

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, DECEMBER 13, 2007

1. 6:30 P.M. Commencement.

Present: Mayor Hunter; Mayor Pro Tempore Cahill; Council Member Durst; 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 8th, 2007

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve the November Minutes as amended. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression- None

6. Report from Mayor Hunter.

Mayor Hunter noted that real progress is being made on fire consolidation and will provide a full report under Item 15. He then indicated that the Town's annual holiday party was Tuesday of this week at MAGC. He congratulated and thanked Town Manager Broad and Administrative Assistant Linda Lopez for another successful and fabulous event. Also, the Ross General Plan is available for purchase from the Planning or Administration office for \$25. He then presented a complementary copy to the RPOA. He thanked RPOA for organizing and providing Town decorations. He also thanked Robert Maccario and Buzz Doughty for their excellent installation. Lastly, he wanted to give an early alert that the next Town Council election will be on June 3, 2008. Three seats are up for election and papers can be pulled beginning February 11 to March 12, 2008.

7. Report from Committee Heads- None

8. Report from Ross Property Owners Association.

Frank Doodha, RPOA representative, stated that RPOA was happy to provide the holiday decorations for the Town of Ross and also thanked Robert Maccario and Buzz Doughty for helping with the installation. RPOA is meeting with Ross Auxiliary to develop a "Get Ready Marin" brochure that is Ross specific and will coordinate with Chief Heying.

9. Flood Control Report.

Mayor Pro Tempore Cahill reported that next Friday there is a meeting on all watershed issues, which he will attend. The meeting will cover litigation, election and pending mitigation initiatives. He will have more to report at the next Council meeting.

10. Town Council approval of the Ross Recreation Board of Directors.

Town Manager Broad summarized the staff report and recommended that the Council approve the Ross Recreation Board of Directors.

Council Member Durst is the Town Liaison to Ross Rec and pointed out that this Board contains two members that are not Ross residents. She believes their bylaws state, "*that Board members must be Ross residents.*" She noted that the two Board members live in the School District, but do not have a Ross address. She recommended that the Council approve the Board of Directors with a condition that if these two Board members do live in Kentfield that they be non-voting members.

Mayor Pro Tempore Cahill stated that if there are qualified representatives the best quality individuals that live in the district, but not in the Town should be allowed to serve on the Board. He suggested that Ross Rec review their bylaws. Council Member Durst stated that based on the report from Ross Rec, she will suggest that they do some strategic planning at their next meeting and turn those plans into the Council. They need to have themselves re-oriented. Also, the Board meetings have changed and they now meet the first Tuesday of every month held at Ross Rec, except in January.

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

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve the Ross Recreation Board of Directors with the condition that if the two Board members live in Kentfield they be designated as non-voting members. Motion carried unanimously.

Mayor Pro Tempore Cahill suggested that Ross Rec post their meeting dates, so the community is informed and can attend, if so desired.

11. Town Council consideration of reappointment of Wendy McPhee to the Marin/Sonoma Mosquito and Vector Control District for a two-year term through December 31, 2009.

Town Manager Broad summarized the staff report and recommended that the Council consider reappointment of Wendy McPhee to the Marin/Sonoma Mosquito and Vector Control District for a two-year term through December 31, 2009.

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

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to reappoint Wendy McPhee to the Marin/Sonoma Mosquito and Vector Control District for a two-year term through December 31, 2009. Motion carried unanimously.

12. **Town Council approval to allow the Kentfield Fire Protection District to temporarily locate their fire service at the Ross Fire Station at 33 Sir Francis Drake Boulevard, zoned Civic District, including the addition of a modular trailer and temporary fire truck shelter, for an approximately one year period.**

Town Manager Broad summarized the staff report and recommended Town Council approval to allow Kentfield Fire Protection District to temporarily locate their fire service at the Ross Fire Station at 33 Sir Francis Drake Boulevard, zoned Civic District, including the addition of a modular trailer and temporary fire truck shelter, for an approximately one year period. Staff noted that Chief Paul Smith is present tonight to answer any questions. Staff further added that they must work out basic items in regard to insurance and logistics that staff will develop with the Finance Committee. They will probably lease the space effective March 1st.

Mayor Pro Tempore Cahill asked staff how the lease rate is determined. Town Manager Broad deferred the lease rate to the Finance Committee. The Town has an agreement with Ross Valley Paramedics that can be reviewed. There are basic expenses such as utility costs. They would start with additional expenses and work from that point and figure out what seems to be a fair rate and approach Kentfield in order to reach an agreement.

Mayor Hunter expressed concern for parking and if adequate space is provided. Town Manager Broad explained that the modular would go around the corner from the Fire Station. The antique fire engine will disappear and that space will be cleared for the two fire engines. Also, Kentfield staff will park where the Town demolished the flood damaged residence.

Chief Smith appreciated the Town's consideration and explained that this is their best option in terms of logistics.

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

Mayor Pro Tempore Cahill believed it is great to accommodate Kentfield and supported the proposal. Council concurred.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to approve the Kentfield Fire Protection District to temporarily locate their fire service at the Ross Fire Station at 33 Sir Francis Drake Boulevard, including the addition of a modular trailer and temporary fire truck shelter, for an approximately one year period. Motion carried unanimously.

13. **Town Council update on the Shady Lane Safe Pathway to School Project.**

Town Manager Broad updated the Council on the Shady Lane safe pathway to school project. Staff provided the Council with the three typical sections that John Moe developed for the pedestrian pathway. The actual location of the pathway will meander due to the existing conditions related to location of trees, driveways and inlets. Staff sent out letters to all property owners in the area notifying them about this meeting and staff received a few

phone calls. Staff is trying, in advance of the project, to do public outreach in order to understand the specific concerns of the residents. Staff is willing to meet residents in front of their properties in order to discuss specific concerns. Conversations with neighbors have provided great back and forth dialogue. Weather permitting, staff is optimistic to go out to bid in early 2008. The grant amount should be adequate to cover the cost of the project, which is a favorable situation for the Town to receive such funding. When they finish this project, staff hopes to move into the Sir Francis Drake sidewalk project where the Town received a \$200,000 grant from a different source for that project.

Mayor Pro Tempore Cahill asked staff if drainage improvements are part of the pathway project. Town Manager Broad said staff is very conscious of the drainage effect, so as they look at each site they are looking at not adversely impacting the drainage. Matt Smeltzer the Town hydrologist and Civil Engineer Moe will review. Also, there was a question about liability related to this project and staff contacted Town Attorney Roth and maintenance of this pathway was a concern. Present language in the code stipulates that a property owner is responsible for maintenance of improvements within the right-of-way. The code suggests that property owners would be responsible for maintenance. But really the only maintenance condition staff envisioned being an issue was if tree roots from a street tree damaged the pathway. As a matter of practice, the Town would still remedy that sort of damage because it resulted from the Town's street tree.

Town Attorney Roth explained that under code and in State law the requirement is for the abutting landowner to maintain the sidewalk. There is an additional provision that requires the property owner to maintain and is liable if there is an affected or dangerous condition. Also, the adjacent landowner is liable for maintenance and responsibility in regard to all sidewalks in Town. Town Attorney Roth noted that this section was added in 1982 and staff is not aware of any incident.

Public Works Director Jarjoura pointed out that a small section might need an additional culvert.

Council Member Durst asked staff if they were to repeal, would the Town then be responsible to repair other pathways in Town. Town Attorney Roth noted that adjacent property owners would always have responsibility to maintain the sidewalk. If this section is repealed, liability could not be imposed unless that property owner did something affirmative to create a danger. The 1982 ordinance adds exposure of liability to the adjacent property owner. It is a matter of the Council's approach to the citizens.

Mayor Pro Tempore Cahill asked staff if this liability sharing is common. Town Manager Broad agreed to review other communities and contact the Town's insurance carrier and then bring the matter back to the Council for their review. The Council agreed.

Mayor Hunter asked staff about the asphalt being impervious. Director Jarjoura noted that it will not be pervious asphalt per say. But a four foot width will not increase the impact of surface water as water can still drain beneath it.

Mayor Hunter opened the public hearing on this item.

Brian Salmen, Shady Lane resident, said he raised most of these concerns along with some neighbors. There are a number of aspects to this and the liability issue is key. He did not think there is any reasonable justification for the Town to make an improvement and the homeowner be liable for some incident that occurs from the result of the Town's improvement. To just add the homeowner as an extra pocket seems unreasonable. He did not think it is reasonable for the Town to have a position that states, "*the homeowner is liable for improvements that the Town makes.*" This improvement is not necessarily an advantage and for the residents to accrue liability is unreasonable.

Mayor Hunter noted that residents are already responsible for the right-of-way maintenance and liability. Mr. Salmen stated that an improvement would be a modification and if that results in an incident he did not believe it is the property owner's fault. Town Attorney Roth noted that since there is no sidewalk there is no liability. This provision is specific to a sidewalk.

Mr. Salmen noted that the most common fatal accident is a bicyclist running into a car backing out of its driveway. Also, if the Town takes the position that the only likely maintenance issue will be Town trees is acceptable, but this is not a sidewalk. It is a pathway. He believed the Town should maintain the pathway, but understands that it will not be much expense. In regard to drainage, he contacted staff and it sounds like they do want to make sure there is no adverse effect on the drainage. He has an open watercourse in front of his house that will now be paved, which will push water onto his property. He was told that the problem would be addressed. He noted for the record that with the greatest foresight it is possible that there could be some adverse effect and would hope the Town would take any remedial action. The current storm drain system begins at his driveway and is extremely effective and he would hate to have this pathway revert a problem with drainage on his property.

Chris Martin, Shady Lane resident, concurred with Mr. Salmen's comments. In addition, when they first heard about this pathway they heard the material was to be crushed granite, which has its advantages. Asphalt is a maintenance issue and difficult to maintain. Also, during this past year they lost nine more elm trees along Shady Lane and they are in favor of some sort of ADA accessible pathway along Shady Lane, but the elm trees must be addressed and possibly bring back some of those elms. They are glad the issue of bikes on this pathway is apparently off the table, but submitted three reports that showed some of the increased risk of collision when pedestrians and bicycles are mixed on a sidewalk.

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

Mayor Pro Tempore Cahill agrees that liability must be further investigated in regard to shared liability.

Council Member Durst cannot justify the liability because this is a project that a group suggested. It is a Safe Routes project and supported by members of the community, but not anything the homeowners in the area were involved in proposing. She would be in favor of investigating the liability issue and changing that aspect of the ordinance.

Mayor Hunter asked staff in a situation described by Mr. Salmen what occurs. Director Jarjoura explained that there are previous issues in this area. When the drainage was installed it stopped at this particular location and one stretch must connect to a culvert to mitigate the issue and he believes this project will improve the situation by installing a new culvert. The Town's Hydrologist will review and make sure the improvements will not impact neighboring residents. In regard to decomposed granite, the Council and residents were considering decomposed granite that would go with a rural setting, but no decision was made. Asphalt is a more stable approach for ADA access for the long-term and requires less maintenance to keep it an ADA approved path.

Town Manager Broad agreed to review the liability issues and bring back to the Council as well as the contract for approval. In regard to landscaping, that is another element that was not included in this discussion and staff would want the Town, after the project is implemented, to have the Street Tree Committee review the entire stretch of Shady Lane and make recommendations on what plantings would be appropriate. It is not necessary to remove any existing trees to do the project.

Town Attorney Roth recommended that staff review the 1982 minutes as well.

14. Town Council consideration of adoption of Ordinance No. 602 amending Chapter 16.18 of the Ross Municipal Code, Restricting Smoking, to include additional regulation of secondhand smoke.

Town Manager Broad summarized the staff report and recommended that the Council consider adoption of Ordinance No. 602 amending Chapter 16.18 of the Ross Municipal Code, Restricting Smoking, to include additional regulation of secondhand smoke.

Mayor Hunter opened the public hearing on this item.

Peter Ausnit, Ross resident, thanked Council and staff for all their efforts in considering this ordinance. He believed Council is taking a step backward rather than forward. He stated there was clear demand for the nuisance ordinance. Smoking is a nuisance to at least most people. He believed a right was established to smoke on private property. They had a terrible problem before this was discussed with Council and they reached an agreement, but now their ability to work with the neighbors has been degraded. There is no right to smoke. Rights are restrained on the entire Town to create a good quality of life in Ross. The nuisance ordinance would have been a real benefit and asked that the Council reconsider its decision in light of these points and adopt the entire proposed ordinance.

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

Mayor Hunter shares Mr. Ausnit's position, but will vote to accept the ordinance as presented by staff tonight.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to adopt Ordinance No. 602, amending Chapter 16.18 of the Ross Municipal Code, Restricting

Smoking, to include additional regulation of secondhand smoke. Motion carried unanimously.

15. Follow-up discussion of the five Town Council goals for 2007-2008 and the implementation of these goals.

Mayor Pro Tempore Cahill noted that they are in process of working on wildland urban interface zone. The State provided a map that did not accurately reflect what is wildland and urban in Town. Staff is working on attempting to have an accurate map and then they can bring the wildland interface regulations back to the Council with the objective of enacting a set of regulations consistent with the amended State map.

Mayor Hunter discussed fire consolidation that has moved along quite well. Chief Heying and Town Manager Broad addressed Larkspur City Council that is considering a resolution to authorize members of Council and their manager to work with the Town and negotiate a draft JPA. After some discussion, they voted unanimously to do so. He further noted that progress is being made.

Town Manager Broad discussed the Downtown Plan and they now have a great map. They scheduled a meeting and invited several professional designers both architects and landscape architects to sit down and provide ideas and visions. They had a great session for a few hours. They have objectives for the downtown and design ideas. Staff added that one of the designers said the meeting was not only productive, but fun as well. Staff believes this is a great start. They are working on getting some ideas drawn to maps and then have a public meeting in order to receive feedback from the public on some of those ideas as early as 2008.

Council Member Durst announced that next Tuesday is the next "Get Ready" meeting. They have 18 signed up to take that session at the Art & Garden Center between 7 and 9pm. They will be provided a 52-page booklet on how to "get ready."

16. Town Council consideration of adoption of Resolution No. 1639 establishing an advisory design review process.

Council Member Durst summarized the staff report and recommended that the Council consider adoption of Resolution No. 1639, establishing an advisory design review process.

Town Manager Broad contacted Council Member Strauss today who is very comfortable with how it was proposed and believed the give and take has been very productive. He is optimistic along with Council Member Durst that this will be a productive process.

Council Member Durst estimated that the first meeting would occur in February. Town Manager Broad will send out a request for volunteers with the hope that the Council could pick volunteers at the January Council meeting. Advisory meetings depend on where the applicant is in the process. Applicants do not need to have submitted plans to the Town. She envisioned that this group would be appointed at the January Council meeting and then shortly thereafter Town staff would meet with the group to develop bylaws and then determine which day works best for the meeting. They were thinking two weeks prior to the Council meeting. One of the five individuals will be a chairperson.

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

Mayor Hunter understands this will evolve and they must be careful that the system is not abused. Mayor Pro Tempore Cahill believed a reassessment after six months should occur to make sure it is effective.

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to adopt Resolution No. 1639, establishing an Advisory Design Review process. Motion carried unanimously.

17. **Town Council approval of regular Council meeting dates for 2008, including rescheduling the October 2008 Meeting.**

Town Manager Broad summarized the staff report and recommended approval by the Council of regular Council meeting dates for 2008, including rescheduling the October 2008 meeting.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to approve the regular meeting dates for 2008, including rescheduling the October 2008 meeting. Motion carried unanimously.

18. **Town Council consideration of Resolution No. 1638 establishing fees for certain Police Department document preparation and processing.**

Chief Heying summarized the staff report and recommended that the Council consider adoption of Resolution No. 1638, establishing fees for certain Police Department document preparation and processing.

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

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to adopt Resolution No. 1638, establishing fees for certain Police Department document preparation and processing. Motion carried unanimously.

19. **Town Council discussion regarding adopting a social host ordinance, imposing penalties for parties or gatherings in which underage individuals possess, consume or are served alcohol.**

Town Manager Broad summarized the staff report and recommended that the Council have a discussion regarding adopting a social host ordinance, imposing penalties for parties or gatherings in which underage individuals possess, consume or are served alcohol.

Mayor Pro Tempore Cahill asked staff what is the response for these loud and out of control parties. Chief Heying responded that parties are broken up by finding a responsible person to disperse the juveniles. At times, they bring kids down to the station and call their parents or citations are issued.

Council Member Durst asked staff qualitatively is that any different than a social host ordinance. Chief Heying noted that they focus on juvenile offenders, and with the social host ordinance it is creating a great amount of responsibility from parents.

Council Member Durst reviewed the public safety report and asked staff in the five incidents that involved juvenile arrests was alcohol involved as well. Chief Heying did not have those details. He explained to the Council that this topic is not being brought up for discussion as a result of a problem in Town, but an overall enlightenment as a whole in the State and a step toward increasing responsibility.

Mayor Hunter discussed the existing law of the business and professions code sections that seems to address many of the same fines and objectives. Chief Heying noted that there are many overlapping features. The social host ordinance focuses on the property owner or responsible person for juveniles. It makes them responsible regardless of if they are present. This will send a message to take better steps to ensure that a party does not occur.

Mayor Hunter asked staff if this is necessary. Chief Heying believed it would apply once or twice per year to situations in Town.

Mayor Hunter opened the public hearing on this item.

Michael Rosenbaum, Ross resident, felt this ordinance should go to an actual election, so young adults can be heard. He is concerned about Ross Town dinners in regard to responsibility. He objected to the \$150 fine and suggested revoking variance privileges or something along those lines.

Gary Narjarian with Marin County thanked the Town and the Council for considering this ordinance. Teen drinking is not acceptable. To address the Council's comments, this is a prevention tool, not a reactionary tool. This is protection and expression of community standards. This ordinance indicates that other parents in the community may not choose to allow kids to drink alcohol on their property. Minors are not allowed to drink in the community, but if drinking at home, people think that is a protective measure. Also, the county and communities are small, if there is a patchwork of ordinances where some communities have ordinances and others do not, young children will have a party in a community that does not have the ordinance. Existing California law under the business and standard code in California is set to provide criminal activities and it does not say anything about hosting and minors drinking. If the host were under 18 years old, then the parent would be liable. If 18 or older they would be held accountable solely. He offered further services to the Town, if so desired.

Marin Youth Leader Scott believed this is an important ordinance. This process of making a statement that underage drinking is not acceptable behavior and will not be tolerated is very important. He is present to provide any resources to the Council. He requested that the fine structure move to \$750 for first offense; \$875 for second offense; and \$1,000 for third offense, which is consistent with Fairfax. This is sending a message to parents to have dialogue with their kids and informing kids that underage drinking is not acceptable behavior.

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

Council Member Durst stated that Marin has a lousy reputation for teenage drinking and it is in general in the County an issue. She does not think it is an issue in Ross. However, she thinks that the way kids get together nowadays is different and parties can become quite larger quickly. She is not certain about this ordinance. She does not believe it is a problem in Ross. It is a regional problem and is not sure how much time the Ross Town Council should devote to this matter.

Mayor Pro Tempore Cahill agreed it is an issue in the county. He is reluctant to enact an ordinance just to enact an ordinance. He believed there must be an actual practical purpose. There are a few cases, but he is not convinced that it is enough to give rise to a social host ordinance, but is open on the issue.

Mayor Hunter stated that it is mind boggling that someone else's parent would provide alcohol to children. He asked Chief Heying if this is necessary. Chief Heying stated that if the ordinance prevented at least one party and prevented a DUI and a fatal accident it is worth it.

Mayor Hunter indicated that he would like the benefit of a full Council to revisit this matter. Mayor Pro Tempore Cahill wanted to hear from more members of the public in Town and appreciated the letter from Erin Rosenbaum. The Council should revisit this matter at a later date.

Town Attorney Roth excused himself from the Town Council Meeting.

20. **Town Council consideration of request from Homeward Bound of Marin for a contribution of \$1 per resident from the Town to support The Next Key Center, a job training and affordable housing facility of 32 units for homeless adults and families in Hamilton Field, Novato.**

Town Manager Broad summarized the staff report and recommended that the Council consider a request from Homeward Bound of Marin for a contribution of \$1 per resident from the Town to support The Next Key Center, a job training and affordable housing facility of 32 units for homeless adults and families in Hamilton Field, Novato.

Mayor Pro Tempore Cahill asked staff if this is a one-time request. Town Manager Broad responded in the affirmative.

Mayor Hunter opened the public hearing on this item.

Bob Puit, Deputy Director, Homeward Bound of Marin, explained that about 70% of single adults who completed the NBC (*New Beginnings Center*) moved into housing. He indicated that more training is needed. The success is a result of Homeward Bound's focus on income enhancement, job skills development, credit clean up and money management skills provided by NBC. The Next Key Center is a job training and affordable housing facility to be built at Hamilton Field in Novato. It will consist of 32 studio units of transitional housing, available to homeless adults and families while they work on issues to become a more productive person to move out of homelessness. They raised over \$8 million and Federal Home Loan will donate \$1 million, which is greatly appreciated. They desired support from different cities and towns. He further noted that the conference space will be open for weddings and so forth, which seats 150 people.

Brian Salmen, Shady Lane resident, thinks the issue of homelessness is serious and must be addressed. It exists significantly in Marin and if Marin takes steps such as this and works to improve the situation it will be a model to San Francisco. He further recommended that the Council give an additional donation on top of the sum requested.

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

Council Member Durst appreciated the opportunity to contribute to the regional approach. Mayor Pro Tempore Cahill agreed it is a great program and this satisfies their requirement under the General Plan. Mayor Hunter concurred. What has been accomplished is phenomenal and encouraged Homeward Bound to keep the Council updated on their progress.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to commit \$1 per resident to Homeward Bound of Marin. Motion carried unanimously.

The Council took a short recess.

21. Town Council, sitting as a Planning Commission, to consider text amendments to the Ross Municipal Code including deletion of Chapter 15.22 (Antennas) and various modifications to Title 18 (Zoning) to eliminate obsolete regulations, clarify existing policies and regulations, and to implement recommendations of the Housing Element.

Senior Planner Semonian summarized the staff report and recommended that the Commission consider text amendments to the Ross Municipal Code including deletion of Chapter 15.22 (Antennas) and various modifications to Title 18 (Zoning) to eliminate obsolete regulations, clarify existing policies and regulations, and to implement recommendations of the Housing Element.

Mayor Hunter asked staff if the line running perpendicular will always run through the building site. Senior Planner Semonian said it did not because sometimes a site topography is unusual. Some discretion must be used on certain sites. Where disagreements regarding slope calculation occurred, they could be reviewed by the Council. Town Manager Broad noted that this has been the practice since December of 1993.

Mayor Hunter opened the public hearing on this item.

Brian Salmen, Shady Lane resident, did not understand the changes in watercourse and definition of creek. Senior Planner Semonian explained that they are recommending the same definition as Berkeley, which would exclude man made watercourses such as man made gutters and drainage ditches that do not follow the location of a natural watercourse. Town Manager Broad provided Mr. Salmen with the necessary information for his review.

Bill Cheek, Ross resident, discussed the change in the definition of slope. He is not prepared to make comments because he did not understand it would be considered at the hearing. He believed that what was proposed was a change to the definition of slope and believed the Town had always measured from the lowest to the highest point of the site, and not necessarily in a line perpendicular to the contours. Several have relied on this as their starting point in determining design. San Anselmo uses the bottom of the lot to the top. The County of Marin uses the contour method. He believed that if the definition is changed, this will change the way slope has been determined for many years. Mayor Hunter noted that what staff is doing is merely codifying what has been done since December of 1993. Mr. Cheek stated that it was not the practice in his particular case. He believed this is a significant change in development rights by changing this one definition. Staff's proposal is a more restrictive definition and there should be other possibilities. In the case of irregular lots, it should not be measured perpendicular, but applicants should be able to discuss other methods. An architect looking at this new definition might start out with a number that is different and this will create more confusion and open more problems. Changing the definition is changing the starting point for every architect and he believed considerable study must occur.

Senior Planner Semonian noted that architects could apply to the Town for a determination of the site slope for a \$100 fee in order to know where to start. Mayor Pro Tempore Cahill asked staff if there have been instances where the slope has been different than measured. Town Manager Broad noted that there has not been a single universal way of determining slope. The definition needs to be clarified. They can still find a reasonable representation and be clear that policy has been that slope is measured perpendicular to the contour not high end-to-low end. Mayor Pro Tempore Cahill clarified that this change more accurately reflects the intent in terms of how to measure lot slope. Town Manager Broad responded in the affirmative.

Mayor Hunter believed it is better defining what the practice has been. Town Manager Broad believes so in his opinion. He believed slopes should be measured perpendicular to the contours.

There being no further public testimony on this item, the Mayor closed the public hearing and brought the matter back to the Council, sitting as Planning Commission, for discussion and action.

Council member Durst thinks it is important to drill down on the consequences of this. They must review some prior applications where they believe a better result may have occurred against the proposed definition. She thought all changes suggested by staff are quite good and have identified issues as well as provided clarity and noted support.

Mayor Pro Tempore Cahill believed it would be a good idea for staff to try to identify some other circumstances where the definition has been applied and what the implications of the change may be. He is in general agreement with the manner in which this is worded and agreed with staff's changes.

Council member Durst recommended that this be a General Government Committee issue.

Mayor Hunter thinks for the most part it has been measured according to the green line, perpendicular to the contours. He agreed with staff's report and desired staff to put it in resolution form. If there is an application that has been long pending where it was measured differently, the Council must review that as a separate item. He referred to the topographic map presented by staff and said if slope is measured via the red line [high point to low point] and now the green line [high point to low point along a line perpendicular to the contours], and that has detrimental effect on an applicant, that must be reviewed separately. He further noted that as possible exceptions come up, the Council could review them as a separate item. Mayor Pro Tempore Cahill and Council member Durst agreed.

Mayor Pro Tempore Cahill stated that in the definition of creek there is a description of permanent or natural source and he did not understand it and desired further review in that regard. Senior Planner Semonian agreed. Mayor Pro Tempore Cahill also noticed that changing the driveway gates to be open to passage of light and 50% transparent has been a policy, but not always enforced. There have been occasions where gates have been granted that are solid on Sir Francis Drake Boulevard. He believed it should be reviewed on a case-by-case basis and not codified. Senior Planner Semonian agreed to clarify that there is some sort of an exception on Sir Francis Drake. Staff agreed to come back and address at staff level.

Mayor Hunter asked for a motion.

Council member Durst moved and Mayor Pro Tempore Cahill seconded, to recommend as sitting as Planning Commission that Council, sitting as a Council next month, consider the introduction of the Ordinance with modifications. Motion carried unanimously.

22. **81 Sir Francis Drake Boulevard, Variance and Design Review No. I673**
Harold and Carol Sherley, 81 Sir Francis Drake Boulevard, A.P. No. 73-052-32, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum). Demolition permit to allow demolition of the existing 2,370 square foot residence. Variance and design review to allow construction of a new 2,288 square foot residence and 260 square foot, attached, one-car garage with a maximum ridge height of 28.75 feet. Variances are requested to locate the residence within the north side yard setback (15 feet required, 3 feet proposed) and south side yard setback (15 feet required, 8.5 feet proposed) and a patio within the rear yard setback (40 feet required, 21 feet proposed). Design review is also requested for a 5.5-foot tall solid wood gate and stucco wall and 6 foot tall columns at the front property line. The residence includes a 250 square foot deck, elevated 5 feet above grade, and a second floor balcony on the rear elevation and within the side yard setbacks (15 feet required, 8 feet proposed).

Lot area	6,821 square feet
Existing Floor Area Ratio	34.7%
Proposed Floor Area Ratio	37.4% (20% permitted)
Existing Lot Coverage	30.5%
Proposed Lot Coverage	29.5% (20% permitted)

The existing residence is nonconforming in floor area, lot coverage, side yard setbacks and covered parking (one required).

Senior Planner Semonian summarized the staff report and recommended that the Council listen to the applicant's description of modifications made to the project in response to the neighbor's concerns and inform staff on the Council's direction.

Jared Polsky, architect, thanked staff for a very reasoned and detailed staff report. He explained that they are trying to fit a small workable house on this lot. They want to meet the Town's requirements to have a covered garage. Last week they received the staff report and learned that neighbors to the south were concerned that the proposed house moved three feet closer to their home. It was suggested to move the house back toward the north property line and he did not believe that is appropriate. They decided to keep the house three feet from the north property line and squeeze the house to make it narrower. They tweaked the elevations. They squeezed the house and made it 90 feet smaller with a garage. The proposed house is 170 sq. ft. smaller than the existing house. With a house that is so tight it is difficult to cut 90 sq. ft. They believe it is a pleasing design. Also, having a covered garage is good to achieve. He further provided material and color samples to the Council for their consideration.

Mayor Hunter discussed the new elevation and asked if it looks essentially the same. Architect Polsky noted that it is the same elevation, but two inches lower. The height of the house is lower, but the appearance looks the same.

Mayor Hunter opened the public hearing on this item.

Patricia Bruvry, Sir Francis Drake Blvd. resident, explained that through the survey she discovered that the Sherley's fence is way into her property and she wanted to move the fence onto the property line. The house is very close and she objected to moving the house any closer to her. The fence is 18 feet into her property line. She has discussed a proposal to allow the Sherley's to permanently use that part of the property and trade it for extinguishing the right-of-way access across her site. She has had insufficient time to consult with a real estate agent regarding the proposal. She is not sure what to do at this point.

Hal Sherley, applicant, explained the property line situation and that they do not have a recorded easement to cross the Town lot, so he had to withdraw the proposal for improving the front and the only legal way out is across the easement across Ms. Bruvry's property. He discussed the proposal to trade the driveway easement area for the landscaped area. Mayor Hunter noted that this must be worked out between private property owners.

Mark Fritts, Sir Francis Drake Blvd. resident, explained that they are working to mitigate issues around moving the house closer to their property. He supported what was proposed as of yesterday. He also supported the volume being proposed.

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

Council Member Durst is glad that this house is being rebuilt. The addition of the garage and a better fit on the lot of the new proposed structure would warrant being able to have the additional 90 sq. ft. Also, they are putting in an elevator, so they can stay in their home comfortably. The additional 90 sq. ft. she had no objection and could make the findings. It adds to a better design to have a garage and better living to accommodate the elevator. She wanted to see horizontal elements and some of the bulk and mass rethought and consider stucco. She further believed it is a handsome building.

Mayor Pro Tempore Cahill agreed with the square-footage. If they are not going to allow people under circumstances such as this to exceed that it is a disincentive for people to go through the effort of adding a beautiful new home to Ross because of the requirement of the garage. In this case, it is warranted and findings can be made for the additional square-footage. He finds the design very handsome. He particularly likes that it is not like every other house on the block. He further believed this proposal is a marvelous solution architecturally.

Mayor Hunter loves the design and a great replacement and a credit to the housing stock in Town. He agreed the findings could be made for the additional square feet, which is deminimis in his view.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to continue the matter to allow the applicant to submit the revised plans presented at the hearing for staff, neighbor and Council review. Motion carried unanimously.

23. Upper Toyon, Variance, Hillside Lot Hazard Zone 3 Permit, Lot Line Adjustment, Parcel Map, and Conditional Exception to the Subdivision Regulations No. 1672

Harvey W. Glasser, owner of Assessor's Parcels 12-081-07, 12-121-03, 12-121-21 and 72-031-29 (all vacant) and 72-031-45 (121 Winding Way); Douglas Abrams, owner of Assessor's Parcel 72-031-27 (18 Canyon Road); and Mike Guelfi, owner of Assessor's Parcels 72-051-15 and 72-051-17 and 72-051-21 (341 Upper Toyon Drive). The lots are zoned R-1:B-5A (Single Family Residential, Five Acre Minimum Lot Size). A hillside lot hazard zone 3 permit and parcel map to allow the merger and re-subdivision of four vacant lots into three lots, one of which would be restricted from development. Variance and conditional exceptions to zoning and subdivision regulations are requested to allow access to the resulting lots from a private road (public street frontage is required) and to be less than 5 acres in size. After the lot line adjustment described below, Parcel 1 would have a net lot area of approximately 4.0 acres, Parcel 2 would have a net lot area of 4.0 acres, and Parcel 3 (the undevelopable parcel) would

have a net lot area of approximately 1.5 acres). The existing lots are nonconforming in size and do not have public street frontage.

Lot line adjustment to allow the transfer of 6,384 square feet from 121 Winding Way to 341 Upper Toyon Road and 7,428 square feet from vacant Assessor's Parcel 012-121-21 (a portion of Lot 1 on the parcel map application) to 341 Upper Toyon Road. The net area of 121 Winding Way would decrease from 4.2 acres to 4.0 acres. The net area of the vacant lot will decrease from 1.5 acres to 1.3 acres. The net area of 341 Upper Toyon Road would increase from 2.1 acres to 2.4 acres. A variance and conditional exception to the zoning and subdivision regulations is requested to allow 121 Winding and the vacant lot to further decrease below the 5-acre minimum lot size.

Lot line adjustment to allow the transfer of 35,563 square feet from vacant Assessor's Parcel 072-031-29 (a portion of Lot 2 on the parcel map application) to 18 Canyon Road. The net area of the vacant lot would increase, and the net area of 18 Canyon Road would not change, since the area transferred is encumbered with a roadway and utility easement.

No construction development plans have been submitted for any of the lots.

Senior Planner Semonian summarized the staff report and recommended that the Council approve the application subject to the findings and conditions.

Mayor Hunter discussed the letter of the applicant objecting to Finding No. 4. Senior Planner Semonian noted that the applicant is giving up development rights, but staff is still uncomfortable with the applicant's calculation of slope and specifying any maximum floor area numbers for the sites without development plans.

Mayor Hunter opened the public hearing on this item.

Ken Wachtel, attorney, representing 341 Upper Toyon, discussed Condition No. 5 that area transferred to increase the size of 341 Upper Toyon and thinks staff is willing to agree that space from 129 Winding Way could count to the FAR for 341 Upper Toyon, but the area from the vacant lot would not. Senior Planner Semonian recommended that it be included in the floor area and noted that any addition using that area would be subject to design review. Staff was opposed to the applicant giving away area in excess of three acres for others to use towards floor area. Mayor Pro Tempore Cahill noted that the net effect is zero.

Douglas Abrams, Canyon Road resident, discussed development rights of transfer that would not increase FAR at Canyon lot and noted that it is tight now and it is all an easement so it would not count toward FAR. The easement agreement may be extinguished in the future, allowing this area to be counted towards floor area. Therefore, staff was not in favor of allowing this transferred area to be counted towards the lot size for determining floor area. Mr. Abrams was concerned with the calculation of slope and believed there should be some thorough analysis before changing the definition. Mayor Hunter noted that it will be revisited before they make modifications.

Bill Cheek, representing Mr. Glasser, did not object to staff findings of the merger of Parcel No. 3 with Parcel No 1. His concern in giving up development rights with this merger

proposal. As it stands, he tried to accommodate the Council's request that they do not set an FAR limit. This is an irregular lot. He set it up so he could have a floor area calculation that he was comfortable with based on his interpretation of the slope definition. He will lose development rights using staff's calculation of slope measured on a line perpendicular to the contours. He asked about the slope in the building envelope and staff agreed the slope should be considered, but what is included in the staff report is the most restricted. He is trying to make sure he will not find himself next month with a new definition that has these rights restricted more and more. He was under the impression to set it up this way based on current definition, but now with the new definition of slope it all changes. He asked that the Council allow him to go by the current definition of slope of lowest to highest. If he did not receive his request, he might go back to the four lots and not file the map. Mayor Hunter explained that will occur when the developer of that land comes in with a project and is able to make the case.

Mr. Cheek stated that if the definition of slope gives guidelines of 9,150 sq. ft. then one will start with that design, if it gives 5,000 sq. ft. then one will start with that design and that is a big difference.

Mayor Hunter suggested a continuance to have the Town Engineer calculate the slope. Mr. Cheek did not think slope should be part of this discussion. The Council had no problem with the lot line adjustment.

Mayor Hunter noted that the Mr. Cheek can pay the fee and have the Town Engineer calculate the slope to determine whether or not Mr. Cheek wants to file the map.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Durst seconded, to approve the lot line adjustments and parcel map to allow the merger and re-subdivision of four vacant lots into two lots with the following findings and conditions.

The lot line adjustment and parcel map projects are approved subject to the following conditions:

1. The Town approves the lot line adjustments proposed and the merger and re-subdivision proposed by the parcel map except as otherwise provided in these conditions.
2. Parcel 3 is not approved and shall be combined with Parcel 1. The contours on the northwest facing area of the new Parcel 1, generally the area of proposed Parcel 3, will not be used in determining the slope of the lot.
3. Final documents shall be submitted to the town planner for review for consistency with this approval before they are recorded.
4. The applicant shall comply with all requirements of the City of San Rafael associated with construction of the roadway on the easterly portion of the lots currently known as APN 12-121-03 and APN 12-121-21.

5. The area transferred from APN 012-121-22 to increase the size of the 341 Upper Toyon lot and the area transferred to increase the size of the 18 Canyon Road lot shall not be included to calculate net lot area to determine maximum floor area for the sites.
 6. Development of the lots shall be subject to development regulations in the Town of Ross, including design review and the hillside lot ordinance. If all other hillside guidelines and Town regulations are met, the town may consider a guideline floor area maximum above what is specified in the zoning ordinance based on the reduced development potential that will result from the reduction from four lots to two lots.
 7. The building envelopes specified on the parcel map may be modified by Town Council when development projects are approved for the sites if necessary to reduce environmental and aesthetic impacts.
 8. All requirements of the utility companies and Town Public Safety, Building and Public Works Departments shall be met prior to recordation of the Final Parcel Map.
 9. The applicants shall provide the planning department with a copy of the recorded documents by December 13, 2008. Failure to record the lot line adjustments or parcel map by December 13, 2008 shall cause the approval to lapse without further notice.
 10. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.
24. Correspondence- None
25. Other Business- None
26. Adjournment
By order of Mayor Hunter, the meeting adjourned at 10:03 p.m.

R. Scot Hunter, Mayor

ATTEST:

Gary Broad, Town Manager