

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, DECEMBER 10, 2009

**1. 6:30 P.M. Commencement.**

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

**2. Open time for matters pertaining to the closed session in agenda item 3**

Carla Small, Duff Lane resident, believed before any action is taken in the closed session, the public should know whether it is a one or two year extension or salary increase that will be discussed. Just indicating “*Extension of Contract*” on the agenda is very vague and difficult for residents to make comments. Also, this Town does not require a Town Manager, especially at the cost of about \$300 per household per year. In the past, this Town ran quite nicely without a Town Manager and saw far more significant building and remodeling. There is a reason only a few people are in this room, and it is not because they are pleased with the Council’s action, it is because the Council does not listen and residents are tired of being ignored. The survey representing 533 residents in Ross has gone largely ignored. Over 200 residents signed a petition regarding the HLO and 33 Baywood that went ignored and now the Town finds itself in litigation. It is very clear in the survey that there were real concerns about extending the Town Manager’s contract. The Town hired a human resource person to work with the Town Manager after being a Town Manager for several years. The Council cannot deny that there have been many issues, and if the Town Manager’s contract is extended then the Council’s action will not reflect a big significant group of this community.

John Martin, Bolinas resident, has been through two Town remodels, one in 1992 and he found the services of the Town Manager to be extremely helpful. In 2005, when the flood occurred, the Town Manager and staff were very helpful. Also, the Bolinas Avenue project has been in the works for about three years for drainage, safety and beautification improvements and without the help of Town Manager Broad they would not be where they are today. He has seen a lot of progress in Town and his experiences with the Town Manager have been positive.

**3. Closed session of the Council pursuant to Government Code §§ 54957 and 54954.5, Public Employment: Town Manager, Contract Extension Agreement.**

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

The Council unanimously voted to extend Town Manager Gary Broad’s contract one and a half years to December 31, 2011.

**5. Posting of Agenda.**

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

**6. Minutes.**

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Martin seconded, to approve the November 12, 2009 Town Council Minutes as amended. Motion carried unanimously.

**7. Demands.**

The demands were met.

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

Mary Amonette, Norwood resident, appreciated the Fire Department's quick response to her smoke detectors.

Ken Fineman, former School Board President, thanked the Town Council for allowing him to work with the Town over the last four years on the school project. The resulting project will be a terrific legacy. He appreciated the Town Council Public Works Committee. He then thanked Town Attorney Hadden Roth for his careful review as well as a special thanks to Town Manager Broad from Ross School Superintendent Tammy Murphy.

John Martin, Bolinas resident, developed a neighborhood committee on Bolinas and the goal is to have Ross and San Anselmo work together to address drainage and beautification. He submitted a document to the Public Works Committee, and if approved, they will be on the January agenda. A leadership meeting was held and they want to work together to make recommendations and follow those recommendations. Several residents are working together to make this happen. He further noted that copies of the plan would be submitted to San Anselmo as well.

**9. Report from Mayor Strauss.**

Mayor Strauss reported that RPOA and the Town of Ross are co-sponsoring an art house with the Ross Rehabilitation Hospital to benefit the Ritter Center's efforts to prevent homelessness. The public art campaign will feature houses designed and decorated by local artists and displayed in locations throughout Marin County. RPOA is asking every Ross resident to donate \$1. Please consider donating to this important cause prior to December 31.

Mayor Strauss then welcomed Fire Captain Jake Peterson who presented Council Member Martin with a special award for participating in their fire program. Council Member Martin appreciated the program and encouraged his colleagues to go through the program.

**10. Report from Committee Heads.**

Public Works Update - Council member Martin

Council Member Martin reported that the Lagunitas Bridge project is on track to commence next summer. The timeline for the project is tight and there is little margin for delays or error. They are still waiting for what appears to be the final environmental permit, which is the categorical exemption that Caltrans must issue. Public Safety Director Mel Jarjoura indicated that the Town received the permit.

Council Member Martin added that the contract for the right-of-way consultant that Caltrans required the Town to hire has been signed and the process starts next week. Utility work is beginning and hopefully there will be no more hurdles and the project will start in June.

Council Member Martin believed it is incredible for residents to form a consensus about issues they would like addressed and Bolinas Avenue is a workhorse for this community. The roadway is worn, drainage is inadequate and Bolinas turns into a creek. There are traffic-calming issues as well. The worst is that Bolinas straddles two jurisdictions and commended the neighborhood with taking this approach and hopes to review in January to begin examining the situation.

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

Diane Rudden, RPOA representative, reported that the newsletter went out and the holiday decorations were installed. Also, the Ritter Center in San Rafael is sponsoring art houses in the hope to decrease homelessness in the County. The RPOA and the Town of Ross are putting together one half the \$5000 to sponsor a house. The public art campaign will feature houses designed and decorated by local artists and then they will be auctioned off. It is seed money to start the process. RPOA is asking every Ross resident to donate \$1 to help in this process.

**12. Flood Control Report and Town Council consideration of adoption of Resolution No. 1690 urging completion of Unit 4 Project.**

Council Member Martin summarized the staff report and recommended that the Council consider adopting Resolution No. 1690, urging completion of Unit 4 project. He then pointed out a few typos in the Resolution for the Council's consideration.

Mayor Strauss 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 Strauss asked for a motion.

**Council Member Martin moved and Council Member Cahill seconded, to adopt Resolution No. 1690, urging the Army Corps of Engineers and elected officials to expedite the implementation of completion of the project work related to Unit 4. Motion carried unanimously.**

**13. Report from the Ross School.**

Bob Dickinson, School Board Liaison, announced that Elizabeth Robbins is the new Board President and Todd Blake is a new trustee. Tonight's report touched on gratitude toward Town Council, staff and the status of the school project. They extended gratitude for the leadership flexibility and support of Town Council in helping with the easement, lot line adjust, and the SR2S program. The new Board would like to continue to collaborate with the Town Council and how to best work together. The new school will open in mid-August of 2010 well ahead of schedule and well under budget. They are very pleased with the progress of the school. The multipurpose room remains an open question. They are approved to receive \$6.8 million from California Office of Public School Construction. They are awaiting disbursement of funds. State funds must be received by May in order for construction of the multipurpose room to remain on schedule. They are very sensitive of the unsightly appearance of the current multipurpose room and returning Ross Common to the greater community as soon as possible. They further believe the gym and outdoor stage will be a tremendous benefit to the community.

14. Report from Disaster Council (DISCO)

Fire Chief Tom Vallee reported that the Disaster Council was actively organizing the Town into blocks for disaster preparedness and emergency response programs. The Council has recruited 16 enthusiastic block captains who are currently brainstorming ways to contact and involve neighbors in block activities. The Council needs about six more block captains, and he asked that anyone interested in volunteering contact him at [tvallee@townofross.org](mailto:tvallee@townofross.org).

Also, the Fire Department is hosting two “Get Ready Marin” classes on January 12<sup>th</sup> and 19<sup>th</sup>. The two-hour classes teach basic skills to survive a disaster.

15. Consent Agenda.

The following nine items will be considered in a single motion, unless removed from the consent agenda: **Items 15a & 15e were pulled from the Consent Agenda for further discussion.**

- b. Town Council consideration of adoption of Resolution No. 1687 authorizing the filing of an application for Energy Efficiency and Conservation Block Grant funding in the amount of \$25,000 for implementation of energy efficiency projects at the Town of Ross and Marin Art & Garden Center facilities and development of a green building ordinance and climate action plan.

Mayor Strauss asked for a motion.

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

- c. Town Council approval of regular Council meeting dates for 2010, including special dates for September and November Council meetings.

Mayor Strauss asked for a motion.

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

- d. Town Council consideration of adoption of Resolution No. 1688 adopting the fee schedule established by the Marin General Services Authority for Taxicab Regulations.

Mayor Strauss asked for a motion.

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

- f. 39 Poplar Avenue, Variance and Design Review No. 1756  
Lambert and Dorothy Meyer, 39 Poplar Avenue, A.P. No. 73-273-05, R-1:B-7.5 (Single Family Residence, 7,500 sq. ft. minimum lot size) Medium Low Density (3 - 6 units per acre). Application for design review and variances to replace a two-car carport within the side yard setback (15 feet required, 3 feet proposed). The new carport would have a maximum ridge height of 11.5 feet (taller than the

existing carport) and would have painted T-1 11 plywood siding and a composition shingle roof.

Lot area	8,686 sq. ft.	
Existing Floor Area	35.7%	
Proposed Floor Area	35.7%	(20% permitted)
Existing Lot Coverage	35.7%	
Proposed Lot Coverage	35.7%	(20% permitted)

Mayor Strauss asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve Consent Calendar Item “f” as submitted by staff. Motion carried unanimously.

Conditions 39 Poplar Avenue:

The project shall be subject to the following conditions, which shall be attached to the project plans:

1. The structure is approved for carport and elevated storage use only. The structure shall be available for parking two vehicles. Doors shall not be installed to fully enclose the structure without prior approval of the Town Council. The town planner may limit lighting, electrical and other improvements on the building permit plans for the garage to ensure it will only be used for storage use.
2. At least five, 15 gallon, pittosporum shrubs shall be planted to screen between the carport and the neighbor to the south prior to project final.
3. The structure shall be painted a color to compliment or match the existing structures.
4. All construction must comply with current fire codes, including a Class A roof and one hour wall assembly where required.
5. All runoff shall be dissipated on site.
6. No changes from the approved plans, before or after project final, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change.
7. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
8. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review.
9. 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.

- 10. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
- 11. Failure to secure required building permits and/or begin construction by December 10, 2010 will cause the approval to lapse without further notice.
- 12. 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.

**g. 59 Winship Avenue, Variance No. 1761**

Robert and Carol Momsen, 59 Winship Avenue, A.P. No. 72-162-02, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre). Variances associated with a remodel of the residence. The project includes modifications to windows on both sides of the residence and the rear of the residence. No changes are proposed to the front façade. The second floor shed dormer, which faces the rear yard, would be replaced by a gable dormer and two, smaller, shed dormers. The project includes the addition of two new bay windows at the first level. The project would increase the floor area at the site by 40 square feet.

Lot area	9,583 square feet	
Existing Floor Area	33.5%	
Proposed Floor Area	33.9%	(20% permitted)
Existing Lot Coverage	29.3%	
Proposed Lot Coverage	29.3%	(20% permitted)

*The garage is nonconforming in setbacks.*

Mayor Strauss asked for a motion.

**Council Member Cahill moved and Council Member Skall seconded, to approve Consent Calendar Item “g” as submitted by staff. Motion carried unanimously.**

**Conditions 59 Winship Avenue:**

- 1. All windows must appear as real wood true divided light.
- 2. Any landscaping damaged during construction shall be replaced. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
- 3. All site runoff shall be dissipated on site.
- 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. 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.) The property must be cleared of all dead or dying flammable materials; 3.) A local alarm system is required.
  6. 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.
  7. 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.
  8. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
  9. Failure to secure required building permits and/or begin construction by December 10, 2010, will cause the approval to lapse without further notice.
  10. 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.
  11. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**h. 17 Brookwood Lane, Variance No. 1762**

James and Ann Kauffman, 17 Brookwood Lane, A.P. No. 73-311-03, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre). Variances to allow the following: 1.) expansion of a deck within the side yard setback (15 feet required, 13.8 feet proposed); 2.) spa and patio area within the side yard setback (15 feet required, 8 feet proposed); and 3.) replacement of a brick patio with gravel within the rear yard setback (40 feet required, 15 feet proposed) and side yard setback (15 feet required, 5 feet proposed). Design review of landscaping work within the guideline watercourse setback (25 feet recommended, 8 feet proposed).

Lot area

10,295 sq. ft.

Existing Lot Coverage	27.3%	
Proposed Lot Coverage	29.2%	(20% permitted)

Mayor Strauss asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve Consent Calendar Item “h” as submitted by staff. Motion carried unanimously.

Conditions 17 Brookwood Lane:

1. A drainage plan shall be submitted for review and approval of the building departments that minimizes water runoff from the site and allows for on site percolation.
2. 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.
3. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
4. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; 3.) The property must be cleared of all dead or dying flammable materials; and 4.) A local alarm system is required.
5. 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.
6. 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.
7. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
8. Failure to secure required building permits and/or begin construction by December 10, 2010, will cause the approval to lapse without further notice.
9. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
10. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
11. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing

contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

i. **11 Fernhill Avenue, Variance No. 1759**

Barney and Temple Schauble, 11 Fernhill Avenue, A.P. No. 73-091-03, R-1:B-20 (Single Family Residence, 20,000 sq. ft. minimum lot size), Low Density (1 - 3 units per acre). Application for variances for the following: 1.) expansion of the first floor kitchen by 37 square feet, in the area of an existing deck on the rear side of the residence; and 2) reconfiguration and expansion of a rear yard deck, which would result in 15 square feet of additional lot coverage. The project also includes landscaping the creek area with riparian plants and construction of a new swimming pool, spa, and on-grade terrace. The pool, spa and terrace would comply with all development regulations.

Lot area	22,050 sq. ft.	
Existing Floor Area	27.8%	
Proposed Floor Area	27.9%	(15% permitted)
Existing Lot Coverage	16.4%	
Proposed Lot Coverage	16.7%	(15% permitted)

Mayor Strauss asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve Consent Calendar Item "i" as submitted by staff. Motion carried unanimously.

Conditions 11 Fernhill:

1. A drainage plan shall be submitted for review and approval by the town hydrologist. The drainage system shall be designed to reduce, to the maximum extent possible, the post-project peak flow discharging from the site during the 100-year 1-hour design storm to at or below pre-project peak flow. The applicant is encouraged to use vegetative low impact development stormwater controls (rain gardens, bioretention, swales, filter strips, buffers) to capture, store, and infiltrate stormwater on-site.
2. A landscape plan shall be submitted for review and approval by the town hydrologist. The area between the stone retaining wall and the creek should be landscaped with at least five 24" box trees appropriate for the riparian area and other plants designed specifically to establish a native California riparian plant community with a multi-level structure to serve as habitat.
3. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
4. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
5. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street

- number must be posted {minimum four inches on contrasting background}; 3.) The property must be cleared of all dead or dying flammable materials; and 4.) A local alarm system is required.
6. 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.
  7. 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.
  8. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
  9. Failure to secure required building permits and/or begin construction by December 10, 2010, will cause the approval to lapse without further notice.
  10. 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.
  11. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
  12. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**End of Consent Agenda.**

**15a. Town Council consideration of the appeal of David DeRuff, 3 Southwood Avenue, A.P. No. 73-152-09, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction and of Resolution No. 1674 acting on the appeal.**

Council Member Martin wanted to better understand this item since this was considered at the October Council meeting. This involves the construction completion penalty and the Council discussed reducing the penalty to \$107,000, but the recommendation tonight was \$24,000.

Mayor Pro Tempore Hunter stated that the Finance Committee met with David DeRuff along with the Public Safety Director and the Town Manager. They looked again at the basement situation and how the planning department changed during the period between the time the plans were agreed and built. It seemed that there had been some miscommunication. Also, they talked about the roof structure and in effect after hearing

staff's input they gave that time as well. The fine was lessened and that is how they ended up with \$24,000 for the period of time that remained.

Council Member Martin appreciated the ordinance, which calms the Town with construction and requires property owners to meet a time schedule. There are a few properties pending in Town with substantial completion penalties and he did not want to compromise the Council's authority to enforce the ordinance and impose future fines. He then asked the Town Attorney if the Council is losing any authority by moving forward with the proposed action. Town Attorney Hadden Roth responded that it is all about reasonable deliberation and this does not set a precedent. The Council independently considered the facts of each case.

Mayor Pro Tempore Hunter had the same concerns as Council Member Martin. This ordinance was put in place with good reason, and in this case, it was a perfect storm. With the flood, change in staff and a unique neighbor situation all combined, the Finance Committee felt \$24,000 penalty was merited, which has been paid.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Skall seconded, to approve Resolution No. 1674, reducing property owner David DeRuff's penalty for failure to complete construction to \$24,000. Motion carried unanimously.

**15e. Town Council consideration of adoption of Resolution No. 1689 awarding a contract to Dimensions Unlimited, Inc. to develop a Flood Mitigation Plan. The Town has received a \$50,000 FEMA grant to cover the contract cost.**

Council Member Martin desired to know the benefits to the Town and how this will be integrated with the overall flood protection plan for the Corte Madera Creek. Project Planner Christine O'Rourke reported that the flood mitigation plan would identify flood risks in Town and develop strategies to avoid floods and potential damage. Staff further noted that the consultant would develop strategies.

Town Manager Broad pointed out that this could be fine-tuned by the Council. This is a general proposal and the Council will have an opportunity to refine and fine-tune to address any issues.

Senior Planner Elise Semonian noted that the Town must have a plan to participate in the Community Rating System from FEMA. The plan can be customized to Ross to help assist and protect residents. Staff further noted that this will identify and address various areas of repetitive flooding.

Council Member Martin pointed out that Stetson is currently working on a model and wanted there to be interface. Mayor Strauss discussed this issue as well with staff in regard to duplicating work, so they suggested looking at the scope of work and then figure out what must be done locally. The program outlined is great, but the Public Works Committee must have oversight. Town Manager Broad agreed to take this matter to the Public Works Committee for input and additional refinement on the scope of work.

Council Member Cahill clarified with staff that one effort is to identify more closely the 100-year flood plain. Project Planner O'Rourke responded in the affirmative. Public Safety Director Jarjoura reiterated that in order to apply for any grant or FEMA money, the Town must have this plan in place and approved by the Town and State. Without a plan, the Town would not be eligible.

Town Manager Broad noted that there are FEMA grants available for public safety facilities, and Ross could not apply until this plan is adopted. It is an opportunity to accomplish valuable goals of the Town and potentially receive more grant money. Staff further noted that the Town received a \$50,000 grant from FEMA.

Senior Planner Semonian added that FEMA would provide more detailed base flood elevations in the future. Mayor Strauss desired an opportunity to review the scope of work.

Mayor Strauss asked for a motion.

**Mayor Strauss moved and Council Member Martin seconded, to adopt Resolution No. 1689 and award the consulting contract to Dimension Unlimited, Inc., and that the Public Works Committee review the scope of work. Motion carried unanimously.**

16. **Town Council consideration of whether to give, or not give, advance written notice to withdraw from the Marin Energy Authority as required under Section 7.1.1.1 of the Marin Energy Authority Joint Powers Agreement. The Town may withdraw its membership in the Authority by giving no less than 30 days advance written notice prior to the Authority's execution of Program Agreement 1. The projected date for MEA contract execution with an energy service provider is February 4, 2010.**

Mayor Strauss announced that the Chair and staff of the MEA are unable to attend the meeting tonight since they are out-of-town, so Mayor Strauss opened the public hearing on this item.

Paul Helliker, MMWD General Manager, believed that MEA Board extended their timeframe to January 12<sup>th</sup> and he strongly recommended that the Council have a special meeting to get further questions answered. The Grand Jury report was published. Since the Council took action to become part of MEA, questions at the time were similar to other Council's, which was will the business plan be successful, and will there be solid bidders to provide energy. The bid and negotiation with Shell Energy North America is the most promising bidder. The bid meets the request for proposal in a price that can meet or beat the price PG&E can offer for 25% renewable portfolio. This is a very appealing choice for members in Ross and he asked the Council to give Ross that choice. It is important that MMWD does as much as possible to reduce GHG emissions. PG&E is one alternative and they desired the advantage of having Marin Clean Energy (MCE) to be a provider. There have been discussions about risk, and it is pretty clear that cities and town are not at risk. The JPA is set up to explicitly define that. Any liabilities with MEA are strictly responsibility of the JPA, which would be the risk to the ratepayers. Also, final numbers will not be available until the contract is signed. MEA has presented a response to the Grand Jury report and explained that they can mitigate those risks so the designation that it is unacceptable does not make any sense. Having been the subject of two Grand Jury reports,

MMWD is familiar, and in this case, they did not do their homework.

Joe Nation, representing PG&E, agreed that a number of changes have occurred since Ross joined MEA and most have gone in the wrong direction. He encouraged the Council to review the Grand Jury report. He referred to the County's homepage that refers to the Grand Jury as the only independent watchdog for the County of Marin. He then pointed out that there are several risks to MCE, including financial risk and pricing issues.

A lot has been made about this firewall between the General Fund and MEA. San Anselmo Council pointed out that the PUC reserved the right to require cities to be jointly and severally liable at any time as a condition of MEA being approved by the CPUC. If MEA should fail, PUC will require a re-entry bond. MEA threatens directly the Town's budget, the County's General Fund and also puts ratepayers at risk. MEA promised local renewables, but the contract with Shell Energy North America contains zero local renewables. They are just moving the power around at least for the first five years. MEA promises prices "at or below" PG&E rates guaranteed for only one year. Independent analysis by MRW suggests that rates could be 12 to 15% higher than PG&E. MEA's main purpose is lowering GHG, yet even the supporters of MEA pointed out that GHG under this plan will actually increase. By year 2015, increase in GHG emissions of about 300,000 tons for the County of Marin, which is roughly 70,000 additional vehicles on the road in Marin. He understands the dangers of climate change and the need to move aggressively, but MEA is moving in the wrong direction. He then asked that the Town withdrawal from MEA and do as the Twin Cities has done and work with PG&E as a partnership.

Mayor Pro Tempore Hunter noted that years ago it was mandated that PG&E meet the 20% renewable number and PG&E has had 10 years to hit this target and they are only at 14%. Representative Joe Nation noted that true certified renewables is closer to 15% today. PG&E is under contract with several providers and that would be well over 20%. It takes time to build wind farms and transmissions. PG&E is on track to comply with the renewable portfolio standard based on flexible compliance mechanisms. He pointed out that PG&E is moving extraordinarily aggressively in this area. 6300mg of new renewables has been introduced in the last few years.

Mayor Pro Tempore Hunter asked without additional infrastructure of MEA, could PG&E spread their umbrella and look at different sources to get 20% a lot faster. Representative Joe Nation stated that PG&E is working as aggressively as they can across the board to ramp up. They are on track to be well above 20% in a short amount of time, probably in the next three or four years.

Council Member Cahill stated that MEA contract provides 25% of light green and 100% for dark green and asked why PG&E does not offer the same to Marin residents. Representative Joe Nation noted that they went to the County this year to discuss such a program and the County was not interested. PG&E is willing to have green electricity and a draft has been submitted to Novato. MEA will have 20% using deep green. In fact, only 5.8% of the load in Palo Alto is deep green and they have been doing this for seven years.

Council Member Martin asked if this partnership would offer better rebates or incentives. Representative Joe Nation indicated that it would be similar, but that would be a different program. Novato is excited about a tri-branded solar power industry.

Council Member Martin understands there is a ballot measure in June for taxpayers to vote. It would require the community to vote before it could be an established CCA effort and asked if PG&E is behind that effort. Representative Joe Nation knows PG&E put financial resources into that ballot measure, but did not know the amount. If MEA chooses to have a vote, they could have a vote before June with a 50% threshold. PG&E's position is that if they borrow \$375 million that people must have a right to vote. Council Member Martin noted that joint partnerships could be pursued, which is one possible option.

Mayor Pro Tempore Hunter asked if this matter is continued, is it possible to get from PG&E a concrete pro forma of the Novato arrangement or what would be offered to the Town of Ross in-lieu of. Representative Joe Nation agreed to provide the different programs to the Town. The proposal for Novato has 17 different elements. Each has description of the program. Estimated staff time, funding if any, and then the estimates of GHG reductions.

Mayor Strauss asked about the smart meters and working together collaboratively throughout the County. PG&E Representative David noted that smart meters are being installed. The entire service territory will be completed in 2010 - 2011 timeframe. They provide the ability for customers to receive more information about how they are using electricity and work with customers to find creative ways to use energy more cost effective. Meters provide information to make smart decisions. Also, they agreed to work with Ross in regard to a mix of programs. They believe their programs are much more effective in helping to meet GHG goals using services and programs per the PUC approval.

David Peterson, Upper Toyon Dr. resident, opposed PG&E and wanted PG&E to become the backup system. He is against MEA at this time since the program is deeply flawed. In terms of the Grand Jury report, Marin County is a drop in the bucket for energy. It is just a grid; energy will still come from PG&E along with Shell Energy North America. He has a lot of respect for the Grand Jury system. They are totally unbiased and any one of the members would be willing to talk to each Council Member individually or as a full Council. He believed it is stupid for a little town as Ross to get into the energy business. The Council already put \$200,000 into the system, just seed money to see if it will work and that money can be better spent on other matters. He suggested approving windmills in West Marin and installing solar collectors to reduce the carbon footprint.

Phil Paisley, Baywood resident, agreed with the previous speaker, particular about the Grand Jury system in Marin County. Their findings should not be dismissed. He objected to the programs opt-out provision, which he finds very distasteful. He further stated that if MEA has a good proposition, then it should be sold just like everyone else.

Paul Fen, Local Power representative, stated that CCA's are nothing new in the US. In all cases, CCA's are immensely popular championed by consumer groups and ratepayer advocates and regarded as most successful supplier in the State's. The Grand Jury report does not discuss Cap Cod or Northeast Ohio Council, which have delivered green power at competitive prices. The simply fact is that they have an offer, even under the Shell Energy offer that is offering 25% renewable energy at the same price they are getting 14% now. This will offer a new choice for those in Marin. As a customer, one can opt-out, but preventing residents from having a choice to opt-out is not rational. No CCA has ever imposed a general fund. The Grand Jury report is flawed. They interviewed no CCA group. There is very

imbalanced information and urged the Council not to act on the basis of that Grand Jury report.

Juliette Anthony, Regulatory Consultant, stated that monopoly does not exist in the choice area. Monopoly is in the distribution lines. Only 15% of the load can go into the distribution lines at any one place. MEA is just buying energy, so only money is being exchanged. She desired local. Shell Energy North America will buy energy from all over and clean energy will go to the nearest using entity. Demand reduction is needed. She has double pane windows and all energy star appliances that have reduced her energy load. She believed that Local Power has a good plan. She has worked against Shell Energy and will not vote in favor of any oil company.

Karen Lang, Allen Avenue, desired more communication from Council and desired more communication in the future. It seems the objective is to lower GHG emissions and would appreciate the Council explaining how this program will do that. Also, the community desired other options as well as the basis of the decision. They must know all options and the community wanted to feel comfortable that the Council is reviewing all options.

Ed Mainland, State Sierra Club Energy Chair, stressed the critical moment and importance of this decision for every citizen in Marin. It will shake Marin's energy profile for years to come. This is a very important moment. Before any action, the Council must hear from MEA's Chair. Any action would lack their input and be premature. This is so important because the Grand Jury report is terribly flawed as previously mentioned. MEA's rebuttal to it is very thorough, compelling and persuasive. He encouraged the Council not to make a decision until all information is reviewed. He lives in Novato, and has been considering an alternative plan. There have been extensive discussions. By continuing to stay with PG&E, Ross will have great difficulty meeting GHG target. If you think PG&E partnership is a valid alternative, then look at the experiences in Novato and the East Bay to come to a different conclusion.

Barbara George, representing Women Energy Matters, stated that the proposal PG&E has made to Novato and to the County that the CPUC decision on energy efficiency cannot use energy efficiency money to interfere or undermine Community Choice Aggregate. PG&E have been making offers to the County since November 2007. The County tried to get more details, but PG&E refused to provide. Novato City Council has been negotiating since February. She then presented the Council with a slide showing the reason why MEA is a good idea. Utilities have a large amount of profits and largest lobbyist in the country and they are spending tens of million of dollars to fight public power efforts. It will come out of the energy efficiency profits. Flexibility compliance means that they do not have to meet the targets. They are supposed to meet targets with online renewable energy, not contracts. How much is online is what matters. Renewable energy from Shell Energy North America will increase renewable energy since they are taking from the pool of renewables and result in more renewables being built. Due to small size, utilize small resources that are available. In terms of resources in geothermal in Sonoma County, contracts are coming up for rebidding and they will have an option to get those. She urged the Council to move forward. As far as bond financing, that does not happen immediately. They must get up and running. Once the Shell Energy contract is in place, they will have customer base and will know the cost and will be able to go to financial institutions and get financing needed to build local resources. She desired more energy efficiency. PG&E is not required to explain how they

spend their money or where they get their savings. She further noted that they have a huge political slush fund.

Rebecca Collins, Fairfax resident, discussed revenue bonds and general obligation bonds. MEA plans to use revenue bonds that do not put tax base at risk in anyway. MEA is representative of all member jurisdictions. CPUC ruled that local government is more accountable to the people than CPCU itself. Seven peer reviews, town attorneys stated that MCE members will not be at risk unless purposely sign on to that risk. PG&E helped to construct this argument and create confusion around general obligation bonds and bonds based on revenue stream. This cannot be repeated enough to the public, especially since they have a ballot initiative coming up. Municipal utility districts in the State of California are at risk due to that bond issue. If SMUD wanted to add two more houses they are at risk with that bond issue. It affects everyone in the state. Any entity has to prove its credit worthiness and MEA will have a considerable revenue stream.

Don Davey, Sustainable Novato, counterpoints in the staff report is based on the Grand Jury report, not on MEA's rebuttals. Mayor Strauss noted that the staff report is based on MEA's rebuttals. Mr. Davey noted that PG&E's power is 50% GHG free, but a huge portion is nuclear. He asked how would Ross meet their goals without MEA. Options must be given, and without MEA there will be no options. MEA's plan is to provide local power and local jobs. MRW consulting firm found no fatal flaws, only that natural gas prices may decrease. He further urged the Council not to take action tonight.

Kiki La Porta, Co-Founder Sustainable San Rafael, agreed that the Grand Jury report is flawed because they did not take into account data and information prepared and submitted to them in the draft implementation plan. None of that material was included in references. Also, the County has been studying this for seven years and the Grand Jury just took it up. It takes digging and insulation from pressure and propaganda that might come from outside. PG&E, as a corporation, has a vested interest in shareholders. MEA has a vested interest in the community. Local renewable energy programs will come from the community taking charge of its own consumption, production and its own use and assets. The assets can benefit the community. She suggested that, as stated with regard to Novato, PG&E has been proposing, proposing and proposing a partnership far more beneficial to them than participating in MEA. In response, Board of Supervisors, staff and the Chair of MEA held numerous meetings over four years to explore and determine if PG&E would offer programs to decrease GHG emissions comparable to MCE program, which is 50 times more. Talking about community benefit, no substantive program was every submitted to Marin County Board of Supervisors or the Chair of MEA. Only if jurisdictions left the MCE program, then programs were provided. She recommended getting a proposal from PG&E before it is too late and not be part of this wonderful community to take control of their assets and future. Do not vote on this matter tonight. No one can speak for the County as they can, allow them to answer questions and respond to allegations to have a clean and fair fight.

Wendy McPhee, Ross resident, desired more information to weigh in on a decision. PG&E has been around for a long time and she knows they have an important issue with climate change and the need to be green. They must move quickly. Nothing is healthier than a little competition. Better technology is needed for a growing community to be more clean and green. Must wait to hear from the others unable to attend tonight. She hoped the Council could schedule a special meeting to discuss further. She looked forward to hearing more

about it and taking part in the vote that will determine the future of this Town and sustainability.

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

The Council agreed to continue this discussion to a future date. The deadline is January 12<sup>th</sup>, so it would require a special meeting. A special meeting provides an opportunity to make the community aware of this important topic and allow members of the community to provide input. The Council tentatively agreed to host a special meeting on January 11<sup>th</sup> at 6:30 p.m. at Town Hall.

Mayor Strauss asked for a motion.

**Mayor Pro Tempore Hunter moved and Council Member Skall seconded, to continue this matter to a special meeting date tentatively scheduled for January 11<sup>th</sup> at 6:30 p.m. Motion carried unanimously.**

*The Town Council took a short recess at 9:00 p.m. and then reconvened at 9:10 p.m. Council Member Skall recused himself from the next agenda item in order to avoid the appearance of the conflict.*

**17. Town Council consideration of construction of a ramp within the east Shady Lane right-of-way in front of 32 Shady Lane and across from Ames Avenue to provide pedestrian access from the roadway to the pathway.**

Public Safety Director Mel Jarjoura summarized the staff report and recommended that the Council consider the design to construct a ramp within the east Shady Lane right-of-way in front of 32 Shady Lane and across from Ames Avenue to provide pedestrian access from the roadway to the pathway.

Mayor Pro Tempore Hunter asked staff about the option on the other side of the street. Public Safety Director Jarjoura reviewed the road and a culvert is needed as well as removal of existing trees, so staff decided to go back to the east side.

Mayor Strauss asked staff if the pathway must be handicap accessible since this is an isolated island and did not understand the rationale for ADA requirements. He understands the rationale for a crosswalk since many children cross that roadway. Public Safety Director Jarjoura responded that whenever access is provided, it must be ADA compliance. Mayor Strauss stated that most walking down Ames Avenue will be able to negotiate stairs, which can be provided to get from point A to Point B. Public Safety Director Jarjoura is not pro or against, it is just process. When providing access, they cannot discriminate and it must be ADA accessible. Mayor Strauss asked if there is a better solution for the Town. He agreed that a safety hazard existed for many children who crossed the roadway at Ames Avenue, so he understands the rationale for a crosswalk, but preferred building stairs rather than a ramp. He also believed the stop signs must be pulled in closer.

Council Member Cahill noted that it is a narrower pathway, so a new pathway would be needed the entire length of that street, but that is not the most cost effective or preferred solution for the Ames Avenue neighbors. He would be in favor of having stairs to cross.

Council Member Martin noted that part of the money spent was from the Marin Transportation Authority (MTA) and the SR2S program along Shady Lane to provide access for families intended to be served under the SR2S program that live on Ames Avenue that did not have access. Mayor Strauss recommended that the language be re-examined since a set of stairs makes more sense.

Mayor Strauss opened the public hearing on this item.

Douglas Kahn, Ames Ave. resident, requested a ramp to span the drainage ditch and connect the crosswalk to the new Shady Lane pathway. He has trouble negotiating that culvert, and believed it should be ADA accessible. He further asked that whatever the Council decides to make the area safe, to do it as quickly as possible.

Boyd Fellows, Shady Lane resident, found it very odd that no one reached to him about building a ramp. He agreed with the Mayor that stairs would be the best approach. He argued that a ramp would turn into a launch for skateboarders and bikers, and that stairs ultimately be a safer solution.

Steve Swire, Ames Ave. resident, favored the pathway and believed steps are a great idea along with a rail.

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 Hunter loved the stair idea as indicated by the Mayor, but believed ADA is required. Council Member Cahill preferred stairs, but desired to know if they have a legal obligation in regard to ADA compliance.

The Council agreed to seek legal advice on American Disabilities Act (ADA) requirements and bring the item back for discussion at the January Council meeting.

Mayor Strauss further asked staff to move the stop signs closer together with consideration for this plan with the crosswalk. Public Safety Director Jarjoura agreed to review.

Mayor Strauss asked for a motion.

**Council Member Cahill moved and Council Member Martin seconded, to continue this matter to a date uncertain. Motion carried unanimously.**

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

18. **Update on the Sir Francis Drake Boulevard Pavement Rehabilitation Project and Marin Municipal Water District's commitment to replace a 100-year old water main under Sir Francis Drake Boulevard extending from Lagunitas Road to Bolinas Avenue prior to repaving.**

Public Safety Director Mel Jarjoura discussed several construction projects that will impact Sir Francis Drake Boulevard next year. Since the Town is planning to repave the roadway,

the MMWD will be taking the opportunity to replace a 100-year old four-inch water pipe from Lagunitas Road to near the San Anselmo town limit. The construction that is currently scheduled to begin in May, will take 4-8 weeks and will require the roadway to be reduced to one lane at times. MMWD plans to scheduled construction outside of the morning and evening commute periods. MMWD expects to complete the water line replacement just before the Lagunitas Road Bridge reconstruction begins. In addition, the Sir Francis Drake Boulevard pathway project will be completed this spring.

Kevin McDonnell, MMWD Senior Engineer, indicated that they were notified of the Town's project, and in this area, it is 1910 four-inch pipe. The exterior is corroded and will not survive the construction activity. They will bring it up to fire code standards as well as add hydrants. They will use their best tricks to move quickly. The Town bridge project limits their mobility, so they must finish before. Best construction efforts it will take four weeks and conventional construction is about eight weeks, so they are shooting for six weeks. The heaviest effort will take place in the first few weeks. They will work with the Town on traffic control. They encourage an incredible amount of resources to go as fast as possible. The main line will be installed in the first two weeks and service work will start, which is perpendicular to traffic, and then the main line connection and hydrant connections will occur. They will try to keep it paved as they go. They will shorten hours of construction during the morning commute and asphalt in the evening time, so they must be creative to accelerate the work. They are fully aware of the timeline and that they must be completed before the bridge construction starts. Communication with the public will be key and is open to other ideas. They will hit the ground running on May 1<sup>st</sup> and provide message boards two weeks before the project starts.

Council Member Martin expressed concern for emergency services, which will be impacted.

Mayor Pro Tempore Hunter desired an earlier start date from MMWD because they have no room for error. Senior Engineer McDonnell agreed to review, but they are on a very tight timeline.

Council Member Martin stated that there was discussion to reconfigure the pathway given the resurfacing of Sir Francis Drake, so they must develop a plan and have a better understanding. He then asked staff if they are eliminating a large amount of parking on Sir Francis Drake. There was a proposal of creating bicycle lanes on both sides of the street. Public Safety Director Jarjoura responded that if they add another element to the project that will get into the environmental issue. There are no more bicycle lanes, so they are back to the original plan. A bicycle lane will only be on the one side, not on both.

Mayor Pro Tempore Hunter asked staff if the Town is responsible for the overlay project. Public Safety Director Jarjoura responded in the affirmative. The Town is the owner, so it is the Town's responsibility.

Town Manager Broad thanked MMWD because this project was not on their radar and Ross received the \$250,000 grant and immediately this became a project that MMWD had to take on and he appreciated their efforts. It is a very difficult project to squeeze in. Also, given that this project was not on MMWD's radarscope, it will be an inconvenience, but the end result will be positive. 100-year water lines are being upgraded, which will improve the flow and once completed the Town will have a brand new roadway and pipes.

Mayor Strauss 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.

The Town Council appreciated the update from staff and will appreciate Ross residents' patience during all of this construction as they dramatically improve the Sir Francis Drake Boulevard corridor.

19. **Town Council consideration of introduction of Ordinance No. 617 adding Chapter 15.42 regulating outdoor wood-burning devices. The ordinance would prohibit burning in outdoor fireplaces on Spare the Air days, prohibit installation of outdoor fireplaces that are not gas or EPA certified, and ban burning garbage in outdoor fireplaces.**

Senior Planner Elise Semonian summarized the staff report and recommended that the Council introduce Ordinance No. 617. Staff agreed to report back to the Council next month on whether Rumford fireplaces are approved by the Bay Area Air Quality Management District.

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

The Council agreed to introduce an ordinance that extends existing Bay Area Quality Management District fireplace regulations to outdoor fireplaces. The proposed regulations will permit only cleaner burning fireplaces, such as EPA-certified fireplace inserts or natural gas devices, to be installed outside. The ordinance also makes it illegal to burn wood, fire logs or pellets in an outdoor fireplace, woodstove or fire pit on winter "*Spare the Air Days*."

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Cahill seconded, to waive the first reading and introduce Ordinance No. 617, adding Chapter 15.42 regulating outdoor wood-burning devices. Motion carried unanimously.

20. **Presentation by Wendy McPhee on Sustainable Ross.**

Wendy McPhee, Ross resident, formed Sustainable Ross a few months ago and wanted it to be similar to Sustainable Marin. It correlates with the General Plan regarding sustainability. Issues to cover are as follows: energy, waste, transportation, toxins in the environment, plastics, and increased community engagement around sustainability with regard to schools, families and green businesses. The goal is to create for efficiency and share their expertise.

Lynn Langford, Sustainable Ross member, explained that tonight is intended to be a meet and greet. There will be no decision making. They are interested in solving problems in an effective way. They worked around coordinating the Shady Lane pathway with the "*International Walk, Ride and Roll to School Day*." There is a big congestion and childhood obesity program. They had a significant drop in vehicles parked in Ross and more than a dozen

firefighters, police and parents were involved in the bike trains. They wanted to alert the Council on their process as well as engage their neighbors.

The Council believed it is well worth the effort and thanked both Wendy McPhee and Lynn Langford for their efforts.

**21. Town Council discussion/appointment of Town representative to the Marin/Sonoma Mosquito & Vector Control District Board of Trustees.**

Town Manager Gary Broad summarized the staff report and recommended that the Council appoint a Town representative to the Marin/Sonoma Mosquito & Vector Control District Board of Trustees. Staff suggested publicizing the opening in the *"The Morning After"* as well as on the January agenda.

Wendy McPhee, former Town representative to Board of Trustees, agreed to serve as the representative of the Town until the Town finds a replacement. The Council noted their appreciation.

Mayor Strauss opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public portion and moved onto the next agenda item.

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

**a. Downtown plan**

Mayor Strauss met with John Moe and Larry Reed on the downtown design and they hope to have it completed in the near future.

**b. Public facilities**

Council Member Cahill reported that the Marin IJ will be running a story on the Town's public facilities and encouraged residents to contact him with ideas to improve the Town's buildings and workplaces. He along with staff will prepare a draft for Council's review.

**c. Flood control**

Council Member Martin stated that there is an opportunity for Ross and Marin County Stormwater Pollution Prevention Program, which is a joint effort of Marin cities and towns and unincorporated areas to: prevent stormwater pollution; protect and enhance water quality in creeks and wetlands; preserve beneficial uses of waterways. All of these issues relate directly to more effective flood control. The Marin County Stormwater Pollution Prevention Program would like to organize a workshop in Ross to further better understanding of proper treatment water management of creeks and hillsides. This will be an opportunity for all interested property owners to visit sites like the Pritzker property, where extraordinary creek restoration efforts are in progress, which ultimately lead to better flood control. The workshop will also explore the management of water on hillsides, and ways to better contain stormwater on properties and reduce soil erosion. Also, he is pleased to report that the Stormwater Pollution Prevention Program, which is a regulatory body, views the Town of Ross as its poster child. They regard Ross' entire staff, including Public

Safety Director Mel Jarjoura, Superintendant Robert Maccario and Senior Planner Elise Semonian in high regard and highly responsive to meeting a common mission.

**d. Hillside lot ordinance review**

Council Member Skall announced that there would be another community workshop on the HLO on January 7<sup>th</sup> from 7 to 9 p.m. at the Marin Art & Garden Center.

**e. Unfunded mandates/pensions**

Mayor Pro Tempore Hunter continues to look and find out what Ross can do to affect this huge problem. He came upon interesting statistics. According to data the Town Manager received at a City Managers meeting this week in which CalPERS spoke, Ross has historically been conservative on all benefit packages. Two-thirds of California has a worse situation than Ross. In terms of solvency of CalPERS statistics, they have reserves of \$200 billion. With no additional income at all, CalPERS could run for 18 years. The likelihood of the system collapsing is remote. In terms of what they can do, they must look at the unfunded \$1.7 million in pension obligations. The Town pays CalPERS 7.75% to carry this debt for Ross. Investment funds Ross has out are making less than 1% and the money invested in CDs is about 4%. He wanted the Finance Committee to review whether it makes sense to take \$1.7 million and pay it down 100% or pay it down partially in order to eliminate the obligation to CalPERS, at least the unfunded mandate.

**23. 126 Winding Way, Variance, Design Review, Hillside Lot/Hazard Zone 3 Use Permit and Demolition Permit No. 1736**

Douglas and Miranda Abrams, 126 Winding Way, A.P. No. 72-091-14, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 nits/Acre). Design review and variances to allow a significant remodel and addition to the existing residence, originally designed by Bay Area architect Bernard Maybeck. Demolition permit to allow modifications to each elevation of the residence, including replacement of the siding and roof and removal of the carport. Design review and hillside lot/hazard zone 3 use permit for the following: 1.) 864 square feet (net) addition to create a 4,507 square foot residence and one car garage; 2.) landscape improvements that include construction of 635 linear feet of new landscape retaining walls up to 10 feet in height; 3.) approximately 571 cubic yards of cut and 580 cubic yards of fill associated with the landscaping and construction; and 4.) a wood, lattice design, driveway gate up to 6 feet in height between new stone columns. Variances to allow the following: 1.) a new arrival court and associated retaining walls within the front yard setback (25 feet required, 0 feet proposed); 2.) one covered parking space (2 covered spaces required); and 3.) new pool, patio area and trellis within the side yard setback (25 feet required, 5 feet proposed). A tree removal permit is requested to allow the removal of 11 protected trees ranging from 12.6 to 23.5 inches in diameter. Fifteen trees not protected under the Town tree ordinance are also proposed for removal.

Net lot area	44,201 square feet	
Existing Floor Area	8.2%	
Proposed Floor Area	10.2%	(15% permitted*)
Existing Lot Coverage	5.7%	
Proposed Lot Coverage	7.4%	(15% permitted)

*\*The slope of the lot is 35%. The Town Hillside Lot Ordinance guidelines recommend a maximum floor area of 4,223 square feet based on the parcel size (not deducting the roadway easement area). The existing residence is nonconforming in number of stories (2 permitted) and covered parking (2 spaces required).*

Senior Planner Elise Semonian summarized the staff report and recommended that if the Council believes findings may be made to approve the project, particularly the floor area requested, then staff recommends approval of this application with the findings and conditions outlined in the staff report.

Douglas Abrams, owner/applicant, worked cooperatively with all neighbors and took into account some fairly significant changes suggested early on. They had two ADR meetings and three Town Council meetings. They worked extensively with Carey & Co. on meeting all requirements so that nothing was disturbed that would have any significant value to this historic resource. It has been a lengthy process and they looked forward to concluding that aspect and start construction next year. He understands that there is a neighbor complaint and pointed out that their property is 55 feet below the base of their wall, so it is not seen from their home. They have a 25-foot buffer that could be filled in with redwood trees that died and have not been replaced. They have a larger impact looking down at their home than the neighbors looking up. He further believed the motor court provides safety to the neighborhood and they managed to get eight or nine vehicles on the property.

Mayor Strauss asked about the retaining walls. Michael Yandle, landscape architect, stated that they can be 6-foot walls with a 3% cross slope on the driveway. From a design standpoint, that is his desire. He wanted the woodland to be maintained in its existing condition. He did not want to see two walls, so there will be a single stonewall that rolls around at the lower level with mature plantings. The nature of the site is to be very open to allow views into the site. Plantings will blend and mitigate the wall, but not extenuate since it will not be a single specie.

Mayor Strauss opened the public hearing on this item.

Marguerite Elliot, Winding Way resident, expressed concern for the amount of cut and fill as well as the 6-foot walls. She desired the charming 3-foot walls. After all the cut and fill and retaining walls, it will destroy the ambiance of the neighborhood and the integrity of the Maybeck property. What is proposed will be an eyesore from her house as well as impact their privacy.

Mayor Pro Tempore Hunter clarified that the 6-foot walls are not along the street. Landscape Architect Yandle noted that the wall she noted would not be changed, it will remain as is. There is a lot of tree canopy and cover along that street and none of the trees at street level are being removed. Mr. Abrams reiterated that the street level walls would remain the same.

Ms. Elliott also expressed concern for the motor court since it will impact the street. Mayor Strauss pointed out that it is getting vehicles off the street, so it is a tradeoff.

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 Cahill complimented the applicant on the improved design, which is 100% better than the last proposal. He liked how it moved into the hillside and the interior flow works better. The overall design is a major improvement. The issue with respect to the HLO and going over the HLO, he reviewed and there is a 1000 sq. ft. exemption for an existing structure if adding on where this would not fall under the HLO. He hoped when the Council reviews the HLO that they take into consideration historic homes for that exemption, but for non-historic homes, he would question whether that exemption should exist. He understands Ms. Elliot's concerns, but it is a tradeoff. It will be very attractive when completed as well as a great benefit for the neighborhood to have more off street parking.

Council Member Martin concurred with Council Member Cahill's comments. The project has improved considerably. It is an outstanding project and it is a pleasure to see a property like this restored to a level it deserves.

Mayor Pro Tempore Hunter believed the changes in these plans are spectacular. The rationale for the HLO is appropriate, so he favored the design as drawn. Council Member Skall agreed with the previous comments. Mayor Strauss concurred as well and appreciated the collaboration.

Senior Planner Semonian asked the Council to limit the walls to a maximum height of 6 ft. in their motion.

Mayor Strauss asked for a motion.

**Mayor Pro Tempore Hunter moved and Council Member Cahill seconded, to approve the Abrams project at 126 Winding Way subject to the findings and conditions outlined in the staff report, with the addition that the retaining walls supporting the parking turnaround be no greater than 6 ft. Motion carried unanimously.**

**Conditions of Approval 126 Winding Way:**

The project shall comply with the following conditions of approval, which shall be reproduced on the first pages of the building permit plans:

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on December 10, 2009, except that the parking area wall design shall be modified to reduce the outside walls to no greater than 6 feet in height.
2. The Building Official may apply provisions of the historic building code to the project as necessary for the approved design.
3. The plans submitted for the building permit shall be reviewed by Carey & Co. to ensure that the project continues to comply with the Secretary of Interior Standards for Rehabilitation.
4. A construction management plan shall be submitted prior to issuance of a building permit showing the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans. Construction

- vehicles should follow Canyon Road to Winding Way and return by the same route to minimize traffic impacts on Winding Way.
5. Grading is prohibited between October 15 and April 15.
  6. The pool equipment and any other exterior mechanical equipment shall be placed in a sound proof enclosure, insulated, and/or vented so that its operation is not heard from adjacent sites.
  7. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety:
    - a. A street number must be posted {minimum 4 inches on contrasting background}
    - b. All dead or dying flammable material must be removed as per RMC Chapter 12.12
    - c. A new hydrant shall be installed, per the Fire Marshal
    - d. Sprinklers are required.
    - e. The applicant shall clear all brush impinging on the access roadway.
    - f. The Roadway shall have a vertical clearance of 14 feet.
    - g. A 24 hour monitored alarm system is required.

The fire chief may make exceptions to preserve the historic character defining features of the property.
  8. A grading and drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. Off site runoff shall be limited to existing conditions. The drainage plan shall comply with all recommendations of the Town Hydrologist.
  9. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
  10. Any work within the public right-of-way requires prior approval of a revocable encroachment permit by the Department of Public Works.
  11. The applicants shall submit a detailed arborist report that details the health of all tree proposed for retention near the proposed improvements as well as any other tree protected by Ross regulations (such as trees on adjacent sites that may be impacted by construction). The report shall identify measures that must be taken before, during and after construction to protect and preserve the trees, which shall be incorporated into the project plans. The applicant shall provide staff with a letter or report from the arborist that confirms that the arborist review the construction level drawings (including foundation plans, any proposed trenching for utilities, landscape plan, etc.) to prepare the tree protection plan.
  12. No brightly colored temporary fencing is permitted where it may be seen by neighbors or the public.
  13. The landscaping shall be installed in accordance with the approve landscape plan prior to project final.

14. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from downslope sites). No up lighting is approved.
15. The applicants shall comply with all requirements of the Marin Municipal Water District for water service.
16. The applicants shall pay required Town fees of \$3 for every cubic yard of off-haul resulting from this project. Final off-haul amounts shall be calculated by the project civil engineer with calculations submitted to the Director of Public Works prior to the issuance of a building permit.
17. 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.
18. 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.
19. 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.
20. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
21. **NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE.**
22. Failure to secure required building permits and/or begin construction by December 10, 2010 will cause the approval to lapse without further notice.
23. 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.

**24. 10 Morrison Road, Variance and Design Review No. 1757**

Margaret E. Hass, 10 Morrison Road, A.P. No. 72-051-02, R-1:B-5A (Single Family Residence, 5 acre minimum lot size), Very Low Density (.1 - 1 units per acre).

Application for design review and variances for a 650 square foot, two story, "garden tower" addition to the south side of the existing residence within the side setback (25 feet required, 18 feet proposed) and rear setback (40 feet required, 39 feet proposed). The materials would match the existing residence. The addition includes decks on the second floor and tower roof.

Gross Lot Area	35,126 sq. ft.	
Net Lot area	28,173 sq. ft.	
Existing Floor Area	13.0%	
Proposed Floor Area	15.3%	(15% permitted)
Existing Lot Coverage	11.7%	
Proposed Lot Coverage	13.7%	(15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council consider the modifications made to the project. If the Council supports the design as revised, the Council may approve the project subject to the findings and conditions outlined in the staff report.

Edward Buchanan, project architect, met with the ADR group and figured out a way to lower the height by shrinking the floor-to-floor height by 1-foot. There were mixed opinions about the deck railing, but the goal is to have a front facade and main roof form to be more prominent. They discussed alternate locations for the elevator, but it encroached on a mature oak tree and did not result in better architecture, so the elevator was shifted back 18-inches to make the front of the addition more prominent. They added a window to break up an area of stucco on the upper floor. The top of the elevator corners was chamfered back as with the main addition. The photomontage tells the story about how well the design is articulated. It shows the dark colors and how the massing is broken up as well as the deep shadows and how light the railing is being discussed. It shows how trees, which will mature, screen the lower half. It helps to show the main roof has become more prominent with these changes. They also took the photomontage around to the neighbors and almost all have signed off. Variances are related to the easement that runs along the west and south side of the property. The addition provides for much needed space. The suggestion of reducing the mass and lowering by 3 feet has made it a much better design.

Mayor Strauss opened the public hearing on this item.

Patricia Engle, Morrison Road resident, felt the architect has done an excellent job in making this an asset to their neighborhood.

Edward Holl, Morrison Road resident, noted that the owners of 10 Morrison would not do anything to harm the neighborhood. He supported the project and hopes the Council approves the project.

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 Members Martin, Cahill, Hunter, and Skall found the project acceptable.

Mayor Strauss expressed concern for the elevator and by eliminating the mass it would make for a much better design. He cannot support the elevator from a design standpoint and felt there are other alternatives.

Mayor Strauss asked for a motion.

**Mayor Pro Tempore Hunter moved and Council Member Skall seconded, to approve the Hass project at 10 Morrison Road subject to the findings and conditions outlined in the staff report. Motion carried 4-1. Strauss abstained.**

**Conditions 10 Morrison Road:**

1. All new site drainage shall be dissipated on site and not directly to any culvert or watercourse. There shall be no net increase in site runoff.
2. The screening landscaping and climbing vines shall be protected and trained to screen the addition. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
3. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded.
4. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; and 3.) The property must be cleared of all dead or dying flammable materials.
5. No changes from the approved plans, before or after project final, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change.
6. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
7. This project 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.
8. Any portable toilets shall be placed off the street and out of public view. Any temporary fencing shall not be an orange or other bright color.

9. Failure to secure required building permits and/or begin construction by December 10, 2010 will cause the approval to lapse without further notice.
10. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

25. **Correspondence -**

- Dogs at Commons

The Council noted that there is no leash law. Council Member Skall felt dogs should be on a leash in order to be under control. He further believed the public must be educated. Town Manager Broad agreed to have Chief Reis draft a letter in regard to the fact that there is not a law in Town to be reviewed by Mayor Pro Tempore Hunter.

Mayor Pro Tempore Hunter asked staff to inform the public that there is a Dog Park at the Grove. Town Manager Broad agreed to inform the public about the Dog Park as well as educate the public about the laws in terms of the area. Council Member Skall suggested adding "*January Reminders*" to "The Morning After." The Council liked this idea.

- Marin Catholic High School Student from Fairfax asked the Council to look at stoplights at Laurel Grove

Public Safety Director Jarjoura agreed to respond.

26. **Other Business - None**

27. **Adjournment.**

By order of Mayor Strauss, the meeting adjourned at 11:03 p.m.

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Richard Strauss, Mayor

ATTEST:

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Gary Broad, Town Manager