

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, DECEMBER 11, 2008

1. 6:30 P.M. Commencement.

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

2. Posting of Agenda.

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

3. Minutes – November 13, 2008

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to approve the November 13, 2008 Town Council minutes as amended, excepting Item 24 minutes. The Council will consider Item 24 minutes at its January 2009 Council meeting to allow more detailed minutes of the Town Manager's project presentation. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression.

Sterling Sam, Ross resident, discussed a letter of map adjustment based on fill, which was explained to the Public Works Director that required a signature that has not been signed or returned. Town Manager Broad indicated that Public Works Director Jarjoura has been working with attorney Todd Masters and correspondences have been occurring back and forth this week.

Mel Jarjoura, Public Works Director, noted that Mr. Sam submitted a document to the building inspector that he wanted signed indicating that FEMA would take Mr. Sam's property out of the flood plain if he added 1.2-inches of fill around the foundation. Staff informed Mr. Sam that the document could not be signed because Mr. Sam indicated to the Town Council that he had 12-inches of water during the December 31st, 2005 flood. He submitted to the Town a letter from his engineer stating that he needs to lift the house 9 feet above ground and that information was conveyed to the Town Attorney in regard to the flood issue. Mr. Sam wanted the document signed, but staff could not sign based on the information submitted to the Town. Town Attorney Hadden Roth concurred with Public Works Director Jarjoura. Mr. Sam further noted that if the document is not signed a lot of nasty things would occur.

Tilda Thomas, Walnut resident, reported to the Town Council that her vehicle was broken into last night and recently was informed that other vandalism has occurred in the vicinity and asked, in the future, if the Ross police officers could inform residents about vandalism occurring on nearby streets. Jim Reis, Police Chief, noted that two other break-ins occurred in the last 60 days. There was no specific pattern. Staff reiterated that all residents should take the necessary precautions on a regular basis to maintain safety and avoid theft. Officers

would discuss the matter with neighbors, and by word of mouth amongst neighbors the area is informed that theft is occurring. Unless there is a series or pattern, the Town does not announce unrelated events.

6. Report from Mayor Cahill.

Mayor Cahill reported that the Town hosted its annual holiday part at the Marin Art & Garden Center on Tuesday. Town staff, Council Members and their spouses enjoyed a fun and entertaining evening. Many thanks to Linda Lopez for planning the party. On Wednesday, the Ross School Board of Trustees elected Dan Bernhard to serve as president and Town liaison and Scott Chronert as vice president. The School Board has committed to attending Ross Town Council meetings every other month to report on school construction progress. A board representative will attend the January meeting. Former President Ken Fineman will serve as an alternate liaison in the event President Bernhard is unable to attend.

Council Member Martin reported on Marin Telecommunication Agency (MTA), which is a joint powers authority administering the AT&T and Comcast cable franchise agreements as well as a developing policy related to telecommunications services in Marin County, includes cable, broadband and related services. The MTA consists of members from the County Board of Supervisors and a council member from each town or city participating in the joint powers authority. Since there are many new, recently elected officials who are not familiar with trends with broadband and telecommunications, MTA is organizing a series of extensive workshops in January. After this process, the MTA will convene and consider a number of possible alternatives about its future operation, which will need to be considered by each individual Town Council and the County Board of Supervisors. He noted that there are nearly limitless opportunities for community outreach, production and education through public, educational and government (PEG) access channels. Also, AT&T is installing new surface-mounted facilities or U-Verse boxes throughout Marin County communities. Unfortunately, local communities must within reason accommodate these devices. They are 6-foot by 3-foot metal boxes that have air fans and equipment to provide video, broadband and other services to residents competing with Comcast services. The units are set on a raised concrete slab. Each unit serves 600 residents. Towns can regulate where in the public right-of-way they must be placed. The MTA has circulated suggested guidelines to town managers and public directors.

7. Report from Committee Heads.

Public Works - Council member Strauss

- Overview of public works committee meetings

Mayor Pro Tempore Strauss reported that the Town retained a traffic engineer to review the downtown-visioning plan.

8. Report from Ross Property Owners Association – No report

9. Flood Control Report.

Council Member Martin reported at the November Council meeting that the Marin Board of Supervisors approved the contract with Urban Creeks Council to provide free assistance to creekside property owners in the Ross Valley with erosion and vegetation management problems. That program is being launched within 30 days. There will be a public announcement, a website and workshops to encourage participation. That program will be

available to all Ross residents along with Corte Madera and Ross Creeks to promote a better understanding of creek-related problems, offering solutions that support the creek environment and provide guidance and help with the permitting process program. This is a program that will have a direct and immediate benefit for the care and maintenance of their community creeks. It is important that they promote maximum participation. The County of Marin owns a parcel of land along the Corte Madera Creek. He believes the address is 49 Sir Francis Drake. The County is interested in working with the Town to develop that property as a demonstration creek restoration area, which may work in concert with the Urban Creeks program.

On January 6, 2009, the Marin County Flood Control District is awarding a contract to perform a detailed study of the feasibility of utilizing large detention basins to reduce or eliminate flood flows; to make suggestions on improving critical reaches where flood waters leave their banks; and suggest a sustainable dredging volume for the lower end of Corte Madera Creek. There are two, well regulated firms bidding on the contract, Stetson Engineering and Philip Williams Associates. He further noted that this would be a priority for the County to move forward.

10. Town Council commendation of Molly Gamble for serving as Chief of Protocol January 1, 2007 through December 31, 2008.

The Council commended Molly Gamble for serving as Chief of Protocol from January 1, 2007, through December 31, 2008, and presented her with several gifts of appreciation. Mayor Cahill thanked Ms. Gamble for her countless hours of hard work, which she made look easy and effortless. Her term expired December 31, 2008.

11. Town Council approval of regular Council meeting dates for 2009, including rescheduling the January and April Council Meetings.

Town Manager Broad summarized the staff report and recommended that the Council approve regular Council meeting dates for 2009, including rescheduling the January and April Council meetings.

Mayor Cahill 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 Cahill asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to approve the regular Council meeting dates for 2009, including rescheduling the January and April Council meetings. Motion carried unanimously.

12. Town Council consideration of adoption of Ordinance No. 612 to approve the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation Program to be known as Marin Clean Energy.

Town Manager Broad summarized the staff report and recommended that the Council adopt Ordinance No. 612, approving the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation Program to be known as Marin Clean Energy.

Mayor Pro Tempore Strauss expressed concern for creating a second bureaucracy to purchase power for Ross residents. He urged the Town and the other Marin jurisdictions to work with PG&E to develop more renewable energy sources and provide alternative energy purchasing plans for Ross customers.

Dawn Weisz, Marin County Sustainability Planner, explained that continuing dialogue would occur with PG&E to explore potential partnerships. They are working to get more details and they encourage working with the JPA to flush out details to have a win/win for all. No one wants to create an unneeded bureaucracy. Other communities are starting to look at this as a way to stabilize costs. Also, there could be new opportunities that were not considered one year ago to make this idea go farther with PG&E, but they will continue to look at other options. In terms of funding, it is similar to how PG&E conducts business such as partnering with a private company or public. It is ultimately paid for by revenue by the energy business. The business plan is set with the main goal to maintain low PG&E rates.

Council Member Hunter noted that the formation of the JPA would research all of these items and discuss in more detail. Mayor Pro Tempore Strauss just wanted everyone to be aware of all the questions. Ms. Weisz added that they are forming a body to work with potential partners. They are going out to bid in February and March. A draft concept will be available in the summer and then the critical decision to move forward will occur. If not, other projects could be launched to help with greenhouse gas emissions.

Mayor Cahill opened the public hearing on this item.

Karen Lang, Allen Avenue resident, did not support the MCE initiative. She suggested forming a committee to explore local solar installation. She does not believe it provides any additional reductions in gas and risk is associated. She noted that there is no oversight. She is concerned in this economic time about potential renewable energy cost burdens. The dollars do not make sense in her view. PG&E is subsidized with a small portion of nuclear. If they are going after the same market of renewable energy, then how can they beat PG&E. The lack of oversight is a concern. She further added that there are several methods the Town can implement to reduce green house gases.

Mayor Pro Tempore Strauss asked how this \$500,000 would be spent. Ms. Weisz explained that allocated is \$330,000 for technical expertise and legal support to form the JPA; to issue request for bid and review requests for bid; and develop draft contract. Some funding included in that \$330,000 is for staff support. It has been decided not to jump the gun and hire a whole body of staff before a decision is made. They will have a transition staff for the next six months to one year, then additional funding could be allocated to look at substantial staff and legal cost going up to \$500,000 or potentially more, if needed.

Council Member Hunter pointed out that if Ross decided not to move forward, the County is already committed to spend the money to explore the JPA. Ms. Weisz agreed. The request for bid will occur in February or March. Ross customers would not be included in that request for bid. It would be somewhat difficult for Ross to join later on with the same terms if not included before they issue request for bid.

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Ms. Lang asked if the Town would have a way to educate the citizens in terms of their options. She desired a forum. Mayor Cahill noted that the JPA would provide that function. Ms. Weisz agreed that the JPA would handle that matter. A good amount of resources in the last year have been spent on educating the public. Hearings would continue through community events and other media outlets.

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 Strauss desired a community meeting because residents in Town must understand the opt in and opt out provision. He wanted the ramifications to be known. He then wondered if they should hold back on a decision in order to explain this matter in more detail to the community.

Council Member Hunter did not want a duplicate bureaucracy. It seemed that by working with the public and PG&E they can affect all items desired by MCE but, it would be a mistake for Ross to opt out of the initial process. He would rather have one member of Council represent the community. No decision on money has to be made until nine months from now. He wanted to understand what it is rather than standing on the outside. He is in favor of moving forward, but he has a lot of the same concerns as outlined by Ms. Lang.

Council Member Martin believed this is a great option for a community to explore and take an initiative. PG&E does not want them to move forward. They hired Joe Nation and Giacomini to prevent this from moving forward. He pointed out that hydro electricity is drying up. Water from the Sierra's is not what it was in the past. He liked the idea of encouraging alternative forms of energy so they are not so needy on importing oil. They must at least explore the option. He further believed this is a bold move and recommended moving forward.

Mayor Cahill agreed to move forward. He agreed with Ms. Lang and Council Member Hunter to do whatever they can to try and incorporate PG&E into the program to avoid two bureaucracies. Ultimately, they are really looking to reduce dependence on fossil fuels and cut greenhouse gases and that will be unknown if they sit on the sidelines.

Council Member Martin noted that the State has mandates that the County must meet in regard to AB32 and this addresses it very actively.

Council Member Hunter noted that the objective is not disputed, but it is how they get there. They are better to be involved in the process than disagree. Mayor Pro Tempore Strauss is disappointed that the community has not been able to provide input on this matter.

The majority of Council agreed that while there are still many unanswered questions that need to be addressed, the Town should participate in further exploring the feasibility of MCE. The Council's decision to join the MEA preserves the option for Ross residents to participate in MCE if they choose.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to adopt Ordinance No. 612, to approve the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation Program to be known as Marin Clean Energy. Motion carried 3-1-1. Skall Opposed. Strauss abstained.

Ms. Lang noted that schools have no solar panels and desired parallel efforts within the construction of the Town. Mayor Cahill believed that is one initiative of the JPA. He further asked Ms. Lang to contact Ms. Weisz.

13. Follow-up discussion of the five Town Council goals for 2008-2009 and the implementation of these goals.
 - a. Staff job description updates and performance reviews
 - b. On-going emergency preparedness, with a focus on seniors
 - c. Town and Ross Valley flood control
 - d. Downtown plan
 - e. Police and Fire Department reorganization

The Council reported progress on their five Council goals as follows:

Goal A - Staff job description updates and performance reviews

Mayor Cahill reported that Patti Divella of PDF consulting is helping the Town create job descriptions and performance procedures. All Council members have been interviewed and Town Attorney Roth. Mayor Cahill will review findings in January and report back to the Council.

Goal B - On-going emergency preparedness, with a focus on seniors

Council Member Skall announced that in late January early February Marin County OES would start a new program called "Alert Marin," which would contact residents through their PDA, desktop or any other gadgets that can receive text messages. He noted that it would be web based and encouraged all residents to sign up in order for the Town to keep everyone informed. Also, they are working on a new flood alarm policy through a horn system, which will take the guesswork out of when to sound the alarm.

Goal C - Town and Ross Valley flood control

Council Member Martin reported that he along with Mayor Pro Tempore Strauss met with Lynn Woolsey and staff and they had the opportunity to ask for assistance in getting funding for next year in order for the Army Corps to continue working on scoping Unit 4.

Goal D - Downtown plan

Mayor Pro Tempore Strauss noted that the administration draft EIR was sent to the consultants on the bridge. Also, the bridge is moving forward. There are some issues with Caltrans, but he hopes to stay on schedule. They are adding a pedestrian walk to the other side as recommended by the committee. Due to the pathway on the opposite side of the road, it may be better to have two 4-foot walkways and maintain a narrow bridge. Public Works Director Jarjoura agreed to explore with Consultant Anderson. The downtown visioning plan with SWA occurred on Wednesday morning.

Mayor Pro Tempore Strauss felt the consultant grasped the prior visioning sessions with the community. After review, the proposed grading for the stage is 7.5 feet higher than the natural grade, so they tabled the idea of having a berm in order to maintain the natural terrain for play fields. The baseball backstop is still being explored as well as the soccer fields in terms of the best layout. With a sloping berm away from the stage one cannot sit, so options are being explored. He will attend the facilities meeting in January. Mayor Cahill recommended starting dialogue sooner than the January meeting in order to accelerate their process. Council Member Martin believed the timing is good for another joint meeting with Town Council, the School Board, and the architect on the downtown plan.

Mayor Pro Tempore Strauss agreed to call President Dan Bernhard on a conference call in order to communicate. Mayor Cahill agreed to have a joint meeting if there are conflicts. Mayor Pro Tempore Strauss believed there are plenty of alternative solutions.

Council Member Hunter is very impressed with SWA consultants. He noted that the new traffic engineer was in attendance and both groups worked well together.

Mayor Pro Tempore Strauss noted that U-turns were discussed and they are looking at alternatives to provide a drop off area for students and allow for a natural path.

Town Manager Broad believed it would be valuable to have a joint Council/Design Review meeting on the downtown plan, so staff will provide possible dates. Also, staff did a fast turnaround on the administrative draft for the Lagunitas Road Bridge project and returned the document to the consultant with a number of comments and suggestions. The consultant will return back the draft and then the 45-day review period will start along with scheduled public comments on the draft EIR. The project design will be incorporated into the draft.

Goal E - Police and Fire Department reorganization – No report

14. Town Council consideration of adoption of Resolution No. 1660 amending the Town's investment policy for surplus funds.

Town Manager Broad summarized the staff report and recommended that the Council consider adopting Resolution No. 1660, amending the Town's investment policy for surplus funds.

Mayor Cahill suggested stating that the Town can invest in CDs, but all invested funds must be federally insured up to the limit, rather than only 30% be invested. The Council and staff agreed.

Mayor Cahill 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 Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to adopt Resolution No. 1660, amending the Town's investment policy for surplus funds with the revised language as discussed. Motion carried unanimously.

15. Town Council consideration of locating a proposed 4 foot-wide pedestrian pathway along Sir Francis Drake Boulevard between Lagunitas Road and the Ross/Kentfield town limit on the west side of Sir Francis Drake Boulevard as recommended by Questa Engineering Corp.

Mel Jarjoura, Public Works Director, summarized the staff report and recommended that the Council consider locating a proposed 4-foot wide pedestrian pathway along Sir Francis Drake Boulevard between Lagunitas Road and the Ross/Kentfield Town limit on the west side of Sir Francis Drake Boulevard as recommended by Questa Engineering Corp.

Jeffrey Peters, the project engineer with Questa Engineering, noted that he has been hired to do the final planning, permit coordination and engineering design. They looked at east side vs. west side. Both are doable. They had questions about whether the east side could be constructed within the construction budget. There are some issues having to do with three driveways with steep slopes. Also, there are more drainage structures on the east side that may require reconstruction work. He is always concerned when touching drainage structures. Any change tends to be blamed or focused on engineering design or adequacy and whether making existing problem worse. Both sides are doable. Project is being administered through Caltrans, so any change from the east side to the west side must go before them. They desired a public hearing and discussion of the process. He added that it is appropriate to get public comment on this especially since first go around from SR2S study had a different recommendation. He could provide street level photographs if the Town Council is interested. In terms of the design level, they will be back before the Council to review the exact alignment, how safety is handled and how the pathway is visually distinct.

Council Member Martin desired public workshops and believes they are appropriate as early as possible. Mr. Peters indicated that it depends on whether the workshop is to look at the east or west or select a side and start to move forward. Council Member Martin believes sooner than later in regard to workshops. Some alternative approaches are in mind, so it would be appropriate to begin to flush it out.

Mayor Pro Tempore Strauss clarified that crosswalks will be reviewed. Mr. Peters noted there is limited construction budget and crosswalks can be expensive. It might be more appropriate to do those improvements associated with other projects such as the bridge or downtown. They will discuss during the public workshop. He agreed the community is very informed and welcomed the chance to receive additional ideas.

Mayor Pro Tempore Strauss believed this made a lot of sense and the committee's recommendation is to move forward.

Mr. Peters noted that the detailed construction cost has not been determined, but the additional cost for the east opposed to west he guesstimated at \$40,000 or more.

Town Manager Broad stated that notice was sent out to residents in an effort for them to provide input and resolve whether to stay with the east or move to the west and continue on and then do more refinement after. Mr. Peters believed construction money must be spent this year. This must be constructed by August 2009. Preference is to arrive at a decision tonight.

Mayor Cahill opened the public hearing on this item

Gary Scales, Berry Lane resident, noted that the east side is very dangerous. He believed a needs assessment must be conducted in regard to the path the children take. The path must service and benefit the children. He urged spending the money and having the appropriate workshops.

A Sir Francis Drake Boulevard resident living on the west side desired public comment. His kids walk to school every day and believed more travel from the east side of Sir Francis Drake. His son was almost hit in front of their house last year. He desired more public comment to determine which side of the street is better. He parks on the west side and on the east there is not as much street parking. He suggested continuing the matter for further public comment.

Douglas Abrams, Canyon Road resident, asked if it will go to Laurel Grove, and if that is the case, it services all kids, so it must be on the east side. Mayor Pro Tempore Strauss agreed to stay with the original proposal and then come back and look at the other side at a later date.

John Gray, Upper Road resident, agreed it is obvious to have the path on the east side. It is very simple and recommended going back to the original plan and run it down to Laurel Grove.

Sterling Sam, Ross resident, concurred that it should be placed on the east side. More children and people come down the hill rather than from the west side, so it is well worth the added expense.

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 Strauss believed the original report with the path on the east side is the correct location. He wanted to make sure it is safe to walk on the west side for the few homes. In the future they can look at connecting, but agreed to move with the original plan.

Council Member Martin believed working with the community through workshops is a great idea. Mayor Pro Tempore Strauss felt workshops could be part of the whole downtown plan. They must get going on this due to the deadline.

Council Member Hunter agreed with the need on the east side. If that is decided, then no action is needed because that is the plan. Council Member Skall concurred.

Mayor Cahill believed a public workshop should occur as soon as possible on the public pathway.

The Council decided to leave the proposed Sir Francis Drake Boulevard pathway on the east side of the roadway from the Marin Art & Garden Center to the southern Town limit as originally planned.

16. Town Council consideration of adoption of Resolution No. 1661 denying the appeal of Rick Newton, 94 Laurel Grove, A.P. No. 72-211-10, of the penalty for

failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction.

Mel Jarjoura, Public Works Director, summarized the staff report and recommended that the Council consider adopting Resolution No. 1661, denying the appeal of Rick Newton, 94 Laurel Grove, A.P. No. 72-211-10, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction.

Mayor Cahill asked staff if work stopped at any period of time. Public Works Director Jarjoura is unaware as to whether work stopped.

Dr. Rick Newton, owner, noted that he is intimidated knowing the Town wants to impose a penalty in excess of \$200,000. He did not believe he did anything wrong to merit that fine. His contractor will discuss the timeline. He set out to build a home. He hired a project manager, contractor and at that point he stood back and watched his project unfold. He wanted this built as soon as possible. There was not a single thing he did that should not have occurred. There is not a single thing that should have been done that did not occur. He is in a very awkward situation. He feels powerless. He hired good people in good faith to work on his behalf. For him to face a fine, when he does not hold an option of affecting the process is a problem. He understands the ordinance, but as a citizen and a resident of Ross, a fine is in order when something was done knowingly. He accomplished with the help of all his staff to build a lovely home that is an addition to the neighborhood. This was a transparent process and he worked with the Town. There were no complaints from his neighbors. All were very pleased with the end result. He asked the Council where's the beef? Who was hurt? Who suffered? He did not see any adverse effect. He is well aware of the need for the Town to prevent problems were fines would be merited. This project moved forward as quickly as it could and all worked in good faith.

Douglass Abrams, project manager, believed Dr. Newton did a great job describing his interaction with Town staff and all done in good faith. Very early on there was an issue of the demo permit and with the exception of that it was a project that took a lot of time and attention due to the drainage ditch that slowed down the process. As storm runoff has become a countywide issue since the violent rains of 2005, the jurisdictions of the road side ditches in many instances has greatly expanded to include the Army Corps, Fish & Game, Marin County and Marin/Sonoma Mosquito Abatement. He is concerned, as a citizen, because he developed a number of homes in Town and believed the municipal code is flawed. In a Town like Ross, they are not talking about track housing, but custom homes that cannot be built within 18 months. His own home took three years. It takes a long time. Team of four or five guys sees it through from framing to the final touches. The code is not written properly. He understands from the Town's perspective that they must control the time it takes to build a home if in the downtown area. This project did not create any traffic problems or inconveniences.

In terms of the code being flawed, the permit process for building larger and more expensive homes should go beyond 18 months. The Council approved the home. The plan check was submitted on November 4th, 2005, and then the home was approved in December of 2005. The permit was pulled on February 2nd, 2006 and demolition started. A company was hired to do the elevation and indicated that the house was built on 2 x 6's, and after demo they realized it was wrong, it was actually 2 x 4's. Public Works Director was informed and the

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structural engineer indicated that it was not structurally sound. Dr. Newton indicated that if he had to relocate the entire framing of the house, he wanted 10-foot ceilings, so the approved home was pulled off the table. They went back to Town Council on March of 2006 with stamped plans with new elevations, mass and scale and it was not determined where the garage would be placed, which was denied. During this time, they were doing foundation. The house foundation was not moving. They installed a fireplace. All inspections occurred and the foundation was completed on August 10th of 2006. They went back to Council on June 14th, 2006 when subsequently approved. Why are they being held to the February 2nd date when the home was not built? The home they built was approved on June 14th, 2006. They put in a three-car garage for more parking. The home they actually built is an entirely different home. They did not pull that permit until August of 2006. Due to the break down at the building department, the new permit was not issued until March of 2007. Look at the facts, the subsequent stamped set of plans were not issued until March of 2007. They must establish a fair start date and then assess the penalty.

Mayor Cahill asked if construction stopped. Project Manager Abrams noted that it never stopped, but there were only three guys on site. He stated once Council approved in June work began in August of 2006. They were forced to take down the existing structure. Council Member Hunter asked if the home could have been built with 2 x 6. Project Manager Abrams agreed, but why. They went through the entire design review process and changed to 4 x 6. This is a much better home as a result from all the input from the Council. He further asked the Council to use a reasonable start date.

Mayor Cahill opened the public hearing on this item.

Donna Goldman, Ross resident, believed the intent of ordinance is meant to have some sort of fine for people who purposely stop construction. This is beyond Dr. Newton's control. This kind of fine is scary and crazy for people in this Town facing construction due to the economic situation.

Dr. Newton pointed out that the ordinance is arbitrary and does not allow for the kind of circumstances that characterize this process. He had no idea that any fine existed. Mayor Cahill noted that Dr. Newton signed a letter agreeing to the fees on February 2nd, 2006.

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 Skall stated that they must go back and review this ordinance ASAP. Also, he sees two projects. One permitted for remodel and then new project, a new home. There are two separate timelines and based on that, the new home started on March 16, 2007 and that is when the Council permitted a brand new project. He believed there is no fine based on the timeline.

Council Member Martin felt it is reasonable to set the commencement of the permit with August 2006 when Town Council approved the plans.

Mayor Pro Tempore Strauss noted that prior Town Council put this ordinance in place and they have an obligation to uphold, but agreed they must revisit this ordinance because some

homes due warrant more time. He is not comfortable imposing the full fine. He further recommended referring the matter to the Public Works Subcommittee.

Council Member Hunter noted that the ordinance was in place with the original permit. There was knowledge of the ordinance. When it adds up to \$200,000 penalty that is a huge number. He noted that the Town rarely, if ever, upholds construction time limit penalties upon appeal, so they must revisit this ordinance. Originally permitted on February 2, 2006, the fact that the nature of the project changed had nothing to do with the Town of Ross. There should be a penalty because everyone working on this project was aware of a timeline, but how to determine that amount he is not sure. The law is on the books, so they can control building projects and get them done in a timely fashion.

Mayor Cahill agreed with Council Member Hunter that it seems every time they have an appeal the amount is modified. \$200,000 seems a bit much. They do have an ordinance to deal with construction projects and this went on 9 months beyond. A 6,000 sq. ft. house can be built in less than 18 months. He built his house in 10 months back in 1991, so it can be done. He believed an ordinance is good, but all the numbers and fines might not be correct. He desired a fine structure or accommodation for special circumstance to avoid these appeals. He is in favor of referring this matter to the Public Works Subcommittee to figure out the appropriate way to amend the ordinance to address the special circumstances. The Council agreed.

Town Manager Broad noted that the majority of Council's desire is to refer the Construction Compliance Ordinance to the Public Works Subcommittee for review and possible revisions. Staff did not disagree with the Council looking at revising the ordinance, but during Town Council's discussion, they should not lose sight of the fact that the ordinance was adopted in 2003 in response to ongoing frustration by residents with noise, parking and traffic impacts of construction activity persisting well past allowed time periods. Staff emphasized that the ordinance has been very effective in curbing those chronic problems of not getting projects completed in a timely manner. Contractors are aware of the ordinance. The intent was not to have \$200,000 fees, so they must look at how they can modify the ordinance to accomplish the intent while taking into considering what they have learned.

Mayor Pro Tempore Strauss suggested continuing the matter. Council Member Hunter stated that if the owner recognizes the limitations, the owner is writing the checks, so there is culpability.

Mayor Cahill asked the public to email the Council if there are any further comments on this matter. Mayor Pro Tempore Strauss welcomed input from contractors, construction managers and homeowners.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to continue the matter to the February meeting to allow the Public Works Subcommittee to review the ordinance and fine, and in considering the fine and any revision of the ordinance, that recognition be included that the owner does ultimately control the project. Motion carried unanimously.

The Council took a short recess at 8:43pm.

17. **54 Baywood Avenue, Variance, Design Review, Hillside Lot/ Hazard Zone 3 Use Permit and Tree Removal No. 1669**
Ross and Ligia Parmenter, 54 Baywood Avenue, A.P. Nos. 72-072-29 and 72-072-30, R-1:B-20 (Single Family Residence, 20,000 square foot minimum lot size). Variance, design review, hillside lot/hazard zone 3 use permit and tree removal to allow construction of a 2-story, 1,198 square foot residence and 260 square foot 2-car garage with a car lift. The residence proposes rooftop, upper level and lower level decks. 51 cubic yards of cut and 77 cubic yards of fill are proposed. A variance is requested to build a garage bridge within the front yard setback (25 feet required, 0 feet proposed) and to locate one off-street parking space within the right-of-way and within the front yard setback (25 feet required, 0 feet proposed.) Tree removal is requested to allow the removal of a 14" bay and a 14" oak tree.

Lot area	20,971 square feet
Present Floor Area Ratio	0%
Proposed Floor Area Ratio	7.0% (15% permitted*)
Present Lot Coverage	0%
Proposed Lot Coverage	11.0% (15% permitted)

(*A parcel slope of less than 51% would allow, under the hillside lot ordinance, a guideline maximum floor area of 1,049 square feet; a lot slope of over 51% would allow a guideline maximum floor area of 840 square feet.)

Town Manager Broad noted that there were three items that the Council asked to be brought back for further exploration. The first relates to the slope of the lot. The Town Engineer was asked to look at the lot slope and provide Council with lines for their consideration. Town Manager Broad introduced Town Engineer John Moe to explain his slope determination.

John Moe, Town Engineer, provided the Council with two exhibits for the slope of this parcel. The first shows that the slope based on the line submitted by the applicant's engineer would be 48.3%. The second exhibit represents his development of the two most appropriate slope lines based on the Town's definition of slope. The two lines are: 1) a 52.5% line perpendicular from the low to the high point near the building; and 2) a 50.8% line perpendicular from the southern lot line through the building to the northern lot line. He believed the 52.5% line best represented the Municipal Code definition of lot slope.

Council Member Martin asked staff if other lines were done. Town Engineer Moe responded that others were developed, but depending on exactly where pieced a range of slopes could be developed. Council Member Hunter asked staff if there is another line that truly runs

perpendicularly from lowest to highest. Town Engineer Moe believed the line ran is the true line.

Council Member Martin asked staff if the slope calculation submitted by Douglas Matheson was reviewed. Town Engineer Moe indicated that they had reviewed that slope calculation, but that line is not perpendicular to the contours.

Town Manager Broad then indicated that the second item the Council asked for more information on related to the legal status of Baywood and allowed the Town Attorney to explain. Town Attorney Hadden Roth indicated that the Amended Map of Winship Park states as follows: *“The offer to dedicate the roadway, now known as Baywood Avenue, to the public was rejected by the Town of Ross. However, property may be dedicated by implication, by continuous public use for more than five years – such is the case here. If the offer of dedication has not been accepted and there is no exercise of dominion and control or maintenance and repair by the public agency, i.e., the Town, the property is not a public improvement and the public agency is not responsible for maintenance or liable for a defective condition of the property – also the case here. The owner of the property abutting the land that has been dedicated as a public street is presumed to be the owner of the underlying fee to the center of the roadway and man make any use of the street consistent with the public right-of-way. He is advised the widening of the right-of-way as proposed by the applicant is to be within the described right-of-way.”* In effect, Town Attorney Roth concluded that the applicant would have the authority to widen Baywood Avenue as long as this was accomplished within the area between the applicants’ street frontage and the centerline of Baywood Avenue.

Town Manager Broad added that the question of slope and status of the roadway were two unanswered issues from last months meeting. As it relates to the third item, at the meeting Architect Hannum indicated that after looking at the story poles, they believed they could lower the height of garage to allow increased views beyond the garage and living wall as seen on the front elevation and the Council asked Architect Hannum to provide such material in his submittal package and to also lower the story poles to reflect the 2-foot drop in the height of the front facade. The project architect had taken both actions.

Staff received a number of correspondences from the public both by email and letters related to this proposal. Essentially, if the Council is supportive of this application, staff recommends approval with the outlined findings and conditions. The Council may need to add additional findings based on their conclusions related to the three items being further assessed at the December meeting. Alternatively, if the Council does not support this application, it should either continue the application to a future meeting and advise the applicants of the changes desired or direct staff to prepare findings for project denial for the January 2009 meeting.

Council Member Martin left last month thoroughly confused about the slope calculation with the historical calculation and then the new calculation submitted. The staff report left it to the judgment of the Council to determine which slope calculation to use. He wondered if staff had a recommendation tonight for the Council to consider. Town Engineer Moe believed the calculation of 52.5% was the correct slope calculation. Town Manager Broad stated that Town Engineer Moe and his office have spent a considerable amount of time on this matter to critically analyze and determine the best-fit line. Town Attorney Roth believed the definition is very clear. The Town Engineer has drawn a line that most closely

meets requirements of the definition at 52.5% slope. Mayor Cahill felt the ordinance is very clear. He assumed that as Town Council, they wanted the Town Engineer to consider other matters to this line that could be done, but absent that, the Council, under the ordinance, must abide by what the Town Engineer recommends. Town Attorney Roth and the Council agreed.

Richard Hannum, project architect, explained that Hannum Associates served many communities over the last 30 years. AIA encourages its professionals to dedicate some of their time to communities they serve. As a member of Ross, he served on the General Plan committee for three years, working with a dedicated team of residents to craft what is considered one of the best General Plan responses. RADR was established in 2008. He serves as an alternate only when a quorum of the committee is not available. In terms of standard of care, the requirement of the law and Hannum Associates policy requires that he recuse himself from any proceeding in which there is an interest. In terms of project attributes, road access per Ross fire is improved. Per Ross Town Hydrologist, the drainage condition is better than existing and requires no maintenance. Per Town peer review, the house structure will improve the hillside condition. This project is designed so that the primary floor footprint is equal to the HLO requirement. All additional space requested to make this a minimal family home is below or within the structural frame. The additional space changes not a single requirement of the project. They have a postage stamp. The entire square-footage of the interior of the house is smaller than the Council chambers.

The slope line they took was defined by taking the centerline of the building, all-perpendicular to the slope. It runs higher than the line proposed at 48.3%. Then Rick Isaac ran it with another line at 50.8%. Then in the most recent iteration it is on average is under 51%. Many lines have been drawn. They believe that the fair approach engages the house and not penalize this family because the tail falls off. The Council has the discretion to determine that the house has met the higher standards of excellence in design in solving the real issues of the site. They hope the benefits support their reasonable request. The Council before indicated that this is a buildable site. In terms of the site plan, they are creating a living roof component. They are reducing the overall water transition. They solved the problem from the Timmons' house. They reduced the water flow downstream. The two-car garage has been installed in other high-end communities. They issued a letter that noise is not discernable. The whole roof is a living roof, except for the small area of the terrace. The only amount of space is 640 sq. ft. of living space. The rest is underneath. The first floor level including the garage they have 940 sq. ft. of footprint that is FAR under the code. The rest of the building is located on a structured space below out of site. They are offering a profile of 9 feet from the road. The living wall as one walks or drives through the building is completely hidden by trees. It falls completely within the guidelines and the rest is underneath that structure. This does not create an onerous mass. All issues have been mitigated. The height of the front of the garage was taken down. It was lowered from the front and even lowered from the street.

There has been discussion about retaining walls following all HLO guidelines. The entire mass of this house is down hill and buried in the trees. They made sure where they touch the ground is minimized. It is done on piers. The bridge allows them to rebuild the forest between the house and road and reweave the natural area. The enclosed living space is below road grade. The northeast elevation shows how they lowered the overall massing. It is living wall system irrigated by ran water, so it will be a combination of vines to be worked out

with the Town Arborist. He then demonstrated to the Council how the car lift works. No soils will be off hauled. They submitted a construction plan that indicates parking off street and how they deal with sequencing events. They are looking at a way to provide a buildable house that satisfies minimum small scale need that fits in with the housing ordinance and General Plan goals while still respecting HLO and how it touches the land, deals with trees, shape and nature. They successfully demonstrated that this design does all those and should be subject to discretion of the Council to be built. He then showed images of retaining wall elevations and sections for the Council's consideration.

Council Member Hunter asked if there is any way to squeeze square-footage. Architect Hannum is certain there is some way to accomplish that. They are dealing with 100 sq. ft., which is equivalent to a bedroom, so where they would squeeze it out he is not sure, but they are willing explore.

Mayor Cahill thanked everyone who spoke at the last hearing and appreciated the fact that all comments were thoughtful, constructive and respectful. The Mayor wanted to make sure that all who desired to speak had an opportunity to do so, but due to the number of applications on the agenda tonight and in the interest of time, he read the ground rules for public comment.

Mayor Cahill opened the public hearing on this item.

Jeff Coon, Madera Ave. resident, submitted an email this afternoon that outlined his comments in more detail, but highlighted a few. He stated that the opinion of the Hydrologist Roy Forster holds a fair amount of credence. He attached to the email Mr. Forster's findings in combination with a soils engineer who he retained and provided a complete summary of their conclusions and findings. The findings concluded that this did not improve slippage and raised major concerns as to mudslides at 5 Madera Avenue and 7 Madera Avenue. He also submitted a letter from the Burke's dated January 15th, 2004 outlining damages that occurred in and around this area. Also, he purchased the property with the understanding he would have pristine forest behind him. Now he will view posts directly above him and the decks will be a detraction. He further asked the Council who would be held accountable if there are mudslides and damage to his property.

Bruce Hart, former Mayor/Upper Road resident, stated that specific elements of the HLO were to reduce visual pollution and retain bucolic nature of the Town of Ross. The way the HLO is setup is to promote small structures nestled into a hillside not to be seen. In accounting the square-footage, it must be in accordance with the Town's ordinance. The ordinance specifically states how square-footage is counted. It is the obligation by the Council by oath to follow the Town's ordinances, regulation, laws and engineered facts based on a professional. The people in this room must look at structures and urged the Council to respect the basis of the HLO and why it was put into place and how successful it has been to protect the visual environment.

Phil Cecchettini, Wellington Avenue resident, stated that throughout his distinguished career, the famous American designer George Nelson reflected on what he called the civilized city. One feature of the civilized city was the willingness to leave intact city amenities for their own sake. Maybe it was a clock in the Town Square that had long ago stopped running, or a statute of a forgotten public official that was now a bird perch, and

examples close to home, a Sam the Butcher sign that remains on an art gallery, or redwood trees in the middle of the road. In the scheme of things, these make absolutely no sense, and yet they are what helps make a city civilized. For all of us, they are part of what makes Ross Ross. They are gifts from your predecessors. A civilized city preserves what is irreplaceable. A civilized city can hold its collective head up high every 100 years or so and say, "*we made sure the town retained its special character and we are going to show off.*" A civilized city asks, "*what can we do to make our hometown even better.*" No amenity is more precious than our natural hillsides. The Council's predecessors have vigorously defended hillsides from development. They recognized the importance of hillsides such as reduced densities, rural character, unspoiled views of valleys and hills, proximity to large natural open space areas, and privacy. A civilized city does not pave the landscape and paint it green based on catchwords like "*excellence.*" The Oakland Raiders' "commitment to excellence" slogan did not produce a winning season this year. A civilized city honors its brand-spanking new General Plan and does not use recent tweaks to the building code to blast through long-standing setbacks and FAR guidelines. A civilized city does not tout new urbanism and then violate one of its most basic principles - honoring and preserving the human scale of its neighborhoods. A civilized city does not have real estate speculate their next conquest and justification to infill its neighborhoods. A civilized city listens to its citizens. The Town Council is the steering wheel that guides the Town of Ross. However, a "yes" vote on this project will show that the Town Council has lost connection with their engine, the citizens of Ross. Ross Citizens listen to their leaders. From the three council members who recently ran for Town Council, he did not hear a word about their property hillside development views. However, he heard a great deal about the tree canopy. Ross hillsides have as much standing as the tree canopy; the Council's views on this critical topic should have been explicit. They do not have a hidden agenda or an economic incentive to oppose this project. Nor is their opposition personal or catty toward the owner. But they are this: 123 residents and counting throughout the Town of Ross who are assertive in their opposition to this precedent-setting nightmare and its likely consequences - the destruction of the scenic beauty of their neighborhoods, increased downstream runoff and flooding, soil erosion, silting of lower slopes, slope failures, and lack of safe access for emergency vehicles, which is only their short list. Finally, he quoted the sound advice of Architect Hannum, who ends his company emails with this footer: "*please consider the environment before printing this email.*" His request to the Council is to please consider the environment before voting on this project.

John Gray, former Mayor/Upper Road resident, stated that there is no God given right that every parcel in Town is a buildable lot. There is nothing in the code that requires it. It is a 52% slope. It is a hillside lot. This is the exact lot the former Council specifically focused on in order to avoid such developments on steep lots. This is an almost vertical lot and only 800 sq. ft. should be built on this lot, not more. If the Council allows anything more no matter how marvelous of materials, the HLO is being gutted. There are far bigger fish to fry. To start messing with the HLO as it stands they are opening up Pandora's box. He does not agree with Architect Hannum's statement that this is a unique situation. He asked the Council to be very cautious in bending or gutting the HLO. This is one of the steepest slopes ever proposed and they must follow the HLO to a tea.

Kelley Reid, Wellington Avenue resident, added that the HLO was given careful consideration and that is the law of the Town. Slope he thought was 53%, but maybe it was changed to 52.5% and does not understand how that occurred. If this particular application were granted, the Council would be opening up a can of worms. It will just be one lawsuit

after another. When he served on the Town Council he was subject to four or five lawsuits, so they must stand on principle of what they effectuated back then. The Council at that time gave a lot of thought on this matter and he requested that the Council go back to where they were and what got this started in the first place. They worked long and hard to develop HLO that would be good to the Town. They must stick to principle and recommended that the project be denied and sent back.

Gary Scales, former Mayor 1982/Ross resident, indicated that he started the slope ordinance and asked that this Council continue to follow the ordinance.

Shepherd Heery, Baywood Ave. resident, is a consistent supporter of this project. The process that the applicant has been through has been very stressful and expensive. This has been a difficult process. Out of that process, he has seen excellence in design as a result. The public process has resulted in a project that is extraordinary. This project once built, all will be proud up. He supported the project and urged the Council to support and grant variance.

Katie Hogan indicated her father served on Council 1962 and is very impressed to see all former Mayor's in attendance. The Council passed a lot subdivision at 5 Madera Avenue for four lots. 7 Madera Avenue was built. Two lots that border Baywood were not developed but sold as private property. The Town Council never said this would be a public park for the benefit of residents for Winship Park. This property was subdivided for a lot to be developed for a residence. Those people did not have the money to develop that property, so the property was kept in their family hoping to do so. It came up in the 80s for development. The Young's got tired of fighting the Town, paying taxes for 40 years on a single-family residence. They gave it to their daughter and then sold to the Parmenter's. This property is a single-family property that the Town Council approved in 1962 and since then there have been various Town Council with other ideas. She asked the Council to keep in mind this property has never been adversely condemned and the Town never offered to pay for it to become a public park. This is a residential lot. In regard to this concept of 52% vs. 48.5%, if the lot goes all the way to the middle of the road with inches of asphalt, does it not take it above natural grade, so then subtract. This property is no different than any property on Baywood. She looked at the foundation request from a neighbor due to slide problems and she could not find an engineering report. Over time, the rules have gotten harsher to protect all. These plans are reasonable. When looking at the next item on the agenda where someone wants to build a guesthouse, which is only 450 sq. ft. less and they will use 14.8%, the Parmenter's are trying to use 11%. They are not being unreasonable. It is not a large house. It might fall into the category of State mandated small homes. Remember this is not a popularity contest, these are lives. Also, this lot is 240 sq. ft. long. It is not right next to any neighbor on either side. She further stated that this is a little house on a half an acre lot.

A Crest Road resident discussed last month about his late father engineering difficult projects. His house is on a 55% slope. He designed it with piers on bedrock as this one. Another project is in Belvedere where it is on a 60% slope. On Lake Washington, he designed a mansion built into a cliff, which is a credit to the community. There is no question in his mind that this house can be built well with good design. The architecture is superb and this project deserves the Council's vote.

Jacqueline Ryan, Baywood Avenue considers this a case of discrimination. Since the HLO, no one has been able to surpass the HLO. She has a buildable lot adjacent to this property and

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she was told that she could not exceed the HLO. Why make an exception when everyone has to follow the law. She is nervous about the car lift. It is very loud with a high pitch sound at 85 to 90 decibels. Subway trains are 100 decibels, so this will be very loud and annoying. In terms of notice for changing the HLO setback ordinance, it was inadequate. She never received a notice in that regard and never would have known it applied to the side setback.

Jon D'Alessio, Baywood resident, stated that the project is too big. Richard Hannum's presence at the RADR meetings was awkward. He believed this property in two places exceeds the 30-foot height limit. The green wall is designed to block views and there is no purpose. In terms of the issues of the right-of-way, he has heard conflicting opinions. It is unfair to ask neighbors to be placed in a position when there is this much conflict. It is a private road. If this is approved, he wants to make sure the applicant is responsible for any damages incurred. He has issues with construction management. 23 Baywood took three years and this project will take even longer. This project threatens the safety of others in regard to mudslides and sets a bad precedence in Town. He further requested that the Council deny this project.

Patty Treadwell, Woodhaven Road resident, stated that this is not just a neighborhood issue, it is a community issue. Over 100 people signed a letter opposing this project. She supported the previous Town Council that denied this project and urged this Council to do the same and deny this project and uphold the HLO.

Beth Minick, Wellington Avenue resident, submitted a signed letter to the Council for their consideration. All those present opposed to this project stood up, which was the majority of those present in the room. In addition, there are at least 16 letters of opposition in the file and one of which is from a former council member.

Phil Paisley, 31 Baywood Avenue resident, is present due to the larger community issue involving the HLO. He appreciated the Council continuing this matter. There is wording in the ordinance that is bothersome in terms of guidance and excellence of design. He talked to Peter Barry and he was not aware that setbacks had been removed. It was his opinion that guidelines had more to do with setbacks than FAR. Excellence of design Mr. Barry said to his knowledge had more to do with how the property fit on the lot and neighborhood and effect on the natural environment. This time was well spent to get up to speed on the HLO. When this was passed, decks applied. When decks were taken out, an exception was not made for the HLO. The HLO now excludes decks from the calculation. The visual impact will be greater even within the FAR that was originally anticipated.

Linda Brown, Baywood Avenue resident, discussed the rainy season and learned that natural gas travels down the hill. She remembers when the Wolfson's house slid downhill and the gas line broke. They have a very wet hill. It is a dangerous hill. She further noted that Alice Reeve's was not allowed to build on her house due to the spring.

Julie McMillan, Crest Road resident, pointed out the aesthetics of this project are not pleasing to the street in regard to a two-story garage with a wall; steep sloping roof; large parking bridge; and the parking area supported by retaining walls. This is not consistent with design standards. The bridge does not conform to the natural contours. The structure calls for 60 feet of concrete retaining walls. The project is very modern with multistory glass and six decks. She added that 800 sq. ft. would loom over the neighbors. In her view, this

project is not consistent or compatible with other residences in the area. The project has safety issues. Baywood is very narrow. The project is on a blind corner. Parking is located in the front setback and in the right-of-way. Vehicles parked in that area will impair access for emergency vehicles. Before the meeting, she confirmed with the Fire Chief that if vehicles were parked in the right-of-way emergency access would be impaired.

Charles Mason, attorney representing several Baywood residents, stated that an independent civil engineer's analysis for the slope confirmed with the Town Engineer that this slope does exceeds 51%. Under the slope ordinance looking at a project of 840 sq. ft. the project applied at a minimum count, not including the decks, 1461 sq. ft. That is 75% over what is allowed. They all heard former council members and other members of the public address the HLO that it has been strictly adhered too and good reason for that. At 75% over what is allowed if granted, the Council would have a negative precedent being set. No matter what the applicant indicates or the staff report, all projects will be considered on their own. All will present this application and it will be precedent setting in that regard. A former mayor warned the applicant, prior to purchasing this property, that the HLO applied to this lot. They bought with full knowledge. Also, during deliberations, findings must be made that somehow to find this application meets substantial compliance with the standards in the HLO. Any one of the criteria in that ordinance in regard to slope, grading, geology and hydrology are all reasons to deny. Only one is needed. One is clear that the slope is determined at 52.5% at 840 sq. ft. to get around 840 sq. ft. is there excellence in design and mitigation of environmental impacts. Those findings cannot be made as presented tonight. Lastly, the application is inconsistent with the General Plan, which quoted in his letter, *"Council has always applied the HLO, and to do so, the Council must find that this application does not meet the HLO."*

A Crest Road resident stated in terms of gas, old construction might have broken lines, but current standards call for shut off valves to be in place.

Architect Hannum pointed out that this is in fact a buildable lot as indicated by Council Member Hunter. The issue is, does the Council find that there is reasonableness to this. They successfully mitigated the issues. Findings can be made. The hydrologist found that expectations were exceeded per review on the structure. The soils issues were mitigated. With widening and parking, it is a much safer condition. They offered the full standard width. It comes back to the issue of will they be allowed to build a two-bedroom and have they satisfied those parts. They reduced the face of the garage and mass. To express it being grand, large or over scaled is an exaggeration. He trusts the Council to deliberate.

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.

Fire Chief Vallee explained that any parking that comes beyond the edge of that driveway on the cantilevered section would impact that turning radius. The turning radius has been made better if no one is on that bridge or cantilevered section.

Mayor Pro Tempore Strauss stated that the house at 1,049 feet with the garage at 263 feet is 1,312 sq. ft. When the house was denied, the structure was at 1,240 sq. ft. With the new information, he is concerned that it is 840 sq. ft. allowed with 263 sq. ft. with the garage, and then the house in his opinion would be 1,103 sq. ft., which is less. He believed the architect

developed a well-designed house. It is LEED certified. He further expressed concerned for the height limit and it must stay under 30 feet.

Council Member Martin spent considerable amount of time reviewing the municipal code, General Plan and conferred with former council members to get a better understanding on how the HLO might work. He listened to all testimony, read all letters and reviewed the plans. He does not know how this has been applied. One issue that he is confused about is this measure of excellence in design and how much can they maneuver or add additional square-footage into a project. He heard the intent from Peter Barry was to accommodate a tree or encourage more deck space. Any guidance in that regard would be helpful. Mayor Cahill responded that every project is different and this is a unique project.

Council Member Hunter stated in his experience, like Council before them, since the HLO was put in place they have treated it as being sacrosanct. They denied this project in the past and what is before the Council today is entirely different. This is the first project looking for an allowance over and above the recommended, which merited design excellence. They have seen three or four designs for this property, none of which were special or merit design excellence. This is the first one in his experience where design excellence was a factor. The way he interrupts the HLO is that if they are going to go above the guidelines for either design excellence or for site planning that the amount over is deminimis and the problem with this site is now they know the Town Engineer has determined that the slope on this lot will only give 840 sq. ft. Percentages are huge. Also, if they were to go down the road toward approval at this meeting or next, this would be the first LEED Gold residence in the Town. He would call for a condition of approval that it must be certified, which speaks to design excellence as well.

Council Member Martin asked if the 72% is justified. Council Member Hunter responded that it was not until this afternoon did he know the number from the Town Engineer. 72% is too much. It is a shame because this is an excellent design.

Council Member Martin is confused about the height, he sees 39 feet since reduced and is confused how that is calculated. Town Manager Broad responded that the height is measured as a straight line, essentially running a plain through the building. It moves up the hillside as the building moves up the hillside. As one drops a line straight down the grade it cannot be more than 30 feet in height. Council Member Martin stated that it is an important calculation and asked if the Town Engineer can verify the calculations. Town Manager Broad noted that survey verification could be required as a condition of approval, but is not routinely done. Staff was concerned that the initial submittal was very close to the 30-foot height and Senior Planner Semonian was appreciated that the amended plans lowered the height and had more margin of error.

Mayor Cahill noticed that the submittal received from a member of the public is for a set of plans out of date and the plans in the staff report are slightly different.

Council Member Skall learned a lot from this particular application and process. The Town has benefited from this challenging process. The architect produced an incredibly and wonderful design that should be encouraged as they go forward. Tonight they received a tremendous amount of input from former council members on what it means to live in this Town and what is important. They must balance the future of the Town and the past. While

he appreciates progress and the best of technology available, they must temper that with what this Town represents. He further stated that with that slope degree, while beautifully designed, would not fit on this lot.

Mayor Cahill agreed they benefited from all the input tonight, particularly the former council members who have taken the time to provide valuable input on the initial intent and purpose of the HLO. In terms of the issues related to drainage, slope stability and fire access, those issues have been addressed adequately, mitigated or resolved. He appreciated the neighbors being concerned. Independent engineers reviewed this issue and as a Council they must rely on experts. He feels the design is superb. This is the kind of project that qualifies under design excellence, but it comes back to how far should they deviate from the guidelines from the ordinance. The various former council members stated it well that the purpose of the design excellence, as an exception, was not to deviate substantially from the ordinance. They have the Town Engineer indicating that the slope calculation of 840 sq. ft. is the guideline and they must live with that guideline and it must be followed. As a result, he cannot be in favor of this application as it now stands.

Council Member Martin found the process enlightening. Current Town Council and former council stated that they must respect the General Plan, municipal code and be consistent and not deviate. They have certain standards. These are tough decisions, but he wants to be consistent with past decisions. The one point he learned is that they have a problem on Baywood. He is concerned about the existing management of the stormwater in that vicinity due to the steep slope. Regardless of the decision tonight, this is an issue the homeowners in that area will have to address. He agreed that it ultimately comes down to size. The HLO is very specific on guidelines. He did not feel justification to go over that amount.

Council Member Hunter stated if the applicant wanted to make it smaller it could be continued, if not denied. Council Member Martin found the law and code very clear. They are reasonable people and should not begin to cut and slice this project. They must deny for a reason. He is open to seeing an alternative that complies with the General Plan and municipal code. He would approve a project with design excellence that was 840 sq. ft. and consistent with all standards required.

Mayor Pro Tempore Strauss would approve 840 sq. ft. of living space with 400 sq. ft. of garage. With a stacked garage it would total 1240 sq. ft. In terms of design excellence, this is a reasonable design and the architect can reduce the area by approximately 149 sq. ft. to 200 sq. ft.

Council Member Hunter stated that if it came in close to 1200 sq. ft., not over that it would stand a chance of approval. It is not guaranteed, but design excellence would get it over 840 sq. ft. Mayor Cahill added with living space equal to 840 sq. ft., but with the garage space as an enhancement to the project to stand for design excellence with 263 sq. ft. for the garage totaling 1103 sq. ft.

Ross Parmenter, owner, stated that the word "guideline" he understands all perspectives. A 1,400 sq. ft. structure does not impact this hill. That gives some overall broad picture to the Town. Why use the word "guideline." 1,400 sq. ft. house with current code is a guideline. He asked that the 840 sq. ft. be stretched since they are using the word "guideline." He further desired a continuance on this project.

The Council praised the project design and integration into its hillside setting, but directed the applicant to scale back the project size to a square-footage more in keeping with the HLO guideline levels.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to continue this item to a later date. Motion carried unanimously.

Mayor Cahill recused himself from the next agenda item in order to avoid the appearance of a conflict.

18. **205 Lagunitas Road, Use Permit, Variance and Design Review No. 1713**
Lagunitas Country Club, 205 Lagunitas Road, A.P. No. 73-211-40, R-1: B-A (Single Family Residence, 1-Acre Minimum Lot Size), RC: Limited Specialized Recreational/Cultural. Amendment to an existing use permit allowing a recreational club to permit the addition of a third paddle tennis court proximate to two existing courts. The 60.5 foot long by 30 foot wide court will have 14 foot high fencing with steel tubing and a hexagonal wire mesh. Four 22-foot high pole mounted, downward directed Halide lights are proposed at the court perimeter (a use permit is required for nighttime lighting and use.) Design review is required for 690 cubic yards of cut and construction of two, terraced retaining walls totaling 224 feet in length, maximum height 4 feet. Tree removal is requested to allow the removal of two 15” bay trees.

Lot area	28.8 acres
Existing Floor Area Ratio	.006%
Proposed Floor Area Ratio	.006% (15% permitted)
Existing Lot Coverage	.008%
Proposed Lot Coverage	.010% (15% permitted)

Dani Hamilton, Senior Planner, summarized the staff report and recommended that the Council approve the use permit amendment to allow a third paddle tennis court with the findings and conditions outlined in the staff report.

Lagunitas Country Club representative explained that they wanted to add this court because platform tennis is for all weather. It is half the length of the tennis court. It is surrounded by wire screens. They have two lighted courts since the 1970s and recently the amount of interest in playing this game has increased and they felt the need to have a third court to accommodate players. Lagunitas Club is viewed as an entity composed of those not residing in Ross or those that do not care about Ross, which is not true. The policy of Lagunitas Club was to be a good neighbor and responsible member of the community that continues. Facilities are available to the Council for meetings and also for activities of Ross Rec. They made efforts to equip themselves of being capable of serving as disaster relief. Four members have been mayors of the Town. Two have been president of Ross Rec and two have served on the School Board. They recently worked with one neighbor and did experimentation to design shields on the present courts that have been installed to prevent lights from being seen outside the confines of the club. He is not aware of any complaints in

regard to the lights. He is aware that one month ago there was screening that was trimmed down and that may account for the problem, but has now been addressed.

They now propose the new installation only to light court by having lights that face away from Lagunitas Road up the hill and pointed down in the court with a light at each end of the court to allow light on the corners. After two sessions with the ADR group, they adjusted the location. They advised all neighbors that they were planning to present this project. A neighbor or two attended the sessions. The court was lowered 4 or 5 feet as recommended by ADR. He then addressed two issues in regard to EIR being required. It is his understand that such reports are not required for residential projects in Ross. Branson was permitted without an EIR. In terms of lot coverage, it minuscule and would remain minuscule. Also, the slope is below the minimum under the HLO and they are not constructing a place of occupancy. In 2004 when neighbors across the street applied for permission to build residence across the street, one condition of approval that was insisted upon was a recognition that a club did not exist, but a recreational and social facility to generate some light and noise impact. They want to be good neighbors.

Shay Zak, project architect, explained the glow on the hillside and other light sources. During the first architectural design meeting, primary objection from the neighbors across the street were the bulbs. They developed a shield so now the light source is not seen across the street. The club installed the shield last Friday. The court location was a concern due to visibility and it was suggested to relocate after design review, but the area suggested was too steep and required aggressive retaining walls. So they slid the court down and determined the court in the subject location and aggressively sinking it down. They reduced the lighting and buried it as low as possible. The reason for the 690 feet of export, they were making the court as low as possible. The retaining walls are standard 4-foot wood retaining walls.

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

John Gray, Upper Road resident, felt the have done a great job in the location and shielding the lights. Those shields are much more effective and believed it is a great project. There is no impact to him or his immediate neighbors. Lagunitas Club has done an excellent job and is a good neighbors and the application should be supported.

Elizabeth Anderson, attorney/representing Glenwood Avenue residents, appreciated the club shielding the lights, but the lights will illuminate the hillside. There are significant lighting impacts. Also, this is a commercial use in a residential zone. The club comes back time-after-time to intensify the use. The project will have a number of impacts, one being noise exacerbated at night when those are most sensitive to noise. They asked the club to consider alternative locations they think will have less impact. Besides light and noise, other issues with this location are that it will require 690 cubic yards of cut into the hillside and retaining walls. The Town has shown a commitment to protect the hillsides and this clearly does not. There will be more light pollution. New lights will be much taller. Existing landscaping will not screen the lights. The staff report admits issues of erosion and storm water control. They do not think the Town can make the findings necessary to approve the design review application. She submitted a letter that better outlined her comments. She requested that the Council deny the request or modify the conditions to not allow night use. The club could add additional landscaping to shield the courts. They do appreciate the fact that they did retrofit the existing lights.

Bruce Hart, Upper Road resident, quoted the condition that the Council placed in the property across the street that states, "*property owner is aware that property across the street is an operating sort of facility including, but not limited to, paddle tennis. There will be generation of noise, light, traffic and other impacts generally consistent with a club of this type.*" Immediate adjacent property owners acknowledged that and Council acknowledged that. The sports club has been present over 100 years, and it would generate noise, light and others consistent to that noise.

Jim Owen, 200 ½ Lagunitas Road resident, appreciated what the club has done in screening the lights, which is an improvement, but it was required in the 1997 use permit. It is 11 years later. Only since they are asking to expand the use permit have they made the action. They worked with them in the past on leaf blowers and it was very difficult to enforce. Now they use quiet leaf blowers. No mechanism is in place to enforce the use permit. He appreciated the shields on their lights. Turning them parallel to the ground would be wonderful as well. To expand the use permit, he did not understand. A great deal of money and time was spent to negotiate the 1997 use permit agreement. Every so many years they expand. Why not look at the existing piece of land west of the tennis courts. To further expand is taking advantage of the situation in his view.

Lagunitas Country Club representative stated that the language read by Mr. Hart came from the minutes during the 2004 hearing in regard to tree removal. They have been responsive to the light situation. In 1996 when he was vice president they asked for permission to renovate the clubhouse and the question of lights came up and he suggested visiting Ms. Gabrielsons house, but he was denied. He further noted that he did plant additional screening.

Mayor Pro Tempore Strauss asked if it is possible to work with neighbors to plant additional material. Lagunitas Country Club representative expected to do so. Council Member Hunter pointed out that it is a condition of approval.

Mayor Pro Tempore Strauss asked what was considered as alternate site locations. Architect Zak reviewed the area near the swale, but it was too far from the existing courts and neighbor. The other lot considered from Jim Owen was to place a court to the west of Court No. 1. They figured it would be that much closer to other neighbors, so they would be moving the problem from one place to another. When playing paddle tennis proximity and visibility is an important aspect.

Council Member Hunter asked that a mechanism be in place where neighbors can call with concerns. Lagunitas Country Club representative agreed.

Council Member Martin asked if a drainage plan has been discussed. Architect Zak noted that drainage plan would be straightforward and would be submitted with the building application as part of the conditions.

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

Council Member Skall wanted to be sure, if approved, they are being sensitive to the neighbors and be sure screening and lighting is mitigated as best as possible. Council Member Hunter noted that Condition No. 6 requires that a landscaping plan be submitted

prior to project final review and approval. Also, if the notion of all lights on one side is not optimal, then lights will not be added on the other side of the court, so he is fine.

Mayor Pro Tempore Strauss asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve the 205 Lagunitas Road application to add the third sport court with findings and conditions as outlined in the staff report, including the stipulation that lighting will not be added on the upper side of the court; add language to Condition No. 6 that landscaping will be planted downhill of the new court to screen; and include ongoing maintenance and adjustment of the lighting, as necessary. Motion carried unanimously.

Conditions:

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

1. As club posted court rules presently require, and consistent with standing Lagunitas Club rule #7, all paddle tennis court "lights must be out" and use shall conclude by 8:30 p.m.
2. The proposed four new light standards shall be installed on the downhill side of the new court and directed away from the Lagunitas Road neighbors. **No lighting shall be installed on the upper side of the court. The club shall be responsible for ongoing maintenance and adjustment of all lighting as necessary to retain compliance with use permit conditions and plan approvals.**
3. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
4. The applicant shall take the following precautions to protect trees during construction:
 - a. Before the start of any clearing, excavation, construction, or other work on the site, or the issuance of a building or demolition permit, every significant and/or protected tree shall be securely fenced-off at the non-intrusion zone, or other limit as may be delineated in approved plans. Such fences shall remain continuously in place for the duration of the work undertaken in connection with the development.
 - b. If the proposed development, including any site work, will encroach upon the non-intrusion zone of a significant and/or protected tree, special measures shall be utilized, as approved by the project arborist, to allow the roots to obtain necessary oxygen, water, and nutrients.
 - c. Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist may be required. Trenches shall be consolidated to service as many units as possible.
 - d. Concrete or asphalt paving shall not be placed over the root zones of significant and/or protected trees, unless otherwise permitted by the project arborist.

- e. Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.
 - f. Compaction of the soil within the non-intrusion zone of significant and/or protected trees shall be avoided.
 - g. Any excavation, cutting, or filling of the existing ground surface within the non-intrusion zone shall be minimized and subject to such conditions as the project arborist may impose. Retaining walls shall likewise be designed, sited, and constructed so as to minimize their impact on significant and/or protected trees.
 - h. Burning or use of equipment with an open flame near or within the non-intrusion zone shall be avoided. All brush, earth, and other debris shall be removed in a manner that prevents injury to the significant tree.
 - i. Oil, gas, chemicals, or other substances that may be harmful to trees shall not be stored or dumped within the non-intrusion zone of any significant and/or protected tree, or at any other location on the site from which such substances might enter the non-intrusion zone of a significant and/or protected tree.
 - j. Construction materials shall not be stored within the non-intrusion zone of a significant and/or protected tree.
5. A drainage plan shall be submitted with the building permit application for review and approval by staff, including the Town Engineer as deemed necessary. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The drainage shall be dispersed on site.
 6. A landscape plan shall be submitted prior to project final for review and approval by staff, including the Town Arborist as deemed necessary. The landscape plan shall include minor improvements to the dirt trail to reduce the effects of erosion. This may include laying down gravel or decomposed granite, installing an occasional stair (up to 8" plank or section of railroad tie secured with rebar.) The landscape plan shall include native vegetation in the area of the retaining walls behind the new paddle tennis court. **Additional planting shall be added downslope of the court.**
 7. Retaining walls shall be pressure treated Douglas Fir post and plank construction. The wood may be left to weather or may be stained with a woodtone finish.
 8. Any exterior lighting not shown on the approved plans, including but not limited to lighting along the hillside footpath, shall be submitted for the review and approval of planning department staff. Existing paddle court lighting shall be shielded with custom shielding and directed straight downward, not angled. New paddle court lighting shall be installed only on the downhill side of the court, directed downward and toward the hillside. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
 9. 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.
10. Any portable toilets shall be placed off the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
 11. 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.
 12. Failure to secure required building permits and/or begin construction by December 13, 2009 will cause the approval to lapse without further notice.
 13. 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.
 14. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 15. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

Town Attorney Hadden Roth excused himself from the Town Council meeting at 11:14pm. Mayor Cahill reconvened his position as Mayor on the Town Council.

19. 14 Walnut Avenue, After-the-Fact Design Review No. 1671

Loretta Gargan and Catherine Wagner, 14 Walnut Avenue, A.P. Nos. 73-171-51 and 73-171-52, R-1: B-10 (Single Family Residence, 10,000 SF Minimum Lot Size). After-the-fact design review for a 6-foot high, solid board vehicular access gate.

Dani Hamilton, Senior Planner, summarized the staff report and recommended that the Council require revised gate plans to be submitted for approval that are at least 50% open or that the applicant modify the gate to be no greater than 48" in height as measured from existing grade.

Loretta Gargan, applicant/owner, indicated that her contractor was informed that the fence was at an acceptable height and that is the reason why approval was not done previously. She was unaware that the height was a problem. She hoped to be able to maintain the current height of the fence due to privacy. She contacted all her neighbors on Walnut Avenue and received unanimous support for the fence, as it exists today.

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

Council Member Skall visited the area and found it to be a unique situation. It is located off the street and he appreciated the privacy issues. Since neighbors are in agreement, he finds the fence acceptable.

Council Member Hunter believed it is walled in and desired more daylight. It is a shock when driving up the street. He found the height acceptable, but it must be daylighted.

Council Member Martin agreed with Council Member Skall. Given the size of the lot, privacy is needed. He agreed it is a unique situation and found this to be an appropriate application. There is strong support from the neighbors for the existing conditions, so he had no objection to the fence.

Mayor Pro Tempore Strauss agreed with Council Member Hunter's comments that it must be modified and suggested removing the two top boards.

Mayor Cahill agreed in part with Council Members Martin and Skall that the fence that blocks the bedroom is important. He desired more plantings at the face of the fence. As one drives up the street there are these boards and desired some foliage that would be consistent with other parts of the neighborhood. In terms of the gate, it is not as important for privacy because it is setback and not blocking views into the house, but the rest of the property. He liked the fence because it matches the neighbors, except the neighbor has a cap on the top. At the gate, the neighbor's fence is at a height that is almost two feet below the height of the gate in question. From a design review perspective, it would be preferable to have the gate match the neighbors. In terms of the fencing that provides privacy, that should remain even though it is a slightly different with other applications. He further believed this is a special circumstance.

Town Manager Broad noted that fencing was subject to staff determination and staff found the fencing not subject to design review, so just the gate is being discussed tonight. Mayor Cahill still desired some plantings in front of the fence. In terms of the gate, he agreed that it must match the neighbor next door. Mayor Pro Tempore Strauss agreed to allow the other three inches since it is de minimis. Council Member Hunter stated that the height is important for privacy. The difference could be hidden from the top of the gate and the neighbor's fence with well planted landscaping. He suggested going back to daylighting and leaving it the same height. Mayor Cahill questioned whether there is enough room.

Mayor Pro Tempore Strauss had no objection to the fence going into the gate. Ms. Gargan noted that there is a metal frame, so if they remove the top boards that will look odd in her view. Mayor Pro Tempore Strauss indicated that the metal must be removed. He felt the design is quite nice if the top boards are removed and then additional landscaping is planted. Ms. Gargan desired a modified gate that did not necessitate having the metal part redone due to the cost. Mayor Pro Tempore Strauss suggested cutting them off to reset the top. Ms. Gargan felt if the gate were cut down it would look odd.

Council Member Martin suggested continuing the matter to avoid a shotgun decision. Ms. Gargan agreed with a continuance.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to continue the matter to a future Town Council meeting. Motion carried unanimously.

The Council took a short recess at 11:29pm.

20. **2 Upper Road West, Variance, Design Review and Use Permit No. 1720**
Alan Grujic, 2 Upper Road West, A.P. No. 73-062-12, R-1: B-5A (Single Family Residence, 5-Acre Minimum Lot Size). Use permit, design review and a variance for construction of a 747 sq. ft. guesthouse over the existing garage within the north side yard setback (20 feet proposed, 40 feet required.) Design review to allow the construction of 1,180 linear feet of new stucco retaining walls up to 8 feet in height and for 2,895 cubic yards of fill and 460 cubic yards of cut (proposed net import of 2,435 cubic feet of fill.) The existing driveway and swimming pool will be relocated east of the residence and an expanded parking area constructed within the north side yard setback (2 feet proposed, 40 feet required.) A tree removal permit is requested to allow the removal of 7 trees.

Lot area	74,487.60 square feet
Present Floor Area Ratio	13.8%
Proposed Floor Area Ratio	14.8% (15% permitted)
Present Lot Coverage	13.8%
Proposed Lot Coverage	14.8% (15% permitted)

Town Manager Broad summarized the staff report and recommended that the Council consider the scope of the project and determine: a) if it is supportive of the project as proposed; and b) if it is supportive, what construction-related steps would the applicant have to pursue to reduce the impacts of project construction to an acceptable level. If the Council believes the project should be modified, it should give the application direction on modifications and continue the item to a future hearing. The Council should also provide feedback on project construction even if it chooses to see the design modified.

Alan Grujic, owner, desired a solution that works for his family.

Michael Yandle, landscape architect, discussed the nature of site, concept design, process and merits of the plan and technical aspects. He provided two graphics, one of the existing conditions and the lower proposed plan. He indicated that it is a wonderful site with great views of the Ross Valley. The problem with the home and garden is the unusual relationship between the use spaces of the home and the outdoor spaces, and lack of appropriate scaled gathering spaces. It is an odd layout that does not make sense. This site has a great buffer and it only has a couple of continuous property lines. The oak grove behind the house and eastern side was graded when the original house was built with a road. The current house was built in 1990 and the road was graded and soils were pushed out. The home looms in its present condition. They propose to remove the poorly located existing pool, which is behind the garage off the master bedroom and locate a new, larger pool on the east side, the view side of the home. They will create a small garden and locate a small guest cottage off the garage. Through a series of terraced site walls, a new pool and lawn area can be created to take advantage of the great offsite views. This is accomplished by adjusting the existing entry drive. In establishing the slope calculations, this is one of the few sites that can

actually accommodate this level of development in that there are no impacts to neighbors or overall community, and the proposed improvements will greatly enhance the livability of the home. They developed the plans further and issues were discussed at the ADR meeting on October 23rd, which was a great meeting where they received support. All in attendance felt the plan worked very well for the site. The amount of cut and fill was a concern at the ADR meeting. In terms of merits, this is a private home.

They are not over programming the site. This is a simple pool, modest terrace, and lawn that all relate to the home. They are adhering to the spirit of the HLO. Specifically related to guidelines, they are working with only previously disturbed areas of the site. They are not attempting to level the site other than adjacent to the pool area. Every other wall, driveway and contour slopes and curves mimic the existing conditions. The combined wall and slope do not exceed the limits. They are limiting cut and fill by stepping down the slope. There will be 2400 cubic yards of import. They recommend standard trucks with 10 to 12 yards on each truck, so about 20 to 24 trucks. They might have two days of trucking followed by three weeks of wall building and so forth until completed. Roughly 10 to 12 days of trucking over three to four months. Trucking will occur between 9:30am to 2:30pm to coordinate with school traffic. They are spanning the pool with steel with a void below the area to save 500 yards. If they continue to excavate they get 220 yards for every foot excavated down. There is no tear down of the house involved. Length of construction time will be considerably less. They estimate 12 to 14 months. A variance is required for the guesthouse and parking area. There is tree removal, but none are in any setbacks. They are doing a significant amount of planting with 12, 18 to 20-foot oak trees. The entire project will be planted to bolster the buffer.

Their geotechnical consultant reviewed the site and submitted a letter verifying the sites ability to accommodate the proposal. They have a highly qualified construction team. They know how to build and are sensitive in Town. Most review the plans as the right solution. This is a benefit for the family and it is not over programmed. Several projects are occurring in Town along with the Branson School project, so they understand neighbors are tired of construction activity. They have a construction management plan and most trucking will occur up Bolinas/Upper Road and into the site. They hope the Council will respect that property rights exist. When created, it will create a balance and continue on a tradition of great homes and gardens.

Council Member Martin asked for clarification on the amount of soil being imported. Landscape Architect Yandle responded 2,435 cubic yards. 2,900 is the fill requirement. He further noted that the cut offsets to make it 2,435.

Council Member Martin desired clarification on the surfaces proposed. Landscape Architect Yandle noted that permeable surfaces do not work, but the stone around the pool could be permeable. Also, he noted that the trucks would come in and leave in the same direction. Most trucks that come in will leave with recycled material as well.

The Council had no questions about the guesthouse.

Mayor Cahill opened the public hearing on this item.

Mitch Wiener, Upper Road resident, is a professional builder and engineering contractor and believes this application shows total disrespect for the neighborhood. He desired a certified soils report in regard to the amount of dirt. He did not think this respects the custom practice of sensitive development in established neighborhoods. They should strive to make every effort to balance cut and fill. Trucks will be traveling back and forth. He believed the number is around 480 trucks because they are going back and forth. He desired the cut and fill to be balanced. The methodology is unreasonable on the neighborhood. He understands that the neighborhood must accept a reasonable amount of disruption and no one wants to deny property rights, but due to the excessive construction it seems unreasonable. There are traffic hazards in regard to dump trucks as well as constant noise along with poisonous diesel fumes. He desired some peace and quiet. This type of development is more commonly found in Los Angeles where no one cares about the environment. He urged the Council to recognize the lasting impacts that cannot be mitigated. There will be permanent impacts to the hillside as well. He hopes the Town will uphold the rights of the many in the neighbor to not have unreasonable and massive intrusion to the desire of one neighbor to relocate a pool. The impacts will be great and this project is an unreasonable burden on the neighborhood. If in fact the application is not denied, he urged the Council to require an EIR so there is a full disclosure to all residents not present tonight.

Nora Laherty, Upper Road West resident, believed this boils down to fairness and balance. She attended the traffic-calming workshop and was shocked to hear the burden placed on the Bolinas residents. Striking a balance is needed. Rights of the applicant with rights of the neighborhood and continued peaceful nature of Ross must be considered. They do not care what the applicant does to his property, but not at the expense of the neighbors and environment. It is how they arrive to the end result is the concern. That piece of road collapsed back in 1994 and all Upper Road residents had to equally share in the expense of repairing it. This failure happened a few years after the house was completed. In her opinion prior to any approval of this project, the project must be reduced. Also, she believed an EIR should be required to determine all the variables in question.

Ann Fanoë, Upper Road West resident, views Ross Valley and has concerns about the guesthouse, the variance, the height and chimney that will impact her views. Staging of trucks is a concern. In terms of her pool, the applicant was very considerate of the landscaping to not diminish privacy and maintain views. She talked to Mr. Grujic and they are agreeable on working on the landscaping. The trucks have been a tremendous burden. Incredible impacts in terms of noise will be extraordinary. She expressed concern for the environment as well. She asked the Council to consider the scope of the project that includes truck traffic, noise and height of the guesthouse.

Pamela Sher, Upper Road resident, expressed concern for trucks waiting in front of her house, which will be cruel and unusual punishment. The guesthouse is acceptable, but desired a revision to the height. The rest of this property is controversial. Removing the trees are a concern and extremely wasteful. The deciduous ones would survive most diseases. Also, they spent thousands of dollars to keep the canopy of trees maintained in a thriving condition. They have deciduous broad-leafed trees and it is terribly wasteful to relocate a swimming pool. The east elevation is missing of that property from Upper Road. She wanted to know what would be seen. With the hard services, a stucco wall, and all the paving it will appear as a parking lot. She wanted to see how dense and high the initial plantings would

be. She also wanted to know how much will be exposed that is not exposed now. She further urged the Council to require an EIR along with elevations to understand the impacts.

Landscape Architect Yandel noted that this project would not be visible from Upper Road. There is a considerable buffer that runs around the property. All plant material will go right back in place of all the walls. They can accommodate all construction parking onsite. They will build the lower road first to accommodate parking. Regarding guesthouse, both parties determined that it is not seen.

Mayor Cahill asked what the historic topography was on this site before it was disturbed. Landscape Architect Yandel felt the hillside, in general, probably came through the entire property. He guessed when they did the original ranch house in the 50s that they graded a road and scraped a pad. He does not have a contour map from the original site.

Mayor Pro Tempore Strauss clarified that when the house was built there was an existing pad. Landscape Architect Yandel responded in the affirmative.

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

Council Member Hunter stated that absent the need for all the import, it is a nice design. It is a beautiful home. He is struck by the disruption to the site and community just to move the pool. If the pool can work where it is then great, if not, then they must reduce the import substantially. He does not think it makes sense due to the impacts to the community and roads. It is just too much for a swimming pool.

Council Member Skall appreciated the design and if there was an opportunity to start over as proposed that would be the way to go, but he leaves it up to the applicant and architect to develop other ideas to potentially have some lesser impacts overall. He feels what is proposed, from a design standpoint is better than the existing, but desired less of an impact.

Council Member Martin is not familiar with an EIR and what could trigger an EIR in a residential community. Town Manager Broad stated that CEQA has a list of projects that are categorically exempt. A project such as this, an accessory structure is exempt from CEQA. It would not be exempt if the Council made findings that because of the specific location of the project what is proposed is not categorically exempt in which case the next step would be to do an initial study to determine if a negative declaration of an environmental impact could be adopted, if not the EIR. The best way for Council to address this matter is to look at the merits for this project itself and look at changes to be made to the scope of the project and impacts.

Council Member Martin concurred with Council Member Hunter's comments. There are strong elements of the project, but they must look at ways to reduce the impact to the community with trucks and fill. He would also like to see the Town work on a traffic route for Bolinas Avenue with construction occurring at Branson School, Glenwood and this project. There is a lot of traffic that travels through that community and they must give some study to how the site is accessed and exited. He wanted to distribute that load to other roads to not impact the same people. Essentially at some point they must look at hydrology of that property. He desired more permeable surfaces. A lot of water is being diverting

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downhill and they must look at how that is handled given the land has been impacted in the past.

Mayor Pro Tempore Strauss concurred with previous comments. There are currently 4,500 trips on Bolinas per day. He visited the property and sees other opportunities. Maybe mitigate fill by looking at alternative locations of the pool. He asked the applicant to take a look at the goals and other ways to achieve their goals with a simpler plan.

Mr. Grujic stated that the main part of the project is to have lawn for his children to play.

Mayor Cahill thinks permeable surfaces are very important. They must address how runoff is not increased, but improved, if possible. In terms of historic topography, it appears the lower part of the site was at a lower elevation. Looking at the profile, the flat shelf would sit on top of the fill as high as 16 feet above existing grade. The design guidelines call for following the topography of the land as much as possible. He understands a flat area for children to play, but this site does not lend itself to that. It is on a hill. He is not sure how to create that site and honor the existing topography. One option is to lower the pool maybe 5 to 10 feet, which would remove a lot of flat lawn space resulting in a design that has a negligible amount of net cut or fill and mitigate the issues of many neighbors. He recommended going back and exploring a design that works more closely with the existing topography and essentially, eliminating the need for net fill.

Landscape Architect Yandle must determine what makes sense. They wanted a pool, a terrace and lawn close to the house rather than a destination pool. He understands the concerns for cut and fill. Maintaining existing grade will be difficult and desired guidance. Mayor Cahill did not object to the height of the retaining walls, just non-conformance with the existing topography.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to continue this matter to a later date. Motion carried unanimously.

21. Correspondence- Ross Recreation Auxiliary

The Council agreed to allow Ross Rec Auxiliary use the Ross Fire Station for the 2009 Winter Dinner Cocktail party on February 7th, 2009.

22. Other Business- None

23. Adjournment.

By order of Mayor Cahill, the meeting adjourned at 12:26 am.

William R. Cahill, Mayor

ATTEST:

Gary Broad, Town Manager