

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JULY 14, 2011

1. **6:15 p.m. Commencement.**

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

2. **Posting of agenda.**

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

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

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

5. **6:30 p.m. Open Session. Council will return to open session and announce actions taken, if any. No reportable action.**

Mayor Martin recommended that Item No. 19 involving the restoration of the Common be discussed before Item No. 18 in order to provide greater clarity. The Council had no objection.

6. **Minutes - March/May/June**

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to approve the minutes of the Special Ross Town Council meeting on March 3, 2011 as amended. Motion carried unanimously.

Council Member Hunter moved and Council Member Strauss seconded, to approve the minutes of the Special Ross Town Council meeting on May 26, 2011 as amended. Motion carried unanimously.

Council Member Hunter moved and Council Member Strauss seconded, to approve the minutes of the Ross Town Council meeting on June 9, 2011 as amended. Motion carried unanimously.

7. **Demands.**

The demands were met.

8. **Open Time for Public Expression.**

Ed Wynn, Historical Society President, submitted a letter in regard to 73 Winship Avenue, which he read into the record as follows:

*"Ladies and Gentlemen:*

*Recently Town Planner Elise Semonian thoughtfully contacted us for any historical data or records the Ross Historical Society might have regarding the property at 73 Winship Avenue, more commonly known as the Coddington House. You may be aware that this residence was featured in our recent book "Ross, The People,*

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*the Places, the History."* We asked our former Trustee and co-author, Susan Nielsen, for her input as she researched and wrote the chapter on *The Pioneer Homes of Ross, 1850-1900*. Susan has sent an email to Elise with detailed notes on 73 Winship Avenue that are available to you. The house called (Gray House in its day) was designed by the famous architect Maxwell Bugbee, and due to its historic architectural significance, records and original architecture drawings of this home have been historically archived in Berkeley.

*Susan made the observation that "The house is one of the oldest and most historically significant in Ross..." At our last Trustee meeting we discussed how the Moya Library-Ross Historical Society could be of assistance to the Town in listing 'historically significant,' the potential sale and possible demolition of the Coddington residence seems to highlight the need for a uniform procedure of identifying and inventorying properties of historic significance.*

*We did not come up with any specific recommendations, and recognize there are inherent difficulties in such a process, but we feel it is a challenge that should be addressed and are willing to work with the Town in drafting some guidelines.*

*Sincerely,  
Ed Wynne  
President"*

Barbara Call, Redwood Drive resident, believes with power comes great responsibility. The last two meetings focused on huge abuse of power such as removal of the historical schoolhouse and destruction of the valley oak. She thanked Mayor Martin for being available to help her with what is happening with Ross Common, the potential destruction of the redwood trees and vehicles driving on the roots. The trees are not being watered and there is a potential for them to die. She would hate to see the trees die and the Common downgraded. It must be maintained so the restoration is easier and less costly to enact. The grass is dying. It would be wise to maintain what is currently present. She suggested that the fence be moved so that the construction fence more outlines the school's property rather than bisecting Ross Common. It would also be easier to maintain the Common, the trees and do what is necessary until they decide what will happen with the Common.

Robert Small, Duff Lane resident, commended the community on the tennis courts. Allen Park is important and it adds to the community. He indicated that it was a pleasure to play on the newly refurbished Town courts nestled in its redesigned setting and hopes the asset is protected and secured as well. He further noted that the courts are first class.

### **9. Report from Mayor.**

Mayor Martin is pleased to report that the Town had a very successful 4th of July celebration. It was a festive gathering on the Common and the parade was peppered with numerous spirited participants of all ages, including the Garbarinos and their armored tank division, vintage cars, fire engines, miniature tractors, a variety of unusual contraptions, bicycles, unicycles, dogs, horses, and goats.

Parade participant, Albert Berger, while driving his mint condition 1964 Lincoln Continental convertible, remarked that Ross may have the largest Independence Day celebration on a per-capita basis in the United States!

Mayor Martin recognized and praised Chief of Protocol Roseanna Lourdeaux, parade organizer Cynthia Wollam, and our Public Safety, Fire, and Public Works Departments for

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accomplishing an outstanding and memorable event, which again reinforces why Ross is such a great place to live in and work.

There are also many others to thank, including: Jennifer and Peter Daly who each year make sure the Town has the required tables, chairs, umbrellas and other equipment for this event; the Ross Fire Department for their watermelon; the Ross Property Owners Association for the popcorn; the Ross School PTA for selling their beverages; BJ Martin for the flower arrangements on the tables; Goat Island Griddlepoppers for their music; Miles Popplewell who is becoming an outstanding bagpiper and a Town tradition; John Lill as Uncle Sam; Katie Baughman for singing our National Anthem; and, Ed Dong for organizing the old-fashioned races and games. The entire Ross community is grateful for their collective endeavors.

After one year as Mayor, it is time to step down and pass the gavel to a worthy successor. He thanked his colleagues, Town staff, the citizens of Ross, and his family, for their support, patience and indulgence during his term as Mayor. It has been a humbling and challenging experience. This Town has a deep history and many legacies that need to be maintained and respected.

This past year, the Council has been able to accomplish many positive things, including the completion of the Lagunitas Bridge and Sir Francis Drake Boulevard pathway, planting and caring for over 100 new street trees along many of Ross streets, the selection and hiring of a new Police Chief, Town Attorney, and Public Works Director, and the completion of the Capital Improvement Plan for Flood Damage Reduction in Ross Valley and Corte Madera Creek, which is a vital first step towards reducing the frequency of flooding which imperils their communities.

### 10. Election of Mayor.

**Council Member Hunter moved and Council Member Strauss seconded, to nominate and appoint Mayor Pro Tempore Small as Mayor of the Ross Town Council. Motion carried unanimously.**

*The Council thanked outgoing Mayor Chris Martin for his outstanding service and presented him with a commemorative plaque.*

### 11. Election of Mayor Pro Tempore.

**Council Member Hunter moved and Council Member Martin seconded, to nominate and appoint Council Member Russell as Mayor Pro Tempore of the Ross Town Council. Motion carried unanimously.**

### 12. Introduction of new Public Works Director and Building Official Bob Hemati.

Town Manager Gary Broad introduced Bob Hemati as the newly hired Public Works Director and Building Official. Mr. Hemati has over 25 years experience in the private sector as a civil engineer and construction project manager. Staff explained that this was a very difficult position to fill, as the Town was looking for someone who could handle both the building department and manage the Town's public works projects.

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Town Manager Broad explained that one of the Town's hiring objective was to have an engineer in-house so the Town could rely less on outside engineers for public works projects. Mr. Hemati will also handle all plan checks on building permits, which the Town feels is an important service to provide to residents.

### 13. Report from Town Manager.

- **Town Office Remodel Update**

Town Manager Gary Broad reported that Public Works Director Bob Hemati will become the point person on the Town office remodel. Public Works Director Hemati has talked to potential contractors and consultants. They are meeting next week to finalize those items, and then go out to bid. They hope to start the project as soon as possible.

- **Frederick Allen Park Tennis Court Resurfacing Project**

Town Manager Gary Broad is thrilled to announce that after eight long months of rain and cold weather delays, the newly refinished Ross tennis courts are finally complete. Although there are a few small items that still need to be addressed by the contractor, the courts are ready for action.

### 14. Report from Committee Heads.

Public Works - Council member Small

- Public Works Committee update

Mayor Small reported that Public Works will be overseeing two projects this summer. The Laurel Grove creek bank and culvert repair will begin work around July 25th and take approximately 20 working days. The Corte Madera Creek, left bank stabilization should begin work around August 15th and take approximately 10 working days.

Public Works will also be actively working with selected engineering firm to design the Sir Francis Drake Boulevard/Lagunitas Road intersection scheduled for construction summer 2012.

Traffic Engineer David Parisi submitted his report in addressing issues with Sylvan Lane and Lagunitas Road, as well as Shady Lane and Lagunitas Road. The solid white stop bar on Shady Lane will be moved closer to Lagunitas Road. With the height of the new bridge, Sylvan residents are experiencing difficulty in safely exiting their lane. A trail solution being recommended is to turn Ross Common and Lagunitas Road into a three-way stop, to make the area in front of Sylvan Lane a "Keep Clear Lane," and to place diagonal white lines, 3.5' along the north lane of Lagunitas Bridge. Public Works Director Bob Hemati is investigating the legal logistics of adding a trail stop sign. The community will be notified by Town wide email prior to introducing a trail solution.

Walters Road and Laurel Grove is still under review. Bushes in the Town's right-of-way will be cut back to improve sight line in exiting Walters Road. The location of the crosswalk is being considered and may be moved to the Walters Road and Laurel Grove intersection. This will be addressed prior to school starting on August 29th.

Public Works is also reviewing all Town facilities and will be developing a maintenance plan along with prioritizing capital improvements for future budgeting purposes.

The next meeting is scheduled for Tuesday, August 2nd at 8 a.m. in Town Hall. Mayor Small then thanked Public Works staff for their support and guidance this past year.

Council Member Strauss agreed to step in as Chair of the Public Works Committee and Council Member Martin agreed to be an alternate.

Community Protection - Council member Hunter

- Public Safety update

Council Member Hunter reported that a meeting is scheduled on July 21st at 8:30 a.m. in Town Hall. Fire Chief Tom Vallee will make a presentation on "*Expanded Shared Services with the Ross Valley Fire Department.*" The Committee will listen to the report and discuss possible next steps and then report back to the Council with recommendations in August.

Also, Council Member Hunter has been the Town of Ross's representative of an Ad Hoc Committee made up of the County and all cities and towns to studying the pension situation and post retirement benefits situation. The committee met for about seven months and accomplished a lot of work. The report now available provides a toolkit to communities having to negotiate labor contracts. For the first time, after a lot of work, they now know the situation within every entity of the County right now as well as what is negotiable and vested. He further recommended that later this year have two representatives from the Ad Hoc Committee make a presentation on this subject to the Town Council.

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

Cate Babcock, RPOA representative, expressed concern about approving attics and basements since it is unfair FAR and it is dissolution of HLO (*Hillside Lot Ordinance*) that took years to create. RPOA does not approve the current process of the Town's Street Tree Committee and demands change. RPOA feels there is a conflict of interest since the Street Tree Committee includes one Council member and spouses of the Town Council as members. RPOA further thanked the volunteers that created the Fourth of July festivities.

**16. Flood Control Report.**

Council Member Martin reported that on June 27th, the Flood Control Zone 9 Advisory Board met and endorsed the Ross Valley Capital Improvement Plan Study and recommended adoption by the Marin Board of Supervisors. During the meeting, he expressed the Town's dismay with the Army Corps units 1-4 projects not being included in the Ross Valley Capital Improvement Plan Study, but rather a separate complementary project and not funded through the flood control parcel assessment. It was his position that because Washington's fiscal crisis funding for required environmental and engineering work was not in the President's budget, and therefore Unit's 1-4 work in Corte Madera Creek, a vital part of the County's flood control solution, was stalled indefinitely. Fairfax Council Member Weinsoff made a brilliant solution that the County consider lending the Army Corps the necessary funds to complete the pre-construction work on the project, which is estimated to be approximately \$700,000 out of its Flood Control reserves.

Two days ago, he received notice from Farhad Mansourian, "*that completion of the federal project Unit 1-4 is a top priority in the Ross Valley Flood Control and Watershed Program's Capital Improvements Plan. It will nearly double the amount of flow that enters the concrete channel in Ross. The benefits of this work apply to towns both upstream and downstream of the Town of Ross. Funding of this project is allocated by the U.S Congress through its allotted budget to the Army Corps of Engineers. In the administration's proposed budget for Fiscal Year 2012, no funding has been allocated to this project.*"

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After deliberation, the County is proposing a visit to Washington DC to speak to the appropriate parties about allotting \$700,000 to the Unit 1-4 project from its discretionary funding. The trip is expected to be scheduled at the end of August. He will keep all informed about how this progresses. The County is finally moving forward on this issue.

**17. Consent Agenda.**

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

- a. **Town Council consideration/action to award the public works contract and authorization of expenditure for the Laurel Grove Drainage and Creek Bank Projects.**

Mayor Small asked for a motion.

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

- b. **Town Council authorization to enter into a contract with Coastland for professional engineering design for Sir Francis Drake Boulevard/Lagunitas Road intersection for HSIP Grant Improvements.**

Mayor Small asked for a motion.

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

- c. **Town Council authorization to enter into a contract for completion of the Corte Madera Creek Bank Project at the southeast corner of the Lagunitas Road Bridge.**

Mayor Small asked for a motion.

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

- d. **Town Council adoption of Resolution No. 1746 amending Resolution 1708 making findings and determinations in compliance with the Gann Initiative and resetting the appropriation limit for the fiscal year ending June 30, 2011.**

Mayor Small asked for a motion.

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

End of Consent agenda.

*The Council agreed earlier to discuss Item No. 19 next on the agenda.*

**19. Town Council discussion/action on the status of the Ross Common Restoration and Ross School action relevant to Government Code Section 53094(c).**

Town Manager Gary Broad indicated that this item has multiple pieces. The first part is the recent resolution by the School on June 29th in which they took advantage of a provision in State law allowing them to overrule local zoning ordinances and deferred to the Town Attorney. Town Attorney Greg Stepanicich explained that under State law, the Town's zoning regulations and building applies to the District unless the District decided by a two-

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thirds vote to override those regulations, which pertains only to trees on School property. Trees within the Town's right-of-way are subject to all Town regulations.

Council Member Martin asked staff if the intent is to abolish any tree protection. Town Attorney Stepanicich explained that in general part of State law deals with intergovernmental relationships and to what extent do the regulations in a town or city apply to other entities. There is a general rule that a town's regulations only apply to the town and its inhabitants. State law indicated that by statute zoning and building laws would apply to the School District, but there is a provision for school districts to override zoning and building regulations.

Council Member Hunter asked staff if they have any mitigation for the valley oak. Town Attorney Stepanicich noted that the Town has no direct regulatory control.

Council Member Martin would assume just because the School District was exempt from the Town's tree protection standard that they would likely adopt their own tree protection procedures as a good neighbor to ensure protection of the tree. Town Attorney Stepanicich indicated that is correct and also to the extent of any projects on School District property it is under CEQA and to any extent actions would require CEQA review there is that need for compliance. In other communities, there is an ability for the Town to come involved and demand conditions to mitigate environmental effects. It applies to cases where CEQA comes into apply to achieve mitigation through the CEQA process.

Town Manager Broad was very surprised by the new fencing and vehicles on the Common since staff had been informed that the School was not going to do the restoration work until after the multipurpose room construction was completed. Staff explained that the unplanned restoration is having multiple unintended consequences including making it difficult for the Town to properly maintain the trees since the irrigation on the Common is not being used by the School. The Town has installed irrigation on the Town owned property at 6 Redwood. Staff also provided the Council with a copy of an email that was sent to Valerie Pitts last week. Council Member Martin tried to schedule a joint meeting between the Council and School Board to have a forum to discuss these issues and attempt to achieve resolution, but since they were unable to successfully have the School Board agree to that meeting, it is now placed on the agenda tonight. There are several items that must be discussed such as the timing for the restoration; the relationship to ball field improvements; the field restoration and items related to field restoration; the need for tree protection and dealing with compacting soil; the recreation field in terms of irrigation, grading and tree protection; the baseball field; drainage must be addressed and resolved; and the lot line adjustment between the Town and the School. The Town asked for markings or temporary markings to show the lot line adjustment. Also, there is a major item that the Town and School must address which relates to the cost for the project, both the cost for Ross Common restoration and what the School's funding will be for that. Also, the cost for the ball field project, what will be funded by the School, and what if anything will the Town be expected to fund as well as ongoing maintenance of the Common. The overriding concern is an unplanned approach in which the School wants to address field restoration before the multipurpose room is finalized. The Town must know what is the cost and is this most efficient and effective way to move forward. These items really need to be discussed between the Town and School. Staff further noted that the Town just received the tree protection plan yesterday.

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Council Member Strauss asked staff about the fence and his understanding is that they worked with School Board Member Bob Dickinson and there was a line drawn and a plan was presented by the School as to where that fence would be located. Town Manager Broad stated that the fence ran along the edge of the portables and this fence cuts off more of the field that was never shown in the original drawing.

Council Member Hunter asked staff why this project has not been red tagged. Town Manager Broad found out yesterday afternoon and staff decided to receive input from the Council and School.

Council Member Strauss recalled that the School is responsible for the restoration of the field and Common. For the Town to take on work, they must be cognizant of that. Also, he wanted to know the date when the School would be out of contract with the Town on using the field. Town Manager Broad noted that the second encroachment permit runs to September 30th of 2011. Council Member Strauss asked staff why the border between the two properties is not marked in regard to the lot line. Town Manager Broad explained that the School indicated that the permanent markers could not go in yet, but staff asked for temporary markings which have not been put in.

Council Member Martin stated that on numerous occasions over the past month there have been trucks parked on the non-intrusion zone of the redwood trees at 6 Redwood and asked staff if an explanation was ever received as to why on a repeated basis these trucks were parked in that location. Town Manager Broad received an email from Ms. Barbara Call, which staff appreciated and staff emailed Ms. Pitts in that regard and no explanation has been received. Council Member Martin asked staff if Arborist Ed Gurka reviewed the sensitive area where most of the construction organizing and unloading of trucks has occurred. It is the area in front of the gym where there are a number of valley oaks and redwood trees, the root systems are located in that area and there is clearly compaction of soil. He asked staff if there is a plan to treat the compacted and corrupted soil. Town Manager Broad has not reviewed the tree protection plan yet. Arborist Gurka has been on the site repeatedly. Council Member Strauss noted that restoration is included in the report. Council Member Martin noted that during the restoration process, it is vital to properly treat those trees.

Mayor Small pointed out that Superintendent Scott Mahoney of the School indicated that there is no reason why temporary lot line adjustment flags could not be posted and she wanted to hold him to that, if at all possible. Also, she is concerned in a sense that they had this meeting that Jim Walton attended and he did not mention anything about moving that fence. When the portables were moved they told Administrative Manager Linda Lopez that it would be done in one day and it was actually two days. Also, a question has been raised about the stormwater permit that must be given out by the State and Mr. Walton stated that their permit to do the School work would also apply to the Town and she is not sure that is true and desired confirmation. There are several issues and she is concerned about moving forward and almost feels that the Town must hire someone to make sure they are doing what they are suppose to be doing, which is concerning and an additional cost.

Council Member Strauss asked if roots were cut over by the redwoods in establishing those portables. He desired clarification as to where the actual drip line is located. Public Works Director Hemati agreed to review.

Mayor Small opened the public hearing on this item.

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A Ross resident recommended that the entire project be red tagged until matters are resolved and until they receive answers.

Elizabeth Robbins, School Board President, explained that the School intends to do right by honoring the encroachment permit that required the School to restore the Common by September 30, 2011. She apologized for the timing and explained in a letter on July 8th that the timing shift had to do with the ball field location not being definitely set. Therefore, the School would not be able to restore that part or put the ball field back per the encroachment agreement, but the School is bound by the encroachment agreement to put back the edge of the Common by September before their contract runs out. They wanted to complete the perimeter of the Common so there is a seamless interface between the School and Common, as the encroachment permit requires. The District is working under the authority of the agreement that the School and Town made in 2008-2010, which requires the District to put back the edge of the Common, irrigation and the ball field. The District is in the process of drafting an amendment to that part to discuss with Town Council about postponing ball field placement and placing monies in an escrow account, so that can be done at a future time. The District, following the provision of encroachment agreement, is trying to put back the sod and irrigation so the gym, when completed, will have grass that is irrigated.

Mayor Pro Tempore Russell pointed out that some sort of use of that property will be needed for construction vehicles and so forth until the gym is completed in October. School Board President Robbins explained that part of the Common by the playground can be completed before the gym is completed, so that the playground grass area is open for the first day of school. The Common restoration is being phased in. She did not know where the construction vehicles will park at this time. They have several consultants and sitting with them they can figure out the details. They are willing and eager to setup a working meeting with Board representatives and construction consultants as soon as possible to provide the details desired. They hired a number of consultants and they want it done right and to turn out well, but at this time she did not know all the details.

Mayor Small stated it is the Town's intent to work with the School and they want it right as well for the community. The concern is the way it has been thrown at the Town. Looking briefly at the plans there are significant issues in what has been drawn. Irrigation must be reviewed. Several details must be worked out and it must be restored properly. The Town wants to work with the School on all the unanswered questions.

Council Member Strauss stated that Mr. Walton should be organizing and coordinating with the Town. Also, with irrigation being discussed there is the under field drainage and drainage that comes through the soil is desired, not catch basins. He also wanted to know about the placement of the fence. He agreed that this project should be red tagged in order to allow rational heads to prevail to come up with a solution.

Council Member Martin noted that they all must live with the field once completed and if it is completed in a substandard way with an irrigation system that does not work as well as it should and irregular grading, it will be an issue that the community will live with for years and years. The consultants will be gone in three months and there is not an active grounds manager retained. Rather than have a list of consultants that will not be around, it is critical that the School have a grounds manager. It is also essential that the School Board and Town Council meet and converse directly to avoid half answers. These are critical days. This

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project will be completed in three months and it is critical to solve these problems. Also, Ross Rec relies on this field and must be involved in decisions.

Mayor Pro Tempore Russell asked why the School is unwilling to meet. School Board President Robbins explained that several have been out of town on vacation. The thinking is to have a few Board representatives and consultants to meet and discuss specific issues.

Bob Dickinson, Ross School Board member, on the issue of meeting as a collective Board that has not been worked out, he takes exception to the question and characterization early that they have not been willing to meet. He has several emails where they were available to meet on July 5, 6, 7, 12, 13 and 14 to get together. Not as a complete Board, but as Board representatives. Mayor Pro Tempore Russell stated the bottom line is with two different governing entities it takes a long time to reach agreement. One quick way is to have a joint meeting. He understood a schedule has not been offered from the Board. It is very important to move forward and have a joint meeting.

School Board Member Dickinson noted that they had a great meeting on June 22nd with the Superintendent and Director of Public Works, their contracting foreman, their interim superintendent from an adjacent school district and Town staff and two representatives from the Council. He would go back to the meeting that was an all hands on deck meeting before school opened. They had to work through striping of the curbs, parking spaces, directing traffic, and getting the School ready and up to code to open. The Town was fabulous in getting the School open on time. This is a critical period and suggested that they schedule weekly all hands on deck meetings between now and the completion of the gym among staff, consultants and specialists to work through issues on a weekly basis. There are a few points that are clear as a School Board they have been following, but shifted to accommodate the Town regarding tree protection plans. He stated in the encroachment permit, the District submitted a tree protection plan including ground fencing before commencement of construction. It has not been to the Town's satisfaction, so they come back with the tree protection plan just submitted. They are trying to figure out how to do right by all the redwood trees. In terms of restoring the Common, their permit indicated that they must restore the pre-approved sprinkler system, the baseball diamond and backstop to its original condition, which is a gray area for both parties and that is why they must meet on a weekly basis. They want to continue to work with the Council. They have made mistakes that must be corrected. He further asked the Town to figure out how to meet on a weekly basis.

Council Member Hunter stated if the desire is to work together, he did not understand the School's resolution to override the Town's zoning ordinances. School Board President Robbins stated that the District is an entity in and of itself, and while they want to work with the Town guidelines about tree policy and tree restoration; nevertheless they are not subject to Town rules.

Mayor Pro Tempore Russell is aware that the School can deal with its own property, and did not believe it was necessary to stick it in their faces. School Board President Robbins noted there had been a lot of talk about suing the School for \$100,000 due to the unfortunate death of the oak tree. They want to finish the project and protect the other trees.

Council Member Strauss stated that the School's contractor did not follow the tree protection plan. He is disappointed that the School did not take a stronger stand.

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Construction equipment and trucks were parked on the non-intrusion zone when he visited the site as the photographs depict.

Council Member Martin pointed out that there is a crew clearing out the corrupted soil around the basin of the old 200-year-old oak tree in front of the playground. They have a tractor the size of a Tonka toy that is in the pit removing soil very carefully. Plywood is applied to the spongy material in the playground so it will not damage. Workers are hand carrying out debris from a wheel barrel. If the same care was given during that two-year period that construction was occurring around the oak tree, if the same regard was paid to the oak tree they would have the oak tree today. He has mixed feelings when he views what is happening just to protect that spongy material in the playground. He wished the same concern from the contractor was exhibited in the last three years.

Barbara Call, Redwood Drive resident, saw the roots of the redwood trees being cut several years ago, so there was no tree protection in place. The School has not shown respect for Town property. The problem is that those trees must be watered. She is an action person and wanted the fence moved and the project red tagged. With regards to drainage and irrigation, none of that can be done until CEQA has been completed. They must be mindful that there is a CEQA process in regard to the southwest corner. They cannot move forward as long as there are plans to place the baseball diamond in that location. She further added that time is of the essence.

School Board President Robbins noted that they are doing what the encroachment permit requires. They must put back irrigation, drainage and sod. Council Member Strauss pointed out that the School had already changed the conditions of that encroachment permit by requesting a relocation of the rookie baseball field. He further believed it is imperative to have a meeting with the School and the Council in order to discuss in more detail.

Sue Talmage, representing Ross Recreation, explained that their main concern is drainage, grading and that all be put back in a proper manner. They were surprised that the fence went up due to their sports programs. The amount of grass is limited. They have a soccer program occurring the last two weeks in July and asked that the fence be moved to improve their sports program.

Randy Orr, Allen Lane resident, reviewed the grading plan that has no date or signature. There are specific areas that indicate, "*see landscape plans for more detail*," and he wanted to review those plans. He is very concerned about the grading. They share a property line with the Common as well as Murphy's Creek. He spent time and money restoring the creek with natural grasses. It is part of the environment as the redwood trees and the Council must consider. Construction trash has been washing through Murphy's Creek, down through the drainage and then into the Bay. When this occurred, Mr. Walton indicated that this has been planned for three months. They seem to be moving forward without any knowledge on their part. He wanted to know the appearance of the Common when all this work is completed. He added that what would New York be without Central Park, so the Town must be careful that they keep the Common.

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 stated that they are the stewards of the Common and it must be cared for and protected. Although it is not in the permit, when talking about moving the

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field, it was clear that anything that happened to the Common had to be pre-approved by this body, which has not occurred. The notion that they can begin to return the Common to the original condition, while construction is still occurring is idiotic. It is incomplete. It is their responsibility to red tag this project until they have a plan that the Council and staff approves. They do not know what is involved with putting the ball field back. If it cost \$100,000 or more it is not their responsibility. They must review their comprehensive plan for the revitalization of the Common, approve that plan and then move forward in an orderly fashion. He further added to do anything else is shirking their responsibility.

Council Member Strauss concurred with Council Member Hunter's comments. Also, a concern is to do the entire field and not patch and repair, so they must stop, take a step back and get all parties involved.

Mayor Pro Tempore Russell agreed all parties must get together and talk. Threatening each other is not the way to move forward. They should setup a committee to meet on a weekly basis to try to work out all the issues. In reality, it makes no sense to get this done by September 30th when the gym will not be completed, which is one of the many issues. They must try to setup a cooperative process. This is another governmental entity and pointing fingers or threatening each other is not helping. At this point, it is premature and it will send a terrible message to red tag.

Mayor Small stated that "*red tag*" is not the most appropriate term. They should not be starting on any restoration of the Common at all until the Council approves the plans. It would be more expedient to have all School Board members and Town Council in a room to work it out, but if that is not feasible for the School Board, then have a weekly meeting to review all material. They must be able to approve all of the plans, so they must have a meeting as soon as possible. Nothing should be touched on Town property until plans are approved. They must have a meeting with Mr. Walton in order for him to understand the encroachment permit as well as move the fence back. There are several issues. She agreed to have weekly meetings and if that does not work fast enough then they must have a joint meeting. There should be no trenching. Nothing should be touched until there are approved plans.

Council Member Martin concurred with Mayor Small. The School Board must take a position to work out a resolution. Red tag may be too strong of a term, but there should not be any more surprises. Both the School Board and the Council will be left with whatever product this contractor is allowed to leave. It is in their mutual interest to make sure this is an excellent process through its entirety. He hopes to work together immediately.

Mayor Small asked staff to setup formal weekly meetings. Town Manager Broad agreed that Public Works Director Bob Hemati, Public Works Superintendent Robert Maccario and possibly Senior Planner Elise Semonian will be the main individuals involved as well as Arborist Ed Gurka. Council Member Hunter made it clear that work stops on Town property until they have an approved plan. Council Member Marin stated other than watering the trees.

Council Member Strauss suggested writing a letter immediately to move the fence back to have clear access for watering. Issues must be clarified. Public Works Director Hemati noted that they claimed that it was part of the permit, which is not the case. Mayor Small stated that they must be notified immediately that the encroachment permit does not cover the area and the fence must be moved back.

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Town Attorney Stepanicich recommended a motion to direct staff and the District as to the next steps.

The Council directed the Ross School to immediately cease all restoration work on the Common until the Town reviews and approves a comprehensive restoration plan for tree protection, drainage, grading, irrigation, landscaping and the ball field. The Council further directed the school to restore the fence to its previous location so that there is clear access for watering of the distressed trees.

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Martin seconded, to direct the School and their contractors to cease all work on the Common restoration immediately until a comprehensive restoration plan is approved by this Council, with the one exception that the fence is to be placed where the Town's Public Works Director indicates, which should be done Friday or early next week at the latest as well as maintain the trees and grass. Motion carried unanimously.**

Town Attorney Stepanicich noted that there have been changed circumstances by the District with respect to the relocation of the ball field, so with those changed circumstances since that encroachment permit was first approved that must be taken into account. Also, CEQA issues have been raised by those changed circumstances. He further added that there is clearly a need for meetings. School Board President Robbins noted that the District will be discussing an amendment at their next meeting.

Mayor Small respectfully asked the School and the School Board to please understand that the Council wants to make sure that the Town is comfortable with work being done by the contractor that will be long gone. School Board President Robbins agreed to weekly meetings in order to make progress. Town Manager Broad suggested meeting Wednesday, July 20th at 8:00 a.m. Staff indicated that it will be an Ad Hoc Committee of the Council.

The Council and School Board President Robbins agreed to schedule weekly meetings with the School's consultants and specialists to resolve all of the Town's issues. The Council also appointed an Ad-Hoc Committee comprised of Council Member Strauss, Mayor Small, Town Manager Broad, Public Works Director Hemati and appropriate Public Works staff to attend the weekly meetings.

Mayor Small asked for a motion.

**Council Member Martin moved and Council Member Russell seconded, to establish an Ad Hoc Committee to meet with the School Board on a weekly basis consisting of Mayor Small and Council Member Strauss along with Public Works Director Bob Hemati, appropriate Public Works staff and Town Manager Broad. Motion carried unanimously.**

18. Town Council update/discussion on the proposed baseball field in the southwest portion of the Ross Common, including preliminary acoustical information. Grading/drainage, irrigation and landscape plans will be developed after the schematic design plans are completed for review under CEQA.

Town Manager Gary Broad reported that a consulting acoustical engineer had determined

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that moving the rookie baseball field to the southwest corner of the Common would create a significant noise impact on the surrounding residences. This finding means that the Town will have to prepare an environmental impact report at a cost of at least \$100,000 if it wishes to proceed with the proposed location. Alternately, the noise impact could potentially be mitigated if construction of an 8-foot high wood fence was incorporated into the project, or the Town could complete an EIR and adopt a statement of overriding consideration and approve the new location anyway.

Mayor Pro Tempore Russell asked staff if they are talking about a minimum of \$100,000 in terms of CEQA. Town Attorney Greg Stepanicich responded in the affirmative. Town Manager Broad noted that in terms of time, 6-months would be a minimum and 9-12 months is more realistic in regard to CEQA.

Council Member Strauss asked staff about the historic location. Town Attorney Stepanicich explained if located back to the original location then the categorical exemption is fine since it is just replacing what existed before. Council Member Strauss felt the School Board and the Town are wasting a lot of money on this decision. He further recommended taking a step back and re-evaluate.

Mayor Small stated the one issue besides the stage in going back to the previous location is that there are trees that have been impacted by construction. The baseball field could not be nestled that close to the trees because of all the stress. She is curious to know where they stand if they considered the southeast location where they have played for the last few years. Town Attorney Stepanicich agreed to review the ability to use the categorical exemption in that location.

Mayor Small opened the public hearing on this item.

Jeff Lyons, Upper Toyon Drive resident, stated when looking at the difference in sound between the southeast and proposed location, he asked if there were other considerations for other comparisons in that acoustical test. Town Manager Broad indicated that they compared the southeast with the southwest. Modeling was involved and they adjusted for different factors. Mr. Lyons believed it is not right in terms of thinking about all the various noises that occur out at the Common and school grounds and wondered if readings were taken when kids were playing at the playground. He asked if noise would be greater than when kids are playing soccer or at the playground. He felt those would be more appropriate comparisons as to whether an environmental change is happening. Town Manager believed those are reasonable questions that were discussed with the acoustical engineer on how to approach the study, what is the project and what are they studying as environmental effects. They look at the total of all different noise situations and this would be a piece of all of that, which would somehow get factored in. In conversations with the acoustical engineer, it was their conclusion that the project is relocation of the ball field. What it comes down to is the environmental effects of this relocation from the current location to the new location in the southwest corner that need to be studied. There are other uses that create noise, but really what is happening is that the ball field is being relocated. He further added that the question will be where was the ball field, where is it being relocated?

Randy Orr, Allen Lane resident, shares a property line with the Common and equipment was in his backyard for almost over one week studying the area. He noted that the engineer did an extensive sampling from his property line. He further noted that it is a residence.

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Barbara Call, Redwood Drive resident, feels the historical location is the best location. The area across from Eddie's is not the location that was ever approved, it was a temporary location. They will still have traffic and noise. Whether or not those are important it must be reviewed. Her attorney has anticipated this. The monitor was in her backyard for one week monitoring all the noise. The field fits nicely in its original location. The massive size of the airplane hanger storage unit multipurpose room or warehouse, having a little baseball field might be a nice relief to add to the whole feeling in the area across from the Post Office.

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

Council Member Martin would defer this matter until they begin the discussions with the School Board and better understand the schedule of restoration of the field and at some point later place this item back on the agenda for further public comment and review.

Council Member Hunter desired the Town Attorney's opinion on the Eddie's location. Council Member Strauss believed the initial study should have gone back to the historical location. Town Manager Broad pointed out that the rookie league is playing across from Eddie's. That delta is just a different location not a different league. Council Member Strauss indicated that it is not in a historical location, so therefore it would be subject to CEQA review. Town Attorney Stepanicich agreed to further review.

Mayor Small asked staff if the commercial district in that area will have any impact along with the apartments. Town Manager Broad noted that they were measuring to the backyard area as an impact rather than an interior reading. Apartments would not have outdoor space associated with them.

Mayor Pro Tempore Russell asked staff if they have to continue to proceed with the initial study at the southeast corner since they found a stumbling block on the southwest corner. He believed all work should stop on the southwest corner. Town Manager Broad reported that all work has stopped. Council Member Strauss believed staff made the right decision. Town Attorney Stepanicich agreed it currently makes sense not to move forward. The purpose of the analysis was to determine whether or not to establish no significant environmental effects. Since the issue has been raised, it makes sense not to move forward and agreed to report back findings.

The Council agreed to stop environmental review work on the southwest location and asked Town Attorney Stepanicich to determine whether the current field location near Eddie's would be considered categorically exempt from environmental review.

#### **20. Town Council review of Oak Tree Forensic Evaluation and Report by Tree Management Experts, Consulting Arborist, on the oak tree in front of the Ross School on Lagunitas Road and consideration/action on replacement tree planting and maintenance of trees.**

Council Member Martin reported that at the last Council meeting, there was staff, public and Council discussion about the unfortunate loss of the 200-year-old oak tree in front of Ross School. The Council heard from Becky Duckles, who served as both the Town Arborist and the School Arborist. Ms. Duckles maintained that there was a tree protection plan in place from the time school construction commenced and that the contractors followed all measures specified. It was her opinion that protective layer of existing asphalt above the roots of the 200-year-old oak tree absorbed the weight of the heavy equipment and building

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material and protected the tree from damage. Further, she stated that an "investigation" by a private consultant team in May 2011 determined the tree was dead and had been dying for a period of the five to seven years. After hearing testimony from residents about the lack of any visible tree protection enforcement to protect the 200-year-old oak tree and after viewing photographs of bulldozers trenching within several feet of the trunk, numerous heavy construction trucks, building equipment, materials, and chemicals stored upon the root-line of the tree, the Town Council authorized an expenditure for an independent arborist's study to determine the cause of death of the tree. The Council also directed staff to present the Ross Street Tree Committee's recommendations for tree replacement to the School District for consideration. These recommendations include a 10-foot boxed valley oak (*Quercus lobata*) to replace the 200-year-old valley oak in the play area, properly removing and amending corrupted soil, adding an 18" concrete inch concrete seat wall around the tree, and the purchase, installation, and irrigation to eight 24-inch boxed valley oaks or *Quercus lobata* along Allen Avenue. Staff engaged Roy Leggitt as Consulting Arborist. Mr. Leggitt submitted his report on June 22, 2011. He was able to examine the stump of the oak tree and its surroundings with Torrey Young, the School's new arborist. In summary here are his conclusions:

- \* The tree was not dead when it was cut down.
- \* Google Earth photos going back to the year 2002 plus photographs taken by Richard Torney show the tree had normal foliage, size, shape, color, density, and distribution.
- \* An examination of its annual growth rings on the stump showed consistent vigor up until the tree was cut.
- \* Soil within several feet from the trunk was hard and compacted.
- \* The layer of asphalt was not adequate protection of the tree's root system.

Mayor Small never reviewed the arborist reports done by Becky Duckles for the School, but it seemed there were reports conducted that took readings that the tree was in fact not alive. Also, a gentleman from UC Berkeley took readings and indicated that the tree was dead. Council Member Martin noted that he took Ms. Duckles recommendations who represented that the tree was dying and he personally did not conduct any test.

Mayor Small asked before it was cut, was there any determination that the tree was in stress, failure, or a danger to the children or pedestrians or nearby buildings. Council Member Martin was onsite when the inspection occurred and Mr. Leggitt stated that in looking at the photographs of the trenching in the immediate vicinity that the tree was compromised and in time that tree would likely fall on St. John's Church. The tree was clearly compromised. On the other hand, there could have been potential measures that might have sustained it or revived it. With a 3-foot trench adjacent to the trunk of a tree significant damage is caused.

Council Member Strauss made a respectful request of the School Board to do everything possible to replace the tree.

Council Member Martin pointed out that this must be done properly. The compromised soil must be removed and the same sort of soil found in the flood plain in Ross where the tree lived should be put in as replacement soil. Also, the size of the tree is an issue. This was a very gracious important tree. Ross School faculty and student body in 2008 assembled under that oak tree. He desired the largest replacement tree possible. There is a recommendation for a tree that has a 10-foot by 10-foot base. The School contractor recommends a 72-inch base tree and that is one issue that is outstanding. The other issue is how the tree is situated. One recommendation is to keep the base of the tree open and to allow leaves and others

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items to work their way into the compost. He did not want to create a decking around the trunk of that tree.

Council Member Hunter noted that the consulting arborist in the report talked about the much larger tree that can die in 10 to 20 years when they should have a life of 200 plus years. Council Member Strauss believed the branching is important as well as shade for the children. He would be comfortable with going with a range and allow the professionals to make a determination. Council Member Martin pointed out that all they can do is provide a recommendation since it is ultimately the School Board's decision.

Mayor Pro Tempore Russell recommended that this matter also be discussed in the weekly meetings with the School Board. Mayor Small believed it would be good to know since work is already being done. Mr. Walton already presented a plan to the School Board last month, so they may be moving ahead and doing what they intend to do. She added that with the passing of their resolution they made it quite apparent that they can move forward.

Mayor Small opened the public hearing on this item.

Bob Dickinson, School Board member, discussed the resolution that passed on June 29th and in the spirit of cooperation they are recommending the seven recommendations from the Street Tree Committee. This topic is being discussed at their Board meeting on July 19th. He is quite pleased with the thought behind the Tree Committee's recommendations. He desired a couple of clarifications, one recommendation is to purchase and install eight stacked *Quercus lobata* along Allen and asked if the residents were consulted and will those be planted on School or Town property. Also, the Town Arborist recently hired might have a different point of view than the recommendations. He asked if the District should listen to the Street Tree Committee, Town Arborist or Town Council in the case of subtle differences. Mayor Small indicated that staff agreed to go along with the recommendations from the Ross Street Tree Committee, but Arborist Ed Gurka is involved.

Diane Rudden, Willow Avenue resident, indicated that after speaking with Anne Hickey who lives on Allen Avenue, pointed out that the trees would not shield the school. They did not provide the shielding that the neighbors really wanted and they desired some sort of a hedge or green wall.

Richard Torney, Allen Avenue resident, expressed concern with putting a 10-foot box in a small root system. Valley oaks get to be 70 to 80 ft. in diameter. He questioned a large tree being able to survive in that area. Mr. Leggitt unofficially thought that a 10-foot tree may not be successful and he heard similar comments. Also, Allen Avenue residents have not heard anything about planting oak trees down Allen Avenue.

Barbara Call, Redwood Drive resident, read the report and had mixed emotions. Her feeling is that if the tree was not completely dead, it would be dead. There is another tree in front of the school that appears dead and assumed the Council will review that tree as well. She further noted that all of the asphalt must be removed in the southwest corner to protect the trees.

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

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Town Attorney Greg Stepanicich noted that the Council can make recommendations. Council Member Strauss wanted to have this as a point of discussion when they meet next week in order to have a consensus on a recommendation.

The Council reviewed a consulting arborist's report on the recent loss of the 200-year old Valley Oak tree located in the kindergarten playground at Ross School. According to Tree Management Experts, the oak tree was not in decline for the past five to seven years, as had been previously stated by a UC Extension arborist, and that extensive tree root removal and compaction of soil had occurred at the site. The arborist's report states that removal of roots and suffocation of roots through compaction of the soil will have the fastest and most devastating effect upon a tree.

The arborist analyzed the tree rings and determined that the growth rings over the last ten years were consistent with those over the last 100 years and that vigor had not declined and the tree was not dying. In fact, moisture staining in the stump indicated that the tree was still alive when it was cut down.

The arborist's report also had some harsh words for the Ross School's tree protection plan, which "*clearly was inadequate and ineffectively implemented.*" The arborist concluded that the buried asphalt layer was most likely a light duty installation for pedestrian use only, had probably deteriorated, and likely had no load bearing capacity to prevent soil compaction.

The arborist recommended removing all compacted soil in the planter bed and installing imported soil from a similar flood plain area. He further recommended planting a 48-inch to 72-inch box tree. A 10-foot boxed oak tree, which has been requested by the Street Tree Committee, was not recommended.

The Council further agreed to discuss the arborist's recommendations with Ross School representatives. As the tree is located on Ross School property, it is not subject to Town regulations. However, Ross School Board Member Dickinson indicated that the School Board is willing to work with the Town to develop a mutually-agreeable tree replacement plan.

*Council Members Martin and Russell recused themselves from the next agenda item in order to avoid the appearance of a conflict.*

**21. Town Council discussion of the Ross Street Tree Committee and consideration/ adoption of Resolution No. 1747 rescinding Resolution No. 1615 establishing a Street Tree Working Group and clarifying the role of the current Street Tree Committee.**

Town Attorney Greg Stepanicich reviewed the history of the original resolution and the current committee and explained that the Council had adopted a resolution in 2006 establishing a Street Tree Working Group. The record indicates that the group concluded its work in 2009 and disbanded. In order to avoid confusion, Town Attorney Stepanicich recommended rescinding the resolution and clarifying the role of the Street Tree Committee as a private group that is not subject to the Brown Act.

Mayor Small asked staff if this group in effect years ago should have been following the Brown Act. Town Attorney Stepanicich responded in the affirmative. Mayor Small noted

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that part of the confusion is that it was not handled under the Brown Act. She further believed that Resolution No. 1615 could be rescinded since it is no longer applicable.

Council Member Strauss believes the Street Tree Committee is a huge benefit and appreciates all their hard work. He desired more structure because there is more to this issue. Staff must understand who has the authority. He suggested that they have a professional involved in order to have an overall plan. If a tree dies, then staff will know they can replant and maintain the canopy. He further suggested that the Council move to rescind Resolution No. 1615.

Mayor Small opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, believes it is important to establish guidelines. The Council must decide who is directing Town staff on trees and whether or not the Street Tree Committee reports to Town Council.

Cate Babcock, Redwood Drive resident, discussed whether this should be private or a government entity and she believes it should be private. The Street Tree Committee makes recommendations and ultimately the Council decides what should be done. It is a conflict of interest to have Council members and their spouses on this Committee because it is very hard to have an objective opinion.

Chris Martin, Street Tree Committee member, explained that the Street Tree Committee has been operating as a private committee. In reading the Committee's minutes, 94% of respondents of the 2009 Ross Town survey considered planting and maintenance of street trees to be an important priority. The goal of the Committee is to restore the original beauty of the tree canopy that has been the signature look of old Ross. They plan to re-establish the arching form of that canopy by planting streets with single species and disease resistant species in the public right-of-way. The Committee will work with the Town to establish policies concerning the planting of those trees and will work with the adjacent property owners to provide maintenance guidelines intended to protect the health and longevity of those trees. Anticipating the natural lifespan of the trees at approximately half-life of the tree they will establish an understory of younger trees that will eventually take the place of the more mature species. He believed this is all about politics. The Committee is present to assist and supplement Town staff in retaining these trees and to work with property owners on educating them on maintenance of trees. Death is from improper maintenance and watering. This Committee is present to supplement Town tasks and to have positive results. This past year over 100 new street trees have been planted.

Doug Abrams, Canyon Road resident, wondered if there is an internal dynamic that perhaps the rest of the community must be made aware of since this is one of the more contentious meetings he ever attended. He asked if there is a group of people in Town that are unhappy with this independent committee. He is trying to put the puzzle together and is having a hard time.

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 explained that there were some concerns and issues raised and the conflict of interest was brought up with the Town Arborist. She believed the Street Tree Committee has done outstanding work this past year. A resident stopped her yesterday in front of the

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Post Office talking about how fabulous the trees planted on Fernhill look. Postcards are being distributed to remind everyone to water the trees. They appreciate all the work that the Committee has done. The group themselves would like to work privately. They have always made themselves available and anyone can join. At this point in time they just want to help define the best method of communicating their concerns and coordinating. She further believed they can find a great avenue for all of this to work and really appreciated the value that the Committee brings.

Council Member Strauss believed the Street Tree Committee is doing a terrific job and is very pleased that this Committee wants to step up, but it must be clarified.

Council Member Hunter agreed with the previous comments. They ran into trouble when the Committee took on some authority where staff was being directed, which became disruptive. Staff is trying very hard to have a streamline organization and they do not know who has authority. They must thank the Committee, but establish their authority. The Committee is an advisory group and they do not have the authority to direct staff. The Council owes it to these volunteers to clearly define some ground rules.

Town Attorney Stepanicich explained that the resolution is to rescind Resolution No. 1615 and indicate that the Street Tree Committee is a private advisory group.

Council Member Strauss recommended adding some language from the letter submitted by B.J. Martin to better understand the intent.

Council Member Hunter noted that they can continue the matter and have a discussion on how this group of volunteers can more effectively get their information into the Town. Town Attorney Stepanicich noted that there was a narrow purpose to clarify that this is a private committee and Resolution No. 1615 is not applicable.

The Council agreed that the Committee's role was advisory only and that it had no authority to give direction to Town staff. The Council asked Public Works Director Bob Hemati to make recommendations on how the Committee should interact with staff in the future.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to adopt Resolution No. 1747 rescinding Resolution No. 1615 establishing a Street Tree Working Group and clarifying the role of the current Street Tree Committee, and direct Public Works Director Bob Hemati to provide further recommendation in regard to the relationship of the Committee. Motion carried unanimously. Martin/Russell had stepped down.

*The Council took a short recess at 9:44 p.m. and then reconvened at 9:51 p.m.*

*Town Attorney Greg Stepanicich recused himself from the next agenda item in order to avoid the appearance of a conflict. Council Members Martin and Russell reconvened their position on the Town Council.*

22. Town Council discussion/action on the Town of Ross joining the Marin Energy Authority (MEA).

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Council Member Martin stated that at the last Council meeting there was considerable discussion about the Town of Ross rejoining Marin Energy Authority (MEA). Tonight the issue is up for further discussion and possible action. Council members requested a powerpoint presentation from MEA as well as samples of bills detailing different tiers and what the cost might be for light green and deep green power for a typical customer. Also, at the last meeting it was suggested that an advisory vote by the residents of Ross on MEA be considered for the November ballot. A report has been distributed where Town Manager Broad analyzed the cost of such an election and procedures for placing it on the ballot.

Dawn Weisz, MEA Director, provided a powerpoint presentation that included the following:

### \* MCE in a Nut Shell

- Administered by local, not-for-profit, public agency (MEA)
- Cleaner, greener, non-polluting energy
- Partner with PG&E to deliver energy and maintain power lines
- 27-100% renewable power
- Competitive rates
- Service area currently includes Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito, Tiburon, and the County of Marin

### \* Making a Difference: Clean power currently supplied by MCE reduces annual GHG emissions by 68,595 tons. That is the equivalent of:

- removing 12,000 cars from our roads
- saving 7.7 million gallons of gas
- saving 160,000 barrels of oil

At full program roll-out, MCE expects to reduce GHG emissions by 560,000 tons annually.

### \* Renewable Portfolio Standard

### \* Giving Back: Rates paid to MCE stay in Marin to support our community

- \$500 energy efficiency rebates
- 5 electric vehicle charging stations
- Local renewables:
  - \* Net Energy Metering
  - \* Feed In Tariff
- Jobs creation and local workforce development with new renewable energy projects

### \* Accomplishments:

- New Renewable projects in California
  - \* 31 MW of new solar
  - \* 3.2 MW of new biogas
- Maintained Fiscal Prudence:
  - \* All loans and financial commitments from County of Marin, Fairfax, and individual lenders paid back and released
  - \* 14% rate decrease in 2011

### \* Energy Options:

- Light Green Power
  - \* 27% renewable energy today
  - \* 33% renewable by 2015
  - \* 78% carbon-free in 2020
- Deep Green Power
  - \* 100% renewable energy today
  - \* 100% carbon-free

### \* The Price: For just a penny more kilowatt-hour you can get 100% renewable energy. That usually averages out to \$5-10 per month. Light green power is competitive with PG&E

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rates and in some cases even cheaper. MCE means more value for your dollar. Our competitive rates are stable and provide long-term price stability.

- \* Light Green Rate Comparison - Commercial/Residential
- \* Sample Bill - Summary Page
- \* Sample Bill - Third Party Electrical Detail
- \* Customer Participation:
  - Customers in the MCE service area will be automatically enrolled with Light Green service within next 9 to 18 months
  - New phase of 5,500 customers scheduled for enrollment this August
  - Customers will receive 4 notices informing pending enrollment
  - Customers may sign up for Deep Green service at anytime
  - Customers may opt-out at any time
- \* Free Amnesty Period to Join MEA:
  - Applies to nonmember jurisdictions in Marin County
  - July 7, 2011 - November 7, 2011
  - Cost to join after amnesty period is \$20,000 - \$40,000
  - Steps necessary to join MEA:
    - \* Adopt resolution by majority vote requesting membership
    - \* Adopt Ordinance required by CPUC Code Section 366.2(c)(10) - 2nd reading and adopting of ordinance by December 2, 2011
- \* Awards & Recognition:
  - Environmental Protection Agency
    - \* MEA ranked #13 on Local Government Largest Green Power Purchases
    - \* Green Power Leadership Club
  - Recognition by Northern California Power Association
  - Marin Builders Association Leadership in Sustainability Award
  - California State Legislature Certificate of Recognition
  - Congresswoman Lynn Woolsey Certificate of Recognition

Council Member Martin noted that the target was to procure 180-mega watts of power for Marin County and asked what is projected in the future. MEA Director Weisz explained that those projections have not changed. Those targets have been reduced since not all cities and towns in Marin are participating. Their overall goal is around 120-mega watts at current size.

Mayor Pro Tempore Russell asked where the projections came from for January 2012. MEA Director Weisz noted that there is a proceeding going on at the CPUC. It is a proceeding where PG&E and other utilities in California have to project how much power is needed in the coming years and the estimated procurement. They are asking permission of the CPUC for a rate increase to cover the cost of the procurement in future years. It is about 6% increase across the board on the generation side and such information is available to the public. She added that their rates stay flat and PG&E's rates increase. It is not clear how this will be applied proportionally on the tiers. Mayor Pro Tempore Russell is worried because right now MEA's rates are more expensive, but project that the rates will be less than PG&E's rate and wondered if they should wait another few months. MEA Director Weisz indicated that they have shown the ability to maintain stable rates. No rate increases since they have locked in the cost of power. In the last year they have seen multiple rate changes by PG&E. The stability along with transparency is important to MEA.

Council Member Martin clarified that if there is 31-mega watts of solar coming on, then that would be approximately one quarter of their power needs. MEA Director Weisz responded

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in the affirmative. It would be coming on line in 2014. Council Member Martin asked how the cost is factored in and is it competitive with the existing rate from Shell. MEA Director Weisz responded that it is very competitive. It is coming in below the Shell cost for a solar facility. The prices of solar once built is very consistent, since there is no moving parts. There is very little maintenance once in the ground. It must be cleaned three times per year. It is a very reliable resource once in the ground. Also, there are performance guarantees on their contract as well.

Council Member Strauss asked if it is their ability to buy a better contract to add more green into the system. MEA Director Weisz indicated that there is very careful accounting of generation when it enters the system. The California Independent System Operator manages the grid. The goal is to line up the amount of power put into the system with the amount pulled out. It is not possible to track where those electrons flow. There are strict State requirements requiring that 20% must come from renewable sources that are California certified as renewable.

Mayor Small asked if the baseline stays the same on the pricing. MEA Director Weisz indicated that MEA has the same baseline as PG&E. Mayor Small asked if the tiers are similar to PG&E's pricing as far as the amount of usage. MEA Director Weisz responded in the affirmative. Mayor Small asked if they offer different types of pricing such as seasonal. MEA Director Weisz responded that they offer the same type of programs as PG&E. Mayor Small expressed concern for the difficulty to opt-out and desired a hot line number to call if individuals are having difficulty. MEA Director Weisz explained that individuals can come directly to them to answer questions. Mayor Small believed it would be helpful to have a few contact numbers. MEA Director Weisz noted that their call center has minimal amount of wait time.

Council Member Martin discussed the \$500 energy audit rebate and asked how their rebate compares to PG&E. MEA Director Weisz explained that all PG&E rebates are still applicable with MEA, so nothing changes on that front. The additional rebate being offered is an add-on. There are rebates that cover the cost of the equipment in regard to Energy Upgrade California, so the \$500 rebate will help cover the cost of the audit.

Mayor Small opened the public hearing on this item.

Doug Abrams, Canyon Road resident, stated that this is about choice and citizens should have the opportunity to choose. It is about cleaning up the environment as well. The least important issue is dollars and sense and hopes the Council will give him the right to make that choice.

Diane Rudden, Willow Avenue resident, asked if solar is available in Marin. MEA Director Weisz responded that there are three different energy products. The one in place right now is in South Joaquin Irrigation District. Also, 30-mega watts will come from the Central Valley area and an additional one-mega watt of solar carport structures in Marin County, which is equivalent to 8-acres.

Chris Neumann, Winship Avenue resident, did not understand the small increase in price with solar. MEA Director Weisz explained that they are a not-for-profit structure, which allows them to keep the cost low. There is no large overhead funds or shareholder profits, so funds get redirected into local programs. In the future, they will be able to take advantage of

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tax exempt bond financing by owning their own renewable generation. She added that once in the ground there is very little cost and maintenance involved with solar.

Richard Hoertkorn, Lagunitas Road resident, understands bonds and asked how they are currently funded. MEA Director Weisz noted they are funded completely from customers. The lag time is about three months and that is why working capital loans are in place. They are a good fit for mid-sized renewable producers.

Basia Crane, Kentfield resident, wrote a letter to the IJ, which she read into the record as follows: *"At Tuesday's Novato City Council meeting, some MEA fans in the audience cited global warming, freedom of choice, and PG&E's tyranny, as reasons why Novato should join MEA. But examine MEA's merits. Out of 55,000 possible customers in Marin's six cities and unincorporated areas who wish to be served by MEA, only 8,000 got served in Phase 1 and 5,500 got notices in Phase 2. This means that MEA is not honoring its commitment to 41,500 critical customers, as they promised to do before moving to engaged outside cities such as Richmond, Arcata, and Monterey. MEA has reneged on its promise to finish Phase 2 before going outside Marin. Why do you suppose 41,500 MEA customers who signed up are not being served? They weren't invited because MEA is going after big electricity users such as the mansions in Ross and Novato's sanitary and water districts. Currently, MEA has no plan whatsoever for creating renewable energy and jobs. It has not installed any renewable facilities within Marin but is purchasing its renewable energy through Shell Energy North America, headquarters in Texas. There are no new construction and maintenance jobs, only highly paid administrative, legal and consultant jobs. MEA says it's financially sound and has paid back \$1.3 million in loans to individuals and the County. But to do this, it borrowed \$3 million from Chinese owned River City Bank in Sacramento. Therefore, MEA still has indebtedness. One wonders how MEA was able to dupe the Board of Supervisors with their phony business plan. The Novato Council voted 3-2 Tuesday to spend up to \$10,000 researching what membership in the authority would mean for the City. It could save some money by reading the grand jury's recent "Pull the Plug" report. If indeed MEA is doing so well, why does it find it necessary to add Novato and Ross, and seek to add Richmond, Arcata and Monterey to its customer base. Why shouldn't Marin residents whose cities and unincorporated County areas are already in MEA's JPA, be able to join right now?"*

William Nicholson, Garden Road resident, stated that in April Governor Jerry Brown signed SB2, which raised the renewable portfolio standard in this State to 33% by 2020. As the chart indicates, most of the utilities in this State are a long way away from that. The bill itself basically precludes purchasing renewable power from outside the State, so all of the utilities will have to buy renewable power from inside the State. The crucial question in terms of rate structure is how long are the contracts that MEA has now going to last before they have to go out and make new contracts at presumable higher prices in a very competitive market.

Susanne Lyons, Upper Toyon Drive resident, believed in any business it is very important to be competitive, but it is very important to keep all utilities to meet these new standards. Having JPA's such as MEA pushing the envelope of reaching new standards is good. Competition is very powerful. They all need to lower greenhouse gases. She believed the Council took a thoughtful stance last year, but now there is enough track record to allow the consumers in Ross to have a choice. The Council can enable the community to have that choice and encouraged the Council to make that available to the community.

Barbara George, Fairfax resident, very proud of MEA and it is amazing what has been accomplished. She added that MEA's contracts are long range. She pointed out that utilities

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have not been in a hurry to get clean energy and have been let off for not meeting their targets, but still received profits and bonuses.

MEA Director Weisz explained that their long-term contract is an 18-year contract with an option to extend. They have a buyout option as well. Power purchase agreement also has a buyout option at 10, 15 or 20 years. The term of the contract for both of those pieces is 25 years. She agreed it will become more competitive. In terms of the RFP for local solar products, they received bids for 615 and are engaged in some bilateral discussions.

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 is very impressed with the presentation provided from MEA Director Weisz and is very confident with the direction and leadership in this field. He agreed with Mr. Abrams and Ms. Lyons, this is about providing a choice. It is also addressing global warming and not relying on Middle Eastern oil. Teddy Roosevelt once said, "*That competition is not only the basis of protection to the consumer, but it is the incentive to progress.*" Breaking the monopoly that they tend to have in this community with PG&E making all their power decisions is not good and there is an opportunity for alternative power. Given the size of Marin County and the nature of the business just with smaller allotments of power being available through solar, gives a great opportunity for MEA. He is prepared to vote in favor tonight.

Council Member Strauss is inclined to think this is a good idea. One of the promises was to keep the rates equal to or less than PG&E and desired more information in that regard. The voters have the option to opt-out. If this passes tonight, he urged the Council to send out a notice to all residents that there is a choice. Mayor Pro Tempore Russell concurred.

Mayor Small believes in choice and the community should be offered the choice. She is in favor of supporting this program. She understood that the price would be close to. Ultimately, they are investing in cleaner energy. Regardless, residents should have the choice to do it or not. If not invited in they are depriving their residents a choice. Having lived in Ross for a short 20 years, they have a very savvy, well-educated, active and vital community that can make a phone call to opt-out.

Council Member Hunter stated on a personal level this is within his value system. When he has the opportunity, he probably would not opt-out. He goes back a year ago, and this room was packed along with emails and letters. There is a lot of water under the bridge. There have been controversial decisions made by the MEA Board. They have not received very many emails and those received have been split. To make this decision at a July or August meeting while half of their constituents are out-of-town is a mistake. Placing this matter on the ballot would be an excellent way to get a sense of what the residents and the rest of the County desired. He would be against joining MEA at this time without placing it either on a ballot for an advisory vote or waiting until September or October when residents are back in Town.

Council Member Strauss recommended postponing until September because half of the community is on vacation. Mayor Pro Tempore Russell has been taken by surprise that MEA is more expensive than PG&E and that projections are lower. This is completely against his position a few days or a few months ago. He agreed to wait until September in order to have

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a full audience and have it agendized earlier on the agenda. He would rather make this decision with a stronger commitment from the community.

Mayor Small asked staff to make sure that Attorney Edward O'Neal can attend the September Town Council meeting since their Town Attorney must recuse himself.

Mayor Pro Tempore Russell asked if Ross would have a Director on the JPA. MEA Director Weisz responded in the affirmative. A Director would be appointed to sit on the MEA Board. She added that adoption of the resolution and ordinance can be scheduled in September. Also, she pointed out that no one is paying more this summer than they were paying last year through PG&E. She further pointed out that MEA brought competition to the market and their rate is below where they were last year.

Mayor Small asked for a motion.

**Council Member Russell moved and Council Member Strauss seconded, to continue this matter to the September Town Council meeting. Motion carried 4-0, Martin abstained.**

*Town Attorney Greg Stepanicich reconvened his position as the Town Attorney.*

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

Council Member Martin discussed the case of the oak tree and the Town consultant worked for both the School and Town. There are also cases where consultants work for private property owners as well as the Town. The policy is where the Town tries to get reimbursements from an applicant for the services of the consultant, but it does not prohibit the applicant from directly hiring the consultant, which creates a conflict. Currently, Ross has a resolution that is a boilerplate resolution dealing with conflicts of interest that is required by State law. He believed it is time to review and consider language that would prohibit any consultant that the Town hires from taking on work from any party, property owner in Ross or business owner in Ross. He felt it is very important that the Town consultants that they rely on have credibility and independence on making their recommendations. He further drafted a resolution for discussion purposes only tonight.

Council Member Hunter agreed that the arborist situation representing the Town and the school was wrong, so he favored being sure that they have the right resolution and laws in place. He then asked the Town Attorney if the proposed resolution addresses the situation. Town Attorney Greg Stepanicich noted that with the current rules there is no prohibition on having multiple employment in the Town. What is proposed by Council Member Martin would have a prohibition, so it would be a good idea to define representation of any or narrow that down more. Very often times by contract, towns will prohibit consultants from representing others in town.

Council Member Hunter is thinking about their Town Hydrologist and did not want to deprive Ross residents of his services, but they want to avoid the arborist situation with the school. Council Member Martin concurred. They are potentially having a conflict with the Town Hydrologist who is working privately for a Ross resident and one key condition of that project was to do improvements to the Ross Creek. They ran into problems with the Department of Fish & Game processing Town Hydrologist Matt Smeltzer's plans. That project is being completed and the contractor believes he has done what he should do and

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does not want to pay a dime more. He felt it is better to be clear. They should never put out the notion that there is a "pay to play" type situation. Ross should have the strictest conflict of interest laws and protect the integrity of their consultants. He further added that there is a way for the Town to get reimbursements, but not have Town consultants involved in the collection of fees.

Mayor Pro Tempore Russell agreed the Town consultants should be under a duty to act in the best interest of Ross and it has to be advice for the benefit of the community as a whole. Council Member Strauss concurred.

Mayor Small agreed with the previous comments. It is difficult to serve two masters. She did not want to be in a position where the Town cannot hire Town consultants because they were already hired by a resident.

Mayor Pro Tempore Russell suggested implementing a transition period in which consultants would be asked to cease working for residents. Town Attorney Stepanicich agreed to provide for a transitional period to allow that to take place.

Mayor Small opened the public hearing on this item.

Peter Nelson, Circle Drive resident, believed the concept is to have a primary and secondary professional. Town Attorney Stepanicich explained that prohibition is not representing any private party in Town, but representing a private party on a matter pending before the Town. If there is such a conflict, then there can be a backup expert. It works easier in larger communities than in a smaller town, but it is complicated since the Town must work with multiple consultants.

Senior Planner Elise Semonian asked if the contract building inspector would be covered under the proposed resolution. Council Member Martin believes the Contract Building Inspector is covered unless exempted by the Town Manager in writing.

Diane Rudden, Willow Avenue resident, pointed out that information on this subject matter was not available on the Town's website.

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 asked the Town Attorney to review and come back with an actual resolution to be considered. Town Attorney Stepanicich agreed to review contracts for independent consultants.

Mayor Small asked how staff would feel about having to deal with a backup or secondary professional. Town Manager Broad wanted to avoid having a backup or secondary professional.

The Council discussed potential conflicts of interest when Town consultants do work for private clients in Ross. Council members were generally in favor of prohibiting Town consultants from accepting any work from private citizens. The Council asked Town Attorney Stepanicich to draft a resolution and bring it back to Council for future discussion.

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24. Town Council, sitting as Planning Commission, continued discussion of Ordinance No. 624 An Ordinance Amending Title 18 “Zoning” of the Ross Municipal Code to Allow Certain Finished Basement and Attic Areas for Storage and Living Space.

In summary, Ord. 624 would apply only to existing structures in residential zoning districts and would create a process for the Town Council to allow exceptions from development regulations, such as floor area limits, to allow finished attics and basements when they meet the following criteria: 1) Area to be improved has an existing ceiling height of at least 5.5 feet. 2) For attics, that no exterior changes are proposed. 3) For basements: a) Finished floor level must be above the base flood elevation. b) Exterior modifications do not materially increase the visible mass of the building, are compatible with the design of the existing improvements, and do not create privacy issues. c) There will be no net increase to the rate or volume of peak runoff from the site. 4) The site has adequate water supply for firefighting purposes. 5) The site has the minimum parking required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require additional covered parking. The Council may also require additional parking spaces, up to 4 spaces, based on the size of the residence, number of bedrooms, and the size and use of the attic/basement area. 6) The project complies with the building code. 7) Excavation, grading or cutting is limited to 35 cubic yards. If the project involves excavation, grading or cutting for a basement space, new floor area shall not exceed 20% of the existing floor area (excluding any area of covered parking). The ordinance provides a one-year amnesty period. The Planning Commission will consider staff’s recommendation that the Town Council consider Ord. 624 categorically exempt from the California Environmental Quality Act (CEQA). The full text of Ordinance 624 is available at the Town website.

Senior Planner Elise Semonian explained that in order to qualify for an exception, a proposed attic improvement could not include any exterior changes to the house, including new windows or dormers. Basements could be finished if the existing ceiling height is at least 5½ feet, and the floor area is above the base flood elevation (the height of the 100-year flood). Basement improvements could involve exterior modifications that did not materially increase the visible mass of the building and were compatible with the existing design.

Council Member Hunter noted that the concern is about changing the texture of the Town and asked staff as an alternative would there be a way to indicate that for increased FAR in buildings with attics and basements that can be built out, that the Council will allow exceptions, but it must come before the Council. Senior Planner Semonian noted that under the proposed ordinance the Council must review all of the applications.

Mayor Small opened the public hearing on this item.

John Clarke, architect, asked why is 20% the limit to square-footage increase. To add an additional percentage limitation on top of it is unfounded and an arbitrary control mechanism. Also, he asked why is the area of covered parking excluded from the existing floor area. The floor area definition in the Ross Municipal Code includes garages and carports. If the parking requirement is satisfied, applicants are then penalized to use the entire floor area of a house for this 20% increase, which does not seem fair. He then clarified that with any excavation there will be over excavation to achieve that desired lower floor elevation. It is to accommodate the thickness of concrete slab, sand and drain rock and it will significantly control allowable floor area increase. The examples studied in the staff report in terms of the proposed revisions to the ordinance, none of the basements comply

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because they fail to satisfy the 20% maximum restriction. He pointed out that they were approved by the Town Council, so floor area increase was not an obstacle for Town Council approval, but it is an obstacle now as the ordinance is written. The draft ordinance presented in June represented thoughtful input from residents and believed the draft ordinance should be adopted without the 20% limitation.

Chris Neumann, Winship Avenue resident, agreed they had three meetings with the ADR Group and a lot of input was provided from residents. He further added that these changes proposed are not the best.

Peter Nelson, Circle Drive resident, explained when calculating out the percentages in the package, they did not meet the standard, and they did range. All were under 30% of existing floor area, so in his view the 20% number did not make sense.

Richard Hoertkorn, Lagunitas Road resident, noted confusion and he has been following the process. He thought they were trying to provide incentives to those with attics and basements to improve the standards. The concept is to truly improve the houses to modern code standards, but leaving the scale and mass untouched, and that is not what was heard last meeting.

Kevin Howley, Winship resident, pointed out that there is no one size fits all solution. With this ordinance there is a lot of unintended consequences. This Council should strongly consider not abandoning the proven process of checks and balances that has been worked in this Town for years. They risk overdevelopment and overburdening services. The needs of every homeowner varies and it does not all fall under safety or bringing structures up to modern code. He further believed this is important to carefully consider.

Andrew Johnston, Sir Francis Drake resident, just purchased an eyesore in Ross and the basement is even worse, which he hoped to improve. He pointed out that this ordinance makes it very difficult to improve the existing basement area and residence.

Katie Hoertkorn, Lagunitas Road resident, did not understand what the unintended consequences could be if they are keeping everything within the existing footprint. She then asked staff how many emails and letters staff received in support because she witnessed a tremendous amount of support throughout the various meetings. Senior Planner Semonian responded that, as of the last meeting, 43 were in support, four had concerns and two did not indicate a position.

Mr. Hoertkorn pointed out that the direction was obvious after the public workshops and many believed this matter was done.

Carland Nicholson, Garden Road resident, indicated that she has a basement located on the side of a hill and at different levels. Her fear is that if residents start digging out these basements, how will water be retained on the lot. Her basement is tiered down and it would be terrible if her basement was removed. She further agreed that one size does not fit all.

Mayor Small pointed out that many letters were received from residents indicating support as long as it did not impact neighbors.

Doug Abrams, Canyon Road resident, believed with the ordinance as drafted, the concerns are more than covered. If a neighbor is affected or if a Council member has concerns, it can be

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pulled and discussed. The Council still has the right to hear all of these cases. He reminded the Council that this was one of the five goals of the Council. Valid points were discussed and agreed that it does not fit everybody. If more than 20% is desired then an applicant can apply for a variance for 25%. All these projects are already within the mass of the home. Windows and doors are not being changed. In regard to drainage, a civil engineer must sign off on the drawings. Most of these homes in terms of upgrading all start in the foundation. The expense to take out a foot is enormous. He further believed homeowners are underestimating the expense of professional fees as well as the actual physical cost.

William Nicholson, Garden Road resident, expressed concern for the potential for a cumulative impact issue in neighborhoods. He recommended providing an explicit method for determining and evaluating cumulative impact in neighborhoods.

Les Sherman, Brookwood Lane resident, agreed with Mr. Abrams and stressed that passing this new ordinance does not take this out of the hands of the Council.

Diane Rudden, Willow Avenue resident, after reading the ordinance she reviewed the General Plan and believed the Council took dramatic steps. The HLO was limited on steep sensitive sites. She expressed concern for the fact that hillside lots are not being listed. This could potentially double the size of a hillside lot.

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 Pro Tempore Russell reminded everyone that the next item is about administrative review of second units and simply giving staff the ability to approve a second unit up to 1,200 sq. ft. No public comment has been received regarding the second unit ordinance, which will potentially allow much more development and create more impacts than this ordinance, which regulates work within existing homes. He further noted that they are talking about in the privacy of one's own home and it is a highly controversial issue.

Council Member Hunter recommended that the Council stipulate to review this matter in one year in order to review the unintended consequences and effect on their neighborhoods. They still have the ability to turn down a project. Mayor Pro Tempore Russell noted that the Council can limit the number of applications that can be accepted. Council Member Strauss added that all matters should come before the Council. Mayor Pro Tempore Russell stated that the purpose was to create consistency and to be more streamlined. This is much more narrow than what has been approved in the past. They created a lot of additional limitations. He is trying to do what is best for the community as a whole, of how to continue to improve the interior of their homes. He further added that what is proposed is to allow the possibility to go on the consent agenda if relatively straightforward, but the Council always has the opportunity to pull the item for discussion.

Council Member Martin supported what is before the Council and agreed to review again in one year. Council Member Strauss concurred. He noted that on page 5 under Section 18.46.050 Item B the word, "variance" is used and believed the word, "exception" should be used. Senior Planner Semonian responded in the affirmative.

Mayor Small supports as written the draft ordinance with the intent that it will be reviewed in one year. The idea to place items on the consent agenda she has less concern because it can be pulled, if necessary. This is fairly restrictive, so as shown by examples, very few will go

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through on consent. In respect to a lot of residents who attended the workshops, in any event, with HLO or these workshops, a lot of the individuals that have an interest attend these workshops. Then she hears from those that want to make sure that the Council maintains the feel of their community, so this is splitting the baby and it is a beginning to see how it might work or not work.

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, that the Planning Commission recommend that the Town Council adopt Ordinance No. 624, changing “variance” to “exception” under 18.46.050(b) and subject to Council review of the ordinance in one year. Motion carried unanimously.**

25. Town Council to consider recommendation of Planning Commission and introduction of Ordinance No. 624 an Ordinance Amending Title 18 “Zoning” of the Ross Municipal Code to Allow Certain Finished Basement and Attic Areas for Storage and Living Space and adoption of categorical exemption from CEQA

Senior Planner Elise Semonian summarized the staff report and recommended that the Council receive public comment, waive the reading and introduce Ordinance No. 624.

Mayor Small opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, appreciated the Council consideration on this matter.

William Nicholson, Garden Road resident, objected to vehicles protruding out into the sidewalk.

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

Council Member Hunter clarified that it would be 20% including covered parking. Mayor Pro Tempore Russell noted that it is consistent with the FAR. Council Member Hunter pointed out that on parking, the Council will always have the ability to discuss.

The Council agreed to introduce an ordinance that will make it easier for homeowners to finish attics and basements and use the converted space for living area. Under the ordinance, the Town Council will be able to grant exceptions from development regulations, such as floor area limits, in order to allow improvement of existing attics and basements. The Council agreed to include covered parking in the calculation of floor area, and to revisit the ordinance in one year. The Council will consider ordinance adoption at the August 1, 2011, Town Council meeting.

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, to waive the reading and introduce Ordinance No. 624 deleting the language regarding the 20% floor area calculation excluding covered parking. Motion carried unanimously.**

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26. **Town Council to consider introduction of Ordinance No. 625, an Ordinance Amending Municipal Code Chapter 18.42, Second Units, to Allow a Discretionary Review Process and to Provide Certain Exceptions to Second Unit Development Regulations.**

Project Planner Christine O'Rourke discussed a proposed ordinance that would allow the Council greater flexibility to review and approve second units. The draft ordinance establishes a new discretionary review process that would allow the Council to grant exceptions to the existing second unit development standards to allow units up to 1,200 square feet, newly constructed units on second stories, and two second units on a lot, all subject to design review.

The ordinance also allows the Town Council to grant a 500-square-foot floor area bonus to property owners who agree to deed restrict their newly constructed second unit to be affordable to a very low income household. Deed restrictions would be in effect for 20 years. The Council agreed to exclude properties subject to the hillside lot ordinance from the opportunity to qualify for a 500-square-foot floor area bonus.

The new ordinance would enact programs the Town committed to implementing when the Council adopted an updated housing element in November 2010. The housing element largely relies on second units to meet the Town's remaining regional housing need for the 2009-2014 planning period of six units for very low income household, three units for low income households, and four units for moderate income households.

Council Member Martin asked staff if there is an annual limit. Project Planner O'Rourke noted that there is no limit, but the Council could place a limit. The limit should be at least what is needed for the housing element. Any unit applying for an exception must come before the Council. Staff further noted that the ministerial units cannot be limited.

Mayor Small expressed concern for the 500-square-foot bonus on hillside lots and believed hillside lots should be exempt from that 500 sq. ft. bonus. Project Planner O'Rourke explained that the second unit is located on a site with a minimum lot area of 20,000 sq. ft., and the site has the minimum parking required for the zoning district. The intention is to get the very low units. Staff pointed out that there has to be some kind of economic incentive. Also, the deeded rent-restricted second units would remain in place for a minimum of 20 years.

Mayor Pro Tempore Russell discussed the additional bonus area and clarified with staff that it could not be traded off for floor area elsewhere in the future. Project Planner O'Rourke read into the record Section 18.42.065(e) as follows: *"At its discretion, the Town Council may grant an owner's request to terminate a rent-restricted residential second unit permit. The Town Council shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the permit, and the impact on the Town's affordable housing supply. In no case shall such permit be terminated prior to 20 years from the date of Town Council approval under this section. As a condition of termination, the Town Council shall require the owner to make modifications to the property to comply with current building code requirements and to comply with the planning code requirements in effect at the time the exceptions(s) was granted or obtain a variance from such requirements."*

Mayor Pro Tempore Russell discussed amnesty on fees until March of next year and on attics and basements, they indicated that they are still subject to regular inspection type fees. Project Planner O'Rourke noted that they do not charge a fee for second unit

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applications. Mayor Pro Tempore Russell wanted to charge some standard fee for second units. Project Planner O'Rourke explained that fees are set by resolution of the Council.

Mayor Small opened the public hearing on this item.

William Nicholson, Garden Road resident, recommended that the Council not have a ministerial decision. He desired transparency. He desired a noticing procedure for everyone within the standard 300 sq. ft. as well as post the notice in the area. He believed transparency is key. Council Member Hunter noted that this is not ministerial. Mr. Nicholson pointed out that residential second units are subject to ministerial review and he believed it must be a public process. Town Attorney Greg Stepanicich noted that State law requires that the smaller units be done in this manner.

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 Pro Tempore Russell wanted to create a mechanism to limit the number of applications. Town Attorney Stepanicich explained that limiting the number of permits on the administrative review would be a problem under State law. The Council could limit the larger discretionary permits, but administrative permits would conflict with State law limitations.

Mayor Small asked staff the number of units the Town is required to provide and could the Council limit to just that number required. Town Attorney Stepanicich recommended applying for a trial period. The 500 sq. ft. could be limited on hillside lots. Mayor Small did not see a need for the 500 sq. ft. bonus on hillside lots due to narrow roads and excavation. She felt they worked hard to develop a new ordinance that defines that square-footage and she did not want to undermine an ordinance they spent a lot of time on.

Mayor Pro Tempore Russell wanted to make it clear that hillside lots are excluded if less than 30% average slope.

The Council agreed to continue the item for further discussion at the August Town Council meeting.

Mayor Small asked for a motion.

**Council Member Strauss moved and Council Member Hunter seconded, to continue the matter to the August Town Council meeting. Motion carried unanimously.**

*The Council took a short recess at 12:23 a.m. and reconvened at 12:29 a.m.*

- 27. Presentation of the draft Town of Ross Budget for Fiscal Year 2011-2012 as recommended by the Town Finance Committee and Town Council consideration/ adoption of the budget.**

*Due to the late hour, this item was continued to the August 2011 meeting.*

- 28. No Action Items:**
- a. **Council correspondence received**
    - \* Consider Smoking Ordinance
    - \* Outrage about the SMART Train

b. Future Council items

- \* MEA
- \* Draft Town Budget for FY 2011-12
- \* Policies & Procedures of placing items on Council consent agenda
- \* Consider introduction of Ordinance No. 625

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

*Due to the late hour, the Council had nothing to report.*

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

*Due to the late hour, this item was continued.*

31. 15 Woodside Way, Design Review No. 1823

Susanne and Peter Chase, 15 Woodside Way, A.P. No. 73-252-06, R-1:B-6 (Single Family Residence, 6,000 sq. ft. minimum lot size), Medium Density (6-10 units per acre). Review of landscape plan associated with an application, conditionally approved by the Town Council on May 12, 2011, for a new driveway/parking area in the rear yard, within 25 feet of the top bank of a seasonal creek, and new 6-foot tall wood and wire fence and gate. Approximately 5-feet of asphalt apron is proposed between the edge of the paved roadway and the driveway.

Lot area	6,900 square feet
Existing/proposed Floor Area	19.4% (20% permitted)
Existing/proposed Lot Coverage	19.5% (20% permitted)
Existing Impervious Areas	26.8%
Proposed Impervious Areas	27.9%

*The residence and carport are nonconforming in setbacks. The site has nonconforming parking (two spaces required, one covered parking space provided).*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council continue the matter to the August 11, 2011 Town Council meeting in order to allow the applicant the ability to present additional information to staff. In the meantime, staff still hopes to work with the neighbors and applicant to develop some landscape screening.

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 continue to the matter to the August 11, 2011 Town Council meeting. Motion carried unanimously.

32. 29 Upper Road, Design Review, Hillside Lot and Demolition Permit No. 1829 Stuart and Sarah Ryan, 29 Upper Road, A.P. No. 73-111-07, R-1:B-5A (Single Family Residence, 1 acre minimum lot size), Very Low Density (.1 - 1 units per acre). Design review, hillside lot application and demolition permit for a significant remodel of the existing residence, which includes: 1.) replacing all exterior windows and glass doors with new aluminum clad wood units; 2.) replacing all exterior wood siding and stone veneer with stucco; 3.) replacing the composition asphalt roof shingles; 4.) installing new painted wood door and window casing; and 5.) construction of the 323 square foot detached office approved February 11, 2010 (which expires February 11, 2012). An amendment to the February 11, 2010, project approval is requested to allow construction of the office and not the remainder of the project. A total of 5,394 square feet of development is proposed.

Effective Lot Area	76,404 square feet
Existing Floor Area Ratio	6.6%
Proposed Floor Area Ratio	7.1% (7.1% permitted)
Existing Lot Coverage	8.1%
Proposed Lot Coverage	8.6% (15% permitted)

*The existing residence is nonconforming in setbacks. The slope of the lot is 35%. The Hillside Lot Ordinance limits the maximum floor area to 5,442 square feet.*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the project subject to the conditions and findings outlined in the staff report including the amended Condition No. 9 to require interception of the driveway runoff, which may currently flow down the private portion of Upper Road. If the Council has difficulty considering the material change without new elevations, or difficulty considering the detached office without re-installation of story poles, it would be appropriate to continue the item and require the applicant to submit more detailed elevations reflecting the proposed material and/or story poles.

Council Member Martin noted that the approved project had an extensive drainage system and asked if the same system will be in place or modified. Jared Polsky, architect, noted that the entire drainage system will not be redone. He pointed out that the back lawn is a bio retention lawn. Senior Planner Semonian pointed out that the stormwater ordinance will probably apply to the project.

Council Member Strauss asked if there was any consideration to breaking down the mass with the materials as they did on the detached unit. Architect Polsky explained that they are just residing the existing building. He added that the office building will be done as designed. He stated that the elevations are a copy of the old elevation and they are just changing the materials. Council Member Strauss believed it is a missed opportunity.

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.

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Council Member Strauss recommended that they come back with illustrated elevations. He would approve the office space with the condition that it comes back to the Council with detailed elevations.

Council Member Hunter would be fine with the applicant going ahead as requested, but if staff feels the finishing touches are lacking to bring the matter back to the Council. Mayor Small and Council Members Martin and Russell concurred. Council Member Strauss wanted the matter to come back. He felt they are putting staff in an awkward position. Senior Planner Semonian agreed the design could be improved, but the house is only visible to a few at a great distance and it will not matter to anyone if it is not. Architect Polsky has not received much direction and pointed out that they just want to fix up the existing house. He further believed the dark color and stucco will only improve the appearance.

Council Member Russell trusted staff's judgment. Mayor Small knows that the design can be better, but it is not visible to anyone other than the owners.

Mayor Small asked for a motion.

**Council Member Martin moved and Council Member Russell seconded, to approve the project at 29 Upper Road subject to the conditions and findings outlined in the staff report and allow staff to use discretion as to whether any changes justify coming back to the Council. Motion carried 4-1. Strauss abstained.**

#### 29 Upper Road Conditions:

The conditions of approval shall be reproduced on the first page(s) of the plans submitted for a building permit.

1. The project shall be built in substantial conformance to the plans approved by the Town Council on July 14, 2011.
2. No construction is permitted on any adjacent site without permission of the property owner.
3. All costs for town consultant, such as the town hydrologist and engineer, review of the project shall be paid prior to building permit issuance. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
4. A preconstruction meeting with the property owner, project contractor, project architect, representatives of the Town Planning, Building, Public Works and the Town building inspector shall be required prior to issuance of the building permit to review conditions of approval for the project and the construction management plan.
5. The construction and traffic management plan and schedule, construction routes, and rules shall be attached to the project plans and submitted to the building department for review and approval prior to the issuance of a building permit. The plan shall include the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. All construction materials, debris and equipment shall be stored on site. Road closures and delays are not permitted. The applicants shall provide sufficient area on site for all construction related vehicles and shall keep Upper Road clear of vehicles and construction materials. Staff shall provide neighbors with the opportunity to review and comment on the construction management plan and construction routes prior to issuance of the building permit.

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6. The applicant shall repair any damage to the Town streets or the private roadway prior to project final. A videotape log, DVD format, clearly showing the existing condition of Upper Road from Glenwood to the project site shall be presented to the Department of Public Works prior to the start of construction. Applicant is advised that, absent clear video evidence to the contrary, road damage must be repaired to the satisfaction of the Town prior to project final. Damage assessment will be at the sole discretion of the Town, and neighborhood input will be considered in making that assessment.
7. Grading is prohibited between October 15 and April 15. No winter grading is authorized for this site and a construction management plan shall be submitted that outlines the scheduling of the site development. This should clearly show completion of all site grading activities prior to the winter storm season. An erosion control plan is required.
8. Prior to any demolition or issuance of a building permit for the new structure, an asbestos and lead-based paint survey shall be provided to the Town building department. If asbestos-containing materials are determined to be present, the materials should be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. If lead-based paint is identified, then federal and state construction worker health and safety regulations should be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified, it should be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations.
9. A drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. The plan shall be designed, at a minimum, to produce no net increase in peak runoff from the site compared to pre-project conditions (no net increase standard). Runoff from impervious surfaces shall be dispersed on site. The plan shall also be designed to collect runoff from the paved driveway so that it does not run down the private portion of Upper Road and is instead diverted and dispersed on site. As far as practically feasible, the plan shall be designed to produce a net decrease in peak runoff from the site compared to pre-project conditions. Applicants are encouraged to submit a drainage plan designed to produce peak runoff from the site that is the same or less than estimated natural, predevelopment conditions which existed at the site prior to installation of impermeable surfaces and other landscape changes (natural predevelopment rate standard). Staff shall provide neighbors with the opportunity to review and comment on the drainage plan prior to issuance of the building permit.
10. Construction of the drainage system shall be supervised, inspected and accepted by a professional engineer and certified as-built drawings of the constructed facilities and a letter of certification shall be provided to the Town prior to project final. The Town may require a maintenance plan to be recorded.
11. A copy of the building permit shall be posted and emergency contact information shall be up to date at all times.
12. Working Hours shall adhere to Ross Municipal Code sections 9.20.035 and 9.20.060.
13. This project must comply with all engineering reports prepared by the applicants' engineering professionals.

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14. Project development shall comply with the requirements of the Ross Valley Sanitary District, Marin Municipal Water District and PG&E.
15. A certified arborist shall review the construction level drawings, including the utility and drainage plans, and all recommendations of the arborist shall be incorporated into the plans. An arborist shall be on site during all trenching and excavation work near protected trees. Tree protection fencing should be installed prior to permit issuance to minimize damage to root systems of preserved trees. An arborist shall certify to the planning department that all necessary tree protection is in place prior to issuance of the building permit.
16. 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.
17. No changes from the approved plans, before or after project final, including changes to the materials and material colors, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change. The applicants are advised that changes made to the design during construction may delay the completion of the project and will not extend the permitted construction period.
18. Any landscaping lost to construction activities shall be replaced. The Town Council may require additional screening landscaping to be installed up to three years from project final.
19. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following:
  - a. sprinklers are required (a 13R system is required);
  - b. a 24-hour monitored alarm system is required with smoke/water flow;
  - c. all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property;
  - d. the street number must be posted (minimum 4 inches on contrasting background);
  - e. the roadway must have a vertical clearance of 14 feet;
  - f. all brush impinging on the access roadway must be cleared as determined necessary by Public Safety.
  - g. a reliable fire flow water supply shall be established as determined by the Fire Marshal.
  - h. Clearance of brush or vegetative growth from structures and driveways shall be in accordance with the California Fire Code and approved by the fire official. Defensible spaces around each building and structure shall be created in accordance with the vegetation clearance requirements prescribed in California Public Resource Code 4291 and California Government Code 51182.
  - i. Development shall adhere to the wildland urban interface building standards in Chapter 7A of the California Building Code. The applicants shall provide a vegetative management plan to be complied with annually.
20. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.

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21. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
22. Failure to comply in any respect with the conditions or approved plans constitutes grounds for the town to immediately stop work related to the noncompliance until the matter is resolved. (RMC §18.39.100). The violations may be subject to additional penalties as provided in the Ross Municipal Code and State law.
23. 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.
24. 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.
33. **43 Winship Avenue, Variance No. 1830**  
George and Judith Bishop, 43 Winship Avenue, A.P. No. 72-154-01, R-1:B-10 (Single Family Residence, 10,000 Square Foot Min. Lot Size), Medium Low Density (3-6 Units/Acre). Variance to allow a 32 square foot addition to the residence in the area of a covered porch, within the east side yard setback (15 feet required, 6 feet 4 inches proposed). The project includes returning the garage to covered parking use and a request to retain an air conditioner within the east side yard setback (15 feet required, 10 feet existing and proposed).

Lot area	6,910 square feet
Existing Floor Area Ratio	29.0%
Proposed Floor Area Ratio	29.4% (15% permitted)
Existing Lot Coverage	34.4%
Proposed Lot Coverage	34.4% (15% permitted)
Existing/Proposed Impervious Areas	no change

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*The existing residence is nonconforming in setbacks and parking (1 covered and 2 uncovered spaces required).*

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

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

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, to approve the project at 43 Winship Avenue subject to the findings and conditions outlined in the staff report. Motion carried unanimously.**

**43 Winship Conditions:**

The following conditions shall be reproduced on the first page of the plans submitted for the building permit:

1. The property owner has until September 15, 2011, or prior to issuance of the building permit, whichever occurs first, to remove the improvements to the garage and restore the area for vehicle parking. The garage door shall be operable and automatic. The floor shall be concrete.
2. A permit is required from the building department for the air conditioner. Operation of the air conditioner shall comply with the Town noise ordinance (Ross Municipal Code Chapter 19.20).
3. All cracked, broken or uplifted sidewalk fronting the property shall be replaced. Prior to issuance of a building permit, the applicant shall be responsible for securing an encroachment permit from the Department of Public Works for improvements to be located within the right-of-way.
4. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
5. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
6. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) depending on the extent of the project, sprinklers may be required (a 13R system); and 3.) A local alarm system is required.
7. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
8. 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.

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9. 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.
10. Failure to secure required building permits and/or begin construction by July 14, 2012, will cause the approval to lapse without further notice.
11. 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.
12. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
13. 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.

**34. 24 Woodside Way, Variance No. 1831**

*This item has been continued.*

Elizabeth McLaughlin Burgis, 24 Woodside Way, A.P. No. 73-231-13, R-1:B-6 (Single Family Residence, 6,000 Square Foot Min. Lot Size), Medium Density (6-10 Units/Acre). Variance to allow a 60 square foot storage structure, up to 8 feet tall, within the front yard setback (25 feet required, 4 feet proposed) and side yard setback (15 feet required, 8 feet proposed).

Lot area	6,560 square feet
Existing Floor Area Ratio	22.8%
Proposed Floor Area Ratio	23.7% (15% permitted)
Existing Lot Coverage	15.4%
Proposed Lot Coverage	16.3% (15% permitted)
Existing/Proposed Impervious Areas	no change

*The existing residence is nonconforming in setbacks and parking (1 covered space required).*

**35. 123 Bolinas Avenue, After-the-Fact Variance No. 1832**

John and Erin Hennessy, 123 Bolinas Avenue, A.P. No. 73-041-05, R-1 (Single Family Residence, 5,000 Square Foot Min. Lot Size), Medium Density (6-10 Units/Acre). Variance application to allow the after-the-fact construction of a 6-foot by 11-foot deck at the front of the residence, within the side yard setback (15 feet required, 6 feet proposed).

Lot area	6,910 square feet
Existing/proposed Floor Area Ratio	no change
Existing Lot Coverage	22.6%
Proposed Lot Coverage	23.6% (15% permitted)

*The existing residence is nonconforming in setbacks.*

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Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the after-the-fact variance based on the findings and conditions outlined in the staff report.

Council Member Hunter believed the porch has improved the appearance of the property. Mayor Small agreed that the porch makes sense, which is really part of the purpose when decks were not included in FAR in order to get away from that boxy look of an entrance.

John Hennessey, applicant, explained that their intent was to view their children playing out in the front yard and sincerely apologized for taking up the Council's time.

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 the after-the-fact Variance at 123 Bolinas subject to the findings and conditions outlined in the staff report. Motion carried unanimously.**

### 123 Bolinas Avenue Conditions:

Staff recommends that the Council approve the after-the-fact variances based on the statements in the staff report, the applicants' attached findings, and subject to the following conditions:

1. The owner shall obtain all necessary permits from the building department within 30 days. The construction shall comply with the building code and any corrections noted by the building department shall be made prior to project final. The building department shall determine the value of the project and shall impose inspection fees as required by the Municipal Code.
  2. 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.
36. **30 Sir Francis Drake Blvd, Community Cultural District, Discussion regarding requested use, No. 1833**  
Marin Art & Garden Center, 30 Sir Francis Drake Blvd, A.P. Nos. 72-231-01, 72-231-02, 72-231-23, C-C (Community Cultural District), Limited Specialized Recreational/Cultural, Partially in Zones A and AE (1-percent annual chance floodplain). Request for Council to consider if a proposed granola production and conservation/educational program use is permitted under the Community Cultural district regulations and not a primarily commercial use. The use involves granola

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production and is proposed to complement the existing and planned edible garden, ecology and cooking events, master gardener sustainability programs, chef/author lecture series and other educational purposes. The use would include construction of an organic kitchen with two ovens (with space for two additional ovens) in an existing 1,366 square foot space. The ovens are proposed to have odor and noise-free ventilation.

*This item was withdrawn.*

**37. Adjournment.**

Mayor Small moved to adjourn at 12:54 a.m.

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Carla Small, Mayor

ATTEST:

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Gary Broad, Town Manager