yard setback (15 feet required, approximately 8 feet existing and proposed). Variances are also requested to retain the existing den and living room within the rear yard setback (40 feet required, 21.5 feet existing) and to modify the existing stairs and deck in the rear yard area (40 feet required, 22 feet existing and proposed). Design review of associated landscaping including realignment of the driveway, a new 6-foot-tall auto gate and entry columns, 170 feet of retaining wall ranging from 3 feet to 11 feet tall, and 80 cubic yards of grading (cut). Design review and an encroachment permit is requested to locate a new 6-foot-tall pedestrian gate and landscaping within the Spring Road right-of-way. Total existing floor area is 2,962 square feet. Total floor area of 4,524 square feet is proposed.

Lot area	23,516 sq. ft.	
Existing Floor Area	12.6%	
Proposed Floor Area	19.2%	(20% permitted)
Existing Lot Coverage	18.0%	
Proposed Lot Coverage	18.4%	(20% permitted)
Existing Impervious Areas	19.1%	
Proposed Impervious Areas	23.8%	

Senior Planner Elise Semonian recommends approval of the requested project re-approval to extend the planning approval until May 12, 2013, essentially a one-year project extension, based on the original findings and conditions of approval. The applicant submitted for a building permit within the approval period, the permit was ready to be issued, the applicant was negotiating with contractors and the planning deadline passed. The applicants would have pulled the permit or requested a first extension had they realized the deadline. Planning staff tracks pending applications and expirations, information shared with the Council periodically, but staff removed the application from the list since issuance of the building permit seemed imminent. The standard planning application fee for this project is \$6,300 and the fee for an extension request is \$500. Staff recommends that the Council waive all but \$500 of the planning application fees. The applicant is requesting that the remaining fees be waived. Staff indicated that this differs from the planning expiration for 18 Canyon since the owner of that site submitted an incomplete building permit application after the approval had expired, that applicant already received the maximum extensions, and the laws applicable to that application had changed since the project was originally approved.

Council Member Martin expressed concern for this being precedent setting. Council Member Strauss stated after hearing the staff report, he felt they made every attempt to pull the building

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permit. Council Member Hunter stated that the Council could stipulate that they must pull the permit by next Friday in order to stay on track.

The applicant expects to pull the permit within the month of June. Council Member Strauss did not want to set precedent for waiving fees. The applicant was unaware of the deadline and desired the maximum period of time. Mayor Pro Tempore Russell did not see innocence as being a reason for waiving fees. He desired a rationale applied consistently in terms of moving forward. They must create a system so this does not happen again. Council Member Strauss stated the burden is on the architect and homeowner to keep track of those dates. Mayor Pro Tempore did not see the basis for letting this go and desired justification going forward.

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 stated it is very tough, especially tonight, but he could support the earlier suggestion of pulling the building permit by next Friday.

Mayor Small supported the recommendation that the permit be pulled by next Friday. Senior Planner Semonian noted that the planning approval would extend as long as the building permit is valid. 18 months would start when the permit is pulled. Mayor Pro Tempore Russell desired consistency. Council Member Strauss felt there is some cause in regard to this grace period. Mayor Small indicated that Town staff would do whatever possible to work with the applicant and architect in regard to due dates, but it is not up to the Town. Town staff cannot be the applicant's watchdog.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to re-approve 19 Woodside Way, Variance, Design Review and Demolition Permit No. 1816 and requested fee waiver based on the original findings and conditions of approval. The applicant shall pull the building permit by Friday, June 22nd, and if the applicant fails to pull the building permit by the date specified, then the extension is null and void. Motion carried unanimously.

### c. 20 Olive Avenue, Variance and Design Review No. 1879

Ezra and Kate Ripple, 20 Olive Avenue, A.P. No. 73-171-09, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre), Zone X (outside 1-percent annual chance floodplain). Application for design review and variances. The project includes: 1) 121 square foot addition at the rear of the residence; 2.) remodel of front elevation, including extension of the existing roofline over the front entry area and modifications to the front porch and entry stairs; 3.) demolition of 268 square foot carport; 4.) reconfiguration of front parking area and replacement of asphalt with pavers; 5.) relocation of pool equipment from east side yard to enclosed area on west side of residence; and 6.) landscape retaining walls.

Lot Area	7,265 square feet
Existing Floor Area Ratio	33.9%
Proposed Floor Area Ratio	31.9% (20% permitted)
Existing Lot Coverage	25.9%

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Proposed Lot Coverage	24.0%	(20% permitted)
Existing Impervious Areas	68.3%	
Proposed Impervious Areas	45.6%	

*The existing residence and parking structures are nonconforming in setbacks.*

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 Strauss moved and Council Member Martin seconded, to approve 20 Olive Avenue, Variance and Design Review No. 1879 subject to the findings and conditions outlined in the staff report. Motion carried unanimously.

**20 Olive Avenue Conditions** *(shall be reproduced on the first page of the plans submitted for building permit):*

1. The project shall be constructed in substantial conformance with the plans approved by the Town Council on 6/14/12, on file with the Planning Department except as otherwise provided in these conditions.
2. Prior to issuance of a building permit the applicant shall submit a detailed tree protection plan pursuant to Ross Municipal Code Section 12.24.100, to be reviewed by the town arborist at the applicant's expense. The improvements proposed within the non-intrusion zone of the protected redwood tree are not approved unless the town arborist indicates the tree will be preserved by following the tree protection plan.
3. The improvements within the Ross Valley Sanitary District shall be reviewed and approved by the Ross Valley Sanitary District prior to issuance of the building permit. If the modifications to the parking area are not permitted, the existing parking configuration (without the carport), shall be maintained.
4. An encroachment permit is required for any work within the public right-of-way.
5. All costs for town consultant, such as the town arborist, 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.
6. 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.
7. This project shall comply with the requirements of the Department of Public Safety including a street number must be posted.
8. The applicant shall demonstrate that the landscape plan and irrigation shall comply with the Marin Municipal Water District Water District Conservation Ordinance. Written confirmation that the plan has been reviewed and approved by MMWD shall be required to be submitted to the town planner prior to project final.
9. The applicant shall comply with all requirements of the Ross Valley Sanitary District prior to project final. Written confirmation from the RVSD is required to be submitted to the building department prior to project final.

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10. 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.
11. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS.
12. 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.
13. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
14. Failure to secure required building permits and/or begin construction by June 14, 2013 will cause the approval to lapse without further notice.
15. 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 Small recused herself from the next agenda item in order to avoid the appearance of a conflict.*

**d. 662 Goodhill Road, Variance, Design Review and Hillside Lot Permit No. 1876**  
Steve Scarpa, 662 Goodhill Road, A.P. No. 73-211-45, R-1:B-5A (Single Family Residential, 5-acre min. lot size), Very Low Density (.1-1 Unit/Acre) and Limited Specialized Recreational/Cultural. Applications for design review, variance and hillside lot permit to enclose the 369 square foot covered loggia/porch on the west elevation to enlarge the family room. The area was counted towards the maximum permitted floor area for the site when the residence was approved.

Lot Area	776,675 sq. ft. (17.83 acres)
Existing Floor Area Ratio	1.1%
Proposed Floor Area Ratio	1.2%
Existing Lot Coverage	0.9%
Proposed Lot Coverage	0.9% (15% permitted)
Existing/proposed Impervious Areas	no change

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The slope of this lot is 41%. The Hillside Lot Ordinance would recommend a maximum floor area of 6,926 square feet, or 0.8% floor area ratio, for the site.

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

Mayor Pro Tempore Russell asked for a motion.

**Council Member Hunter moved and Council Member Martin seconded, to approve 662 Goodhill Road, Variance, Design Review and Hillside Lot Permit No. 1876 subject to the findings and conditions and outlined in the staff report. Motion carried unanimously. Mayor Small absent.**

#### **662 Goodhill Road Conditions:**

1. A building permit is required for the project. The conditions of Resolution 1720 shall apply to the project and building permit issuance.
2. The project shall be constructed in substantial conformance with the plans dated May 21, 2012, on file with the Planning Department and approved by the Town Council on June 14, 2012.
3. 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.
4. This project shall comply with the requirements of the Ross Fire Department (or the Ross Valley Fire Department after July 1, 2012). The Town may require sprinklers to be extended to the area.
5. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. 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.
6. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS.**
7. 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

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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 Small reconvened her position as Mayor on the Town Council. Mayor Pro Tempore Russell rescued himself from the next agenda item in order to avoid the appearance of a conflict.*

### **e. 27 Upper Road, Basement Exception and Hillside Lot Permit No. 1882**

Eric Greenberg, 27 Upper Road, A.P. No. 73-111-11, R-1:B-5A (Single Family Residence, 5-Acre min. lot size), Very Low Density (.1-1 units per acre), Zone X (outside 1-percent annual chance floodplain). Request for basement exception and hillside lot permit to retain finished basement area.

Lot area	123,710 sq. ft.
Effective Lot Area	81,327 sq. ft.
Existing Floor Area	11.9%
Proposed Floor Area	14.1%
Existing/Proposed Lot Coverage	no change
Existing/Proposed Impervious Areas	no change

Senior Planner Elise Semonian recommended amendment of the draft conditions of approval to read: Condition No. 2 *"The applicant shall produce contracts, receipts or other verification to confirm the valuation of the project. The Town may retain a consultant to determine the value of the project for the building permit. The cost of the construction consultant shall be paid by the applicant."* Condition No. 5a *"The applicant shall provide a fire suppression system for the basement areas to the satisfaction of the Fire Department prior to project final."*

Council Member Martin asked staff if there is an estimate on the fees. Senior Planner Semonian did not know at this time. Staff further explained that the assessor would upgrade the value of the site after a building permit is issued.

Council Member Strauss believed this is an illegally built structure and the contractor should be banned from further working in this Town because it sets a bad precedent. It was a concealed space. He was surprised of the extent. This area did not exist before as a basement space and was illegally created. He did not believe the attic and basement ordinance applies. The Council must be very careful. Grading is beyond what would be allowed. Limits of area must be set and penalties must be fair to the applicant.

Town Attorney Greg Stepanicich agreed to review the project against the provisions of the basement and attic ordinance. Council Member Strauss suggested the application be continued to allow review by the Town Attorney.

Jared Polsky, architect, representing Owner Eric Greenberg, stated that it is a big basement. His understanding is that the Town recognizes something underground and not seen as different than a structure that has impact on the community. Like every other applicant under the amnesty provision, Mr. Greenberg admits he constructed this basement without a permit. He has come clean and provided drawings and requested amnesty by law. He understands it will be assessed at a sizeable fee. Mr. Greenberg wants to make good, pay his fee and move on, which is what amnesty is about. Mr. Greenberg has admitted wrong and now wants to make good and

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move on. It does not seem to have any size limits on basements, which would be very discriminatory in regard to a big basement. Also, the only provision for amnesty was that the basement or attic must be built before the enactment of the ordinance, which was last September. If built before it is subject to amnesty. This basement was built in 2001 or 2002, so by law there are no grounds to deny amnesty. If it must be continued, he would hope it is a win/win that Mr. Greenberg wants to make good, pay his fee and not be discriminated against the large basement.

Mayor Small opened the public hearing on this item.

Katie Hoertkorn, Lagunitas Road resident, asked if more than 35 cubic feet was removed in order to construct this basement. Architect Polsky responded in the affirmative.

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 agreed to continue the matter in order for the Town Attorney to review. They were all rather surprised by the immense amount of work that was done. In most neighborhoods that would not have been done without a neighbor making a phone call to the Town. It is a significant project, but regardless, they have an ordinance. If this ordinance creates this loop hole so that the Council must honor this, then that is what they must do. Then they must look at attics and basements to determine a scale factor. They must also be careful how they move forward in order to treat this fairly. She wondered if Town staff should review business licenses. Council Member Strauss urged staff to review contractors without a contractor's license and building illegally in Town. He further views this as an illegally built structure. Town Attorney Stepanich must review the facts and how the amnesty provision is worded.

Mayor Small asked for a motion.

**Mayor Small moved and Council Member Hunter seconded, to continue 27 Upper Road, Basement Exception and Hillside Lot Permit No. 1882 to a future date. Motion carried unanimously. Russell absent.**

*Mayor Pro Tempore Russell reconvened his position as Mayor Pro Tempore on the Town Council. Council Member Strauss recused himself from the next agenda item in order to avoid the appearance of a conflict.*

#### **f. 14 Madrona Avenue, Variance No. 1801**

Elika and Michael Rosenbaum, 14 Madrona Avenue, A.P. No. 73-232-42, R-1:B-10 (Single Family Residence, 10,000 Square Foot Min. Lot Size), Medium Low Density (3-6 Units/Acre). Setback variance to install an emergency generator within the front yard setback (25 feet required, 0 feet proposed). The unit would be located to the west of the pool equipment.

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 Martin moved and Council Member Hunter seconded, to approve 14 Madrona Avenue, Variance No. 1801 subject to the findings and conditions outlined in the staff report. Motion carried unanimously. Strauss absent.**



**14 Madrona Avenue Conditions:**

1. A building or electrical permit may be required for the generator. Contact the Town building official for details.
2. No changes from the approved plans, before or after project final, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change.
3. 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.
4. 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.
5. Failure to secure required building permits and/or begin construction by June 14, 2013 will cause the approval to lapse without further notice.
6. 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.

*Council Member Strauss reconvened his position on the Town Council.*

**End of Public Hearings on Planning Applications- Part I.**

**17. Town Council consideration/approval of Special Events Permit for Campout on the Common September 7-8, 2012.**

Interim Town Manager Patricia Thompson summarized the staff report and recommended that the Council approve a permit for use of a portion of the Common for the Ross School PTA fundraiser for a Campout on the Commons for September 7-8, and determine if a permit application fee and reservation fee should be charged or waived.

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Ed Dong, Campout on the Commons Chair, explained that he is a very involved Ross School dad trying to raise funds for the PTA, and if fees were imposed, it would defeat the purpose to raise funds for the kids. He respectfully requested that the Council waive the reservation fee and the application fee.

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 Martin stated that given the Town is covered with insurance through the PTA and given this is for Ross families and a fundraiser for Ross School, personally he did not have a problem waiving the fees. Council Member Strauss noted that staff time is involved in terms of writing the staff report, but agreed it is for a good cause.

Mayor Small recommended adjusting the sprinklers during the Campout on the Commons. She agreed to waive both the reservation fee and the application fee in order not to confuse the issue since it is Ross School and Ross families and the Town would desire the same in return. She further believed keeping cooperation going would set a precedent.

The Council agreed to authorize the Town Manager to issue a special events permit for the Ross School Campout on the Commons that will take place from Friday, September 7, at 7 p.m. to Saturday, September 8, at 10 a.m. About 40 families will participate in this fundraiser for Ross School. Families will pitch individual tents and take them down in the morning. Refreshments will be served in the evening and in the morning.

Mayor Small asked for a motion.

Council Member Martin moved and Council Member Strauss seconded, to approve the Special Events Permit for Campout on the Commons September 7-8, 2012 and waive any permit application or reservation fees for the event. Motion carried unanimously.

18. Town Council consideration of approving Marin County Bicycle Coalition's (MCBC) request to install a Class II Bike Lane in the eastbound direction on Sir Francis Drake Boulevard from Sir Francis Drake Bridge to Ross Terrace.  
*\*\*This item has been removed from the agenda\*\**

19. Presentation by Stetson Engineers of FEMA's revised flood insurance rate maps. James Riley, Stetson Engineer, discussed preliminary Flood Insurance Rate Maps (FIRMS) that incorporate new data from the latest hydraulic studies and modeling technology. The new maps identify the area contained within the Special Flood Hazard Area, or the area within the 100-year flood boundary. In Ross, this area is generally smaller than the area identified on the current FIRMS.

Unlike previous FIRMS, the preliminary maps also delineate a Regulatory Floodway, which is an area within the Special Flood Hazard Area that must be reserved in order to discharge the base flood without a rise in the water surface elevation. The Federal Agency Management Agency (FEMA) has developed regulations that jurisdictions must adopt that will affect new development in the Regulatory Floodway. Existing structures will be allowed to rebuild as long as the new construction stays within the existing footprint. Projects that cost more than 50% of the value of the building will be required to elevate the structure. New development that

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increases the water surface elevation will not be approved. Applicants will be required to submit a hydraulic study that certifies the project will not result in a rise in the water surface elevation.

Council Member Martin asked if the Town is obligated to adopt policies to prevent any additional building within that floodway. Stetson Engineer Riley responded that it is not any additional building, but any building that would cause a rise. Kathleen Schaeffer, FEMA Regional Engineer, indicated that there is an obligation to adopt policy. Once these maps are issued, the Town must adopt all parts. She further noted that projects that cost more than 50% of the value of the building would be required to elevate the structure.

Council Member Martin stated it is difficult to determine exact locations, but it includes Ross Common and it looks as if part of the regulatory floodway would include Ross School. Now, of course, when Ross School was rebuilt a few years ago, water was not allowed to be absorbed under the project, so that sort of project today would be illegal under these standards. Regional Engineer Schaeffer responded in the affirmative. They would be required to elevate that structure. Council Member Martin explained the reason why this standard is being applied is to not push out the floodplain any further. Council Member Strauss pointed out that Ross School appears to be outside of the regulatory floodway.

Council Member Hunter clarified that due to the approval process this map will not be approved until 1.5 years and then the Town would have 6-months to make changes. Regional Engineer Schaeffer responded in the affirmative.

Council Member Martin clarified that the latest FEMA map did not include global warming. Stetson Engineer Riley responded in the affirmative, not in Ross.

Mayor Small recommended that the maps presented at the June 28th meeting and the final map presented in September be clearer as to the streets in order for the public to better understand. Stetson Engineer Riley agreed to prepare the map in that fashion. Regional Engineer Schaeffer explained that the work maps would be presented to the community on June 28th. Because they are GIS based, those same lines will be transported to the FEMA map to have that traditional appearance and that process of converting will take until September. Once issued in September, the Town of Ross will receive a formal letter, which kicks off a very formal process. There will be a community meeting with staff that will occur within 30-days after the letter is mailed to the Town. Following that meeting there is a notice in the federal registry and noticed two weeks apart in the Marin IJ. The final notice in the Marin IJ kicks off a 90-day formal appeal period. Hopefully there will not be any appeals, so then they can start the process of making the final FEMA map and issue a letter of final determination, which will kick off the 6-month compliance period and in that 6-month window that is when the Town will want to amend their ordinance. They have staff to assist Town staff to make sure the wording is correct.

Council Member Martin clarified that the reason FEMA is pursuing this update and the mandatory regulations are to reduce claims overall. Regional Engineer Schaeffer responded in the affirmative. Council Member Martin asked, as a Federal Agency, do they have any connection with the Army Corps of Engineers. Regional Engineer Schaeffer agreed to share some ideas with staff in order to help with the Army Corps of Engineers. The State of California is about to present a report to the Citizens of the State that shows that, as a State, there is a \$37 billion shortfall in flood structures, so the State will be moving forward on some of these funding mechanisms. Currently, the Central Valley gets the brunt of the State's attention. She met with State officials today and they realized that they must look beyond the Central Valley, but this is a

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very tight financial situation.

Stetson Engineer Riley noted that it is important to point out that with the Ross Valley flood program, the ultimate goal is to contain a 100-year flood in the channel. In theory, if and when that was to be built, then the County would approach FEMA to redraw this map and in theory all of this would go away, but it does not necessarily have to be at that point to have it redrawn. There could be an interim redrawn.

Senior Planner Semonian asked if there is funding available through FEMA or through the County to send notices to homeowners in regard to the changes. Regional Engineer Schaeffer indicated that unfortunately there is no money available to send out public notices, so they ask the community to reach out.

Mayor Small opened the public hearing on this item.

Jonathon Goldman, Ross resident, imagined that a property is not now in the regulatory floodway, and as a homeowner of Ross, who does not understand the process and does not attend the public meetings and is contemplating changes to their property, when a resident comes to the Town after the regulations are developed and is told to hire a hydrologic engineer, a homeowner would be surprised and the cost will be significantly altered. He guaranteed that the product of that analysis would be that it could not be built. There is a huge benefit to the community to accomplish that outreach. Give people an opportunity to understand that the permitted uses of their property will change and that they have an opportunity to argue the technical merits. A lot of property owners might perceive that somehow the federal government or the Town is taking value from their property. He suggested working with the property owners affected and give them an opportunity to understand in advance, which would limit the pain and make the process a lot more successful.

Charlotte Levin, Ross resident, asked if this is for new construction. Regional Engineer Schaeffer explained that if it is an existing structure and the changes proposed are more than 50% of the value of the structure, then floodplain requirements kick in. Matters end up being on a case-by-case basis with a building official who understands the FEMA regulations.

Elizabeth Brekhus, Council Member-elect/Sir Francis Drake Blvd. resident, noted that several properties have a small portion in the floodplain and desired clarification on whether such properties have to be in a floodplain or a portion of the unapproved land would require the same ordinance regulation. Regional Engineer Schaeffer indicated that FEMA is only concerned about the structure within the floodplain. She encourage elected officials to have the conversation, if on the edge, a homeowner may be subject to flooding. Residents may have risk and should consider a low cost flood insurance policy.

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

Mayor Small agreed noticing residents is very important and the map must be better clarified. Regional Engineer Schaeffer noted that they have GIS information available and individuals can access the maps through their website as well.

Council Member Martin asked staff the cost to send out proper notification to impacted properties. Senior Planner Semonian believed 240 residents live in the flood zone, so postage is

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substantial. Council Member Martin believed it is appropriate that the County get involved and agreed to contact the County.

FEMA will be holding a community meeting on June 28, 2012, at 7:00 p.m. at Sir Francis Drake High School to discuss the preliminary maps and development regulations. Property owners within the flood zone are encouraged to attend. The new FIRMS and development regulations are expected to become effective in 2013.

### 20. Town Council consideration/adoption of Resolution No. 1772 final draft of Council Procedures Manual and descriptions of Standing Committees developed by the General Government Committee.

Council Member Martin explained that the purpose of the procedures manual is to familiarize Council members with current accepted practices and procedures to assist them with actions representing the interests of Ross. The manual is concise, not overly restrictive and not too cumbersome as a document. It is a document that can be amended and updated from time-to-time at the pleasure of the Council. He further recommended that the Council review and approve the final draft of the Procedures Manual and adopt Resolution No. 1772.

Council Member Strauss clarified that on page 9 under "Overview," it is referring to policy being set, and believed it should be to the Town Manager. Council Member Martin explained that the Council sets policy and the staff implements. Town Attorney Greg Stepanicich noted that direction is given through the Town Manager. Council Member Martin explained that the Council does not assign work, it is the Town Manager who decides what to assign to staff.

Council Member Hunter discussed page 5 under "*JPA and Liaison Appointments*," and pointed out that liaison is left in. He believed the purpose of the JPA is to make decisions and advocate decisions that are in the best interest of that JPA. Town Attorney Stepanicich explained that when sitting on a JPA, the duty is to act in the best interest of the JPA and take into account the interest of the Town. There is an obligation to further the interest of the JPA, but in doing so also take into account the interest of the Town. Mayor Pro Tempore Russell suggested modifying the language to state, "*In the interest of the JPA, taking into account the interest of the Town of Ross.*" The Council agreed.

Mayor Small opened the public hearing on this item.

Elizabeth Brekhus, Council member-elect/Sir Francis Drake Blvd. resident, indicated that the manual has been helpful and great to have as an orientation to the community and noted her appreciation for the effort behind it.

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

The Council agreed to approve a procedures manual that will help familiarize new Council members with the existing practices and procedures of Town government. The manual, which was Council Member Martin's Council goal for the year, is intended to assist the Council in performing its duties. It describes the roles and responsibilities of the Town Council, Town Council meeting procedures, interactions between the Council and staff, communication protocols, and other operating procedures.

Mayor Small asked for a motion.

Council Member Martin moved and Mayor Pro Tempore Russell seconded, to adopt Resolution No. 1772, a Resolution of the Town Council approving a Procedures Manual for the Town of Ross as amended. Motion carried unanimously.

**21. Town Council consideration/adoption of Resolution No. 1773 establishing additional twenty-minute restricted parking on Ross Common.**

Police Chief Erik Masterson summarized the staff report and recommended that the Council adopt Resolution No. 1773 establishing additional twenty-minute restricted parking spaces downtown.

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 approve a resolution establishing two additional twenty-minute restricted parking spaces in the downtown area. The last two parking spaces on the east side of Ross Common, just south of the southern entrance to the Post Office parking lot, will be designated for twenty-minute parking between 6 a.m. and 6 p.m. Staff recommended these spaces after discussing parking needs with the downtown business owners.

Mayor Small asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to adopt Resolution No. 1773 establishing additional twenty-minute restricted parking on Ross Common. Motion carried unanimously.

*The Council took a short recess at 9:06 p.m. and then reconvened with the next agenda item at 9:18 p.m.*

**22. Public Hearing: Presentation of the draft Town of Ross Budget for Fiscal Year 2012-2013 and Town Council consideration of adoption of Resolution No. 1774 adopting the budget.**

Interim Town Manager Patricia Thompson explained that while the Council had previously discussed a "Plan B" budget that would have eliminated three apprentice firefighter positions and two police positions, one officer and one School Resources Officer, the Council decided to transfer \$284,000 from the Facilities Fund to save two firefighter apprentice positions and one police officer position. School Resource Officer Bob Besgrove, who has worked for the Town for 18 years, will be laid off. Apprentice firefighter Steven Morlock left last month to take a position with the Mill Valley Fire Department.

The approved budget transfers almost \$263,000 from the Equipment Replacement Fund to cover one-time retirement costs and other expenses. Interim Town Manager Thompson explained that, in her opinion, this use of the Equipment Reserve Fund was warranted since there is less of a need to use the funds to replace fire engines and equipment now that the Town has joined the Ross Valley Fire Department. The fire department merger is expected to result in annual savings of roughly \$100,000, which will help defray any future operating deficit.

Council Member Hunter discussed the possibility of using money from their facilities fund to pay down the \$1.5 million owed in regard to CalPERS. Right now the Town pays about \$116,000 per year in interest to CalPERS and the thought is to use the cash available to pay that down and

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save about \$116,000 for about 10 years. There is a middle position, and that would be to finance their pension obligation with a pension obligation bond. The Town at \$1.5 million could get a 4% rate, so that would be about \$60,000 in interest versus \$116,000, so that would be another option to recommend. The process would take six months. If they did decide to pay it all off, and take the balance and pay down the pension on the side fund obligation, wiping out all money in the facility fund, a revenue bond right now is very favorable around 3%, so there are some ways to leverage the cash the Town has or borrow it at very favorable rates.

Mayor Small opened the public hearing on this item.

Jonathon Goldman, Ross resident, apologized to the Council and staff for the fact that people did not vote. Several did not know that by not voting they were putting at risk those that have served this community for many years and are in many ways irreplaceable. Also, for those interested in contributing at the apprentice level in this community. He encouraged the Council to continue to be creative and give the community another opportunity to address their failure of not passing the continuation of the parcel tax. He is personally willing to pay his share of the tax as a donation without the expectation that it is even tax deductible. Also, the amount of money involved is not significant to this community. He encouraged the Council to find a way to keep employees and resources at work providing the services that they do instead of punishing the community or allowing the community to suffer from its foolishness with reduced level of services. Also, challenge the community to do the work necessary to make sure the measure passes. He further stated that it would be nice if this revenue source did not have to be renewed regularly.

Mayor Pro Tempore Russell stated that they should not lose sight of the fact that 60% of the community did vote in favor of the Public Safety Tax. This is a terrible situation and very sad.

Katie Hoertkorn, Lagunitas Road resident, pointed out that this budget is being balanced using reserved funds which is a one time deal. This could cause the Town to go bankrupt such as with the City of Vallejo. The Town is taking a very treacherous step with good reason. No one should think the budget is balanced.

Mayor Small stated that they must determine exactly at what point if the ballot measure did not pass will they keep the apprentice program through the end of this fiscal year or complete after that six month time period. Council Member Hunter stated if it does not pass in November the apprentice program will no longer be continued. Fire Chief Roger Meagor indicated that if they choose to modify the program based on the apprentice program continuing based on the budget, it would be for a minimum period of six months. Council Member Hunter noted that the letter being sent out would state continue the apprentice program for two people for one year subject to the tax measure passing. Fire Chief Meagor suggested stating for a period of six months.

Charlotte Levin, Ross resident, expressed concern for special Town events such as Fourth of July and the Town Dinner. Police Chief Erik Masterson noted that they would make it happen in regard to the Fourth of July celebration. Mayor Small stated that the Council must look at what is most important for the safety of Town residents and make sure dollars are spent on necessary services, and if they have to forgo the lovely Town dinner for one year that is a small price to pay in order to be committed to the more necessary services. Ms. Levin added that the Ross Historical Society also made a generous substantial contribution for the Fourth of July celebration. Mayor Small and the Council noted appreciation.

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Mayor Pro Tempore Russell pointed out that if the municipal tax passed, they were still going into their reserves. The fundamental point is that this is not going to solve the problem. It is a band-aid this year. They must get more revenue or cut expenses. This problem is not going away tonight. Interim Town Manager Thompson added that this is a very tight budget. There are substantial cuts and there is no contingency reserve. Mayor Pro Tempore Russell believed they must address fees involved with applications.

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 suggested setting up a side fund for donations to the Town for not only this year, but in the future. Also, they must consider that some of the additional one time cost that the Town has experienced in the last few years, and not having those going forward and the savings of the JPA, she believed if the tax does pass, their future looks brighter than it appears right now and the Town will be much more in line with where they need to be.

Council Member Strauss believed this should be considered a working document for the new Town Manager and future Council to consider in regard to the apprentice program. Mayor Small expects this community to be generous with the side fund. She further noted that it would not be prudent to not have the apprentice program at least at this point.

Mayor Pro Tempore Russell added that Officer Bob and Project Planner Christine O'Rourke have suffered from this and this is not a decision the Council is making lightly. The Council appreciates Officer Bob and all he has done for the community. Officer Bob stated that the Council must do what is best for the Town and noted that it has been a privilege working for the Town.

The Council discussed placing the Public Safety Tax back on the ballot in November. If the tax fails to pass at that time, the apprentice firefighter program will be eliminated and the two remaining apprentice firefighters will be laid off in December. In the meantime, the Town has requested the Ross Valley Fire Department to not fill any vacant apprentice positions if one or both firefighters find employment elsewhere.

The Council agreed to approve a General Fund budget for fiscal year 2012-2013 that slashes expenditures by \$358,000 and transfers nearly \$647,000 from reserve funds in order to close a gaping hole in the Town's budget caused by an operating deficit and the failure of Measure C, a public safety tax that did not get the two-thirds vote it needed to pass on June 5th. The public safety tax was intended to replace the municipal services tax, which had been approved by voters seven times since 1984, and contributed approximately \$642,000, or 16%, of the Town's general fund budget.

In order to save money in other special revenue funds, the Council agreed to defer projects to improve buildings and grounds. Funding was eliminated for the Town Hall office remodel, engineering design work for anticipated improvements to the public safety building, legal and environmental review expenses for the ball field on the Commons, and audio and video recording and a projection screen for the Council chambers. Funding was also cut for legal services, town events, public information updates, grant writing, and office supplies.

Mayor Small asked for a motion.



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Council Member Hunter moved and Council Member Martin seconded, to adopt Resolution No. 1774 adopting the budget for Fiscal Year 2012-2013. Motion carried unanimously.

*Town Attorney Greg Stepanicich recused himself from the next agenda item in order to avoid the appearance of a conflict.*

**23. Town Council discussion and approval of Marin Clean Energy for Renewable Energy (electric) service or initiating an opt-out provision for Town to remain with PG&E.**

Interim Town Manager Patricia Thompson summarized the staff report and recommended that the Council approve Marin Clean Energy (MCE) for renewable energy service and do 50% renewable.

Council Member Hunter discussed the July 1 date, if like the City of Novato, the Town of Ross chose not to go with MCE at this time, they still have that option for an extended period of time. Justin Kudo, MCE Account Manager, responded in the affirmative. If the Town opts-out of MCE service the Town can re-enroll at anytime. Additionally, if the Town becomes enrolled, the Town has the option of up to 60-days after service begins to opt-out and go back to PG&E without any change. If the Town waits longer than 60-days after enrollment there would be a \$25 opt-out fee on each commercial account to switch back to PG&E.

Mayor Small opened the public hearing on this item.

Rich Hoertkorn, Lagunitas Road resident, noted that the City of Novato opted to stay with PG&E to save money, which should be considered since Ross is in a budget crisis.

Account Manager Kudo noted that the rate calculator is in progress. PG&E rates are still a portion of their rates. They must wait for PG&E to calculate and separate out certain costs. That calculator will be up as soon as possible, but they are waiting for PG&E to deliver their portion of those rates. In terms of Novato, PG&E put together their portion of the cost comparison. Half way through the process, PG&E proposed new rates through July and MCE asked PG&E to update their comparison to reflect the new rates, and PG&E had not finalized their rates and would not modify their cost comparison. The rate change in July is reducing the ongoing CPC rate which all customers pay. PG&E was required to reduce that rate and they are making that up by increasing their generation rate. As a result, they are seeing a shrink where MCE customers are getting a benefit from the rate being decreased but not the other side of PG&E's generation rate increasing. Novato was looking at a \$7,000 to \$8,000 cost increase by switching over to MCE. Using the new rates for Ross, the Town is looking at about \$100 savings per year.

Council Member Martin stated there is also a benefit, the Town under State law, is required to reduce greenhouse gas (GHG) emissions. Ross will begin to meet the requirement with cleaner energy so there is a side benefit to taxpayers.

Charlotte Levin, Ross resident, clarified that it is \$100 cheaper for the entire year from PG&E. Council Member Martin responded in the affirmative. Eventually the PCIA charge will either diminish or go away. Account Manager Kudo responded that the PCIA charge is based on the contracts that exist. So the longer one stays off PG&E service they can expect that charge to decrease.

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Mayor Small asked staff when the GHG inventory must be updated. Project Planner Christine O'Rourke responded every five years. Council Member Hunter asked staff if the 37% includes all energy sources from both suppliers. Project Planner O'Rourke responded in the affirmative.

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

The Council agreed to stay with MCE as the electricity provider for the Town's facilities. An analysis provided by the MEA showed that opting out of MCE and remaining with PG&E would save the Town about \$88 per year on approximately \$35,792 in electricity costs to power the Town's buildings, streetlight, traffic signals, and irrigation systems. The Council considered, but rejected, a proposal to purchase 100% renewable energy from MEA – the Deep Green product – for an additional \$2,049 per year. As with all residential and business accounts in Ross, the switch to MCE will become effective on July 1, 2012. Residents who wish to opt-out of MCE must contact MEA by August 29th; otherwise, your account will automatically be enrolled in MEA's 50% renewable Light Green electricity. Residents who wish to enroll in the Deep Green 100% renewable electricity must also contact MEA.

Mayor Small asked for a motion.

Mayor Pro Tempore Russell moved and Council Member Martin seconded, to approve remaining with Marin Clean Energy for Renewable Energy Light Green Electricity for the Town of Ross. Motion carried 4-1. Hunter opposed.

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

#### **24. No Action Items:**

##### **a. Council correspondence received**

\* Phone campaign to receive donations

##### **b. Future Council items**

\* Support Governor Brown's Pension Reform Program

\* November Ballot Initiative

\* Resolution for side funds if donations are collected

#### **25. 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 announced that Town residents are invited to a public workshop to review the draft of the Town's right-of-way ordinance. The workshop will be held at Ross Town Hall on June 25, 2012 at 7:00 p.m. Residents will have the opportunity to review and comment on the enclosed draft of the right-of-way ordinance.

##### **b. Development of Council procedures**

Council Member Martin completed his goal.

##### **c. Development of overlay landscape plan**

Council Member Strauss urged the Public Works Department to plant the trees as soon as possible as well as repair the lifted part of the sidewalk. He noted that there is a plan, and

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recommended that staff work with the Street Tree Committee to make it happen when funds are available.

**d. Fire consolidation**

Council Member Hunter completed his goal.

**e. Post-emergency permitting and nonconforming structure regulation review**

Mayor Pro Tempore Russell announced that information would be brought to the Council in July.

**Public Hearings on Planning Applications – Part II.**

**26. 8 Southwood Avenue, Design Review No. 1820**

Cam and Edward Lanphier, 8 Southwood Avenue, A.P. No. 73-151-25, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1 - 3 units per acre), Area outside of creek Zone X (outside 1-percent annual chance floodplain), creek is in a special flood hazard area. Town Council consideration of the adequacy of the landscape screening for a design review project approved on March 11, 2011, for design review for a new 532 square foot pool house/garden house with an unfinished understory storage and mechanical area, and associated landscape work.

Lot Area	42,366 square feet
Existing Floor Area Ratio	14.8%
Proposed Floor Area Ratio	14.9% (15% permitted)
Existing Lot Coverage	9.1%
Proposed Lot Coverage	9.2% (15% permitted)
Existing Impervious Areas	12.3%
Proposed Impervious Areas	13.6%

Senior Planner Elise Semonian summarized the staff report and recommended that the Council determine if the landscaping installed at the site is adequate.

Edward Lanphier, applicant, thanked the Council for visiting the site. Over the last several years, he planted over 20 redwood trees, some over 50 ft. tall. They moved four large camellias on the bank shielding the area, in addition to planting the English laurels. From virtually every part of the building, it is 100% to 99% shielded. He further noted that his landscape architect is present to answer any questions.

Council Member Martin asked roughly how tall are the English laurels that were planted. The landscape architect indicated that they are 5 feet, ball and burlap. They will grow much taller than 5 ft. It is a good plant with some shade and over time it will grow to that 20-foot height. There are six English laurels planted between the subject property and 11 Norwood Avenue. Council Member Martin discussed the plant submittal and there is a notation in regard to existing landscape to remain and desired clarification. The landscape architect responded that as they got into the construction process, they discovered a rat infestation and at that time the remedy was to remove the ivy and remove the fence.

Council Member Strauss noted that he is comfortable with the plantings as proposed.

Mayor Small asked if there was any intent to replace plantings to screen the concrete. The landscape architect planted native California honeysuckle in that location, which will grow into

a shrub form.

Mayor Small opened the public hearing on this item.

Mary Amonette, Norwood Avenue resident, expressed concern for her privacy from the construction of a three-story building. There is no creek bank screening. She desired appropriate screening. She felt the bushes that were planted were planted in a gully very low, so there is no legitimate screening. After 60 years of being a Ross resident, she desired screening that was promised.

Kim, Mary Amonette's son-in-law, indicated that the screening diminished considerably. The honeysuckle will not cover the concrete bank. He agreed the screening is inadequate. The English laurels will not grow in two years time to screen the house. It would be easy to plant along that bank. Wood rats are everywhere and the territory can be reduced, but not eliminated.

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 visited both properties and thinks the Lanphier's have a wonderful property. It is a great backyard. He agreed there is a radical change where the screening bed existed previously has been impacted. A lot of the plantings are worthy plantings and in five years the screening desired will be present, but for the immediate time there is a problem and there are solutions such as larger English laurels. Also, modifying the irrigation system to serve those plants is not very complicated. He further believed neighbors have to get along, and personally he would like to see an accommodation to get a resolution.

Council Member Strauss thinks the landscaping is fairly sufficient in the backyard. He felt both parties have a responsibility in terms of the screening. Also, 99% is accomplished in the screening. He further believed they did an adequate job and in three to five years it will grow.

Mayor Pro Tempore Russell visited the site and it was very hard to see Ms. Amonette's home through the vegetation planted.

Mayor Small agreed there is a change, but the plants will grow. She understands it is not what Ms. Amonette had before in terms of privacy. Council Member Strauss suggested blackberry bushes. Council Member Hunter visited the both sites and what popped out was the new wire fence. It would seem there is sufficient planting, just more time is needed. He further recommended reviewing progress in one year. Council Member Strauss agreed.

Mr. Lanphier agreed to accommodate more honeysuckle to address Ms. Amonette's concern.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to find that the landscaping installed at 8 Southwood Avenue, for Design Review application No. 1820, is adequate; the Town shall monitor the landscaping to ensure it has grown to provide sufficient screening within three (3) years of project final; and the applicant has agreed to install additional planting to screen the creek bank area.

**27. 7 Hillgirt Avenue, Variance and Design Review No. 1880**

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Tony Curtiss and Marta Osterloh, 7 Hillgirt Avenue, A.P. No. 73-232-42, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1-3 units per acre), Zone X (area outside of 1-percent annual chance floodplain). Design review of 6-foot tall front yard fence made of wood and galvanized metal grid, 6-foot tall redwood driveway gate, 6-foot tall entry columns finished with bluestone and rock, and an 8' 6" tall wood arbor entry structure.

*This item was moved to the consent calendar as Item No. 15e.*

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

#### 28. 4 Canyon Road, Amendment to Variance, Design Review and Demolition Permit No. 1821

Christian Lind and Lisa Bernardi, 4 Canyon Road, A.P. No. 72-092-08, R-1:B-A (Single Family Residence, 1-Acre minimum lot size), Very Low Density (.1-1 units per acre), Zone X (area outside the 1-percent annual chance floodplain). Amendment to plans for a demolition permit, design review and side setback variance for an addition and remodel to the residence, including associated landscaping. The applicants request after-the-fact watercourse design review approval of a side entry deck constructed within 25 feet of the top bank of the creek. The project also includes a request for a new swimming pool, spa and patio area south of the residence, which complies with the 25-foot side yard setback and 40-foot rear yard setback.\*

Lot area	57,688 sq. ft.
Effective Lot Area	39,247 sq. ft.
Existing Floor Area	6.9%
Approved/Proposed Floor Area	9.6%/10.9% (15% permitted)
Existing Lot Coverage	7.7%
Approved/Proposed Lot Coverage	9.2%/9.2% (15% permitted)
Existing Impervious Areas	19.8%
Approved/Proposed Impervious Areas	19.2%/20.95%

*\*The existing residence is nonconforming in setbacks. The slope of the lot is 28%. The project no longer falls under the hillside lot regulations because a site-specific engineer analysis concludes that the site is not within Slope Stability Zones 3 or 4.*

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

Christian Lind, applicant, had nothing further to add other than he spoke with a geotechnical scientist who presented such information to the Council for their consideration and Public Works Director Bob Hemati is in agreement with the report.

Mayor Small opened the public hearing on this item.

Mark Goldstein, Winding way resident, stated that there are technical aspects and aesthetic aspects to this proposal. The technical aspects are that Mr. Lind contracted with a geologist who produced a report that has not been independently verified. He desired independent verification in regard to Hazard Zone 3. He is not clear how the determination was changed in order to get this property outside the hillside lot regulations. The aesthetic aspect is that Mr. Lind is placing a large pool in his front yard and there will be an extension of hardscape along

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with a waterfall. This is a relatively classic battle between a developer trying to maximize the property that he is in the process of selling and neighbors who have lived in the area for many years and will live with the result of the Council's decision after Mr. Lind is long gone from the site.

Patty Shimek, Canyon Road resident, submitted letters expressing her feelings. It is a matter of her front yard. When driving up to her property it is extremely quiet and having a large pool with center activity occurring, she will lose the tranquil state in her yard area.

Margaret Elliot, Winding way resident, finds it very convenient that another engineer provided this report and desired an independent review. If allowed, the pool should be moved closer to Mr. Lind's house and should be a smaller size. She also believed the waterfall should be eliminated. She further desired plantings between the road and fence. Mr. Lind tried to plant between the road and fence, but he is unable to do so due to the right-of-way.

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 Hunter appreciated how the project appears now. He understands the concern from the neighbors about this study, but staff reviewed and agreed with the study. With the additional landscaping near the fence it is acceptable. To have it peer reviewed outside, it should not be a Town's expense or at the applicant's expense.

Council Member Martin is not able to vote on this matter tonight as presented. He believed it is a dangerous precedent without the Town guiding the parameters of the study. From experience, any consultant can put out a report to prove a premise. The proper procedure is for the applicant to pay for a report, but the Town must set the parameters and select the engineer. Based on what is presented tonight, he cannot vote in favor.

Mayor Pro Tempore Russell feels if they can rely on the study he would be comfortable subject to dealing with the landscaping issues, but he is not sure if he can rely on the study. He suggested continuing the matter and agreed the applicant should pay for further verification. He felt the applicant owes that to the neighbors. If it is correct then Mr. Lind will get his pool, if not, then it is unfair to the neighbors.

Council Member Hunter pointed out that the Town has used this scientist for years. Senior Planner Semonian noted it could be a violation of the conflict of interest policy since the Town used this scientist. Staff further suggested making a decision tonight on the creek setback issue and deck since it is holding up the project final.

Mayor Pro Tempore Russell loves the house and believes Mr. Lind did a nice job. He had no objection to the deck. The Council agreed. Council Member Hunter stated when it comes to pools, not everyone is entitled to a pool. Public Works Director Hemati reviewed the slope studies and is comfortable with his studies and their opinion, but he is also comfortable with it being peer reviewed if that is the desire of the Council.

Mr. Lind was referred to this technical scientist by his engineer, so he is stunned that there is a question about his integrity. Council Member Martin noted it is procedural. Senior Planner Semonian believed peer reviewing the study would provide some assurance. Public Works Director Hemati agreed to review the prior slope calculation.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to approve the design review of the side entry deck subject to the findings and conditions outlined in the staff report and continue the application for the new pool so that the Gilpin Geosciences Study may be peer reviewed by an expert chosen by Town staff to determine the accuracy of the study. Motion carried unanimously. Strauss absent.

4 Canyon Road Conditions:

The Town Council approves the deck work within 25 feet of the top bank of the seasonal creek subject to the findings and conditions of the May 12, 2011, Town Council approval and the following additional conditions:

1. All fencing at the project site shall be reduced to 6 feet tall prior to project final. Pursuant to Ross Municipal Code Section 18.40.080 (c) the height of the fences shall be the vertical distance between finished grade at the base of the fence and the top edge of fence material.
  2. The applicant shall provide sufficient survey evidence to staff to verify that no soil or other materials have been placed on any adjacent site prior to project final.
29. 6 Southwood Avenue, Variance, Design Review, and Demolition Permit No. 1859  
*\*\*This item has been continued.\*\**  
Darr and Sandy Aley, 6 Southwood Avenue, A.P. No. 73-151-20, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1 - 3 units per acre), Zone X (outside 1-percent annual chance floodplain. Request for design review and a demolition permit to alter the barn structure to add skylights on the ridge and new sliding glass doors on the north, east and south elevations.

End of Public Hearings on Planning Applications- Part II.

30. Adjournment.

Mayor Small moved to adjourn at 11:24 p.m.

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Carla Small, Mayor

ATTEST:

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Linda Lopez, Town Clerk