

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JANUARY 13, 2011

1. 5:30 p.m. Commencement.

Present: Mayor Chris Martin; Mayor Pro Tempore Carla Small; Council Member Rupert Russell; Council Member Rick Strauss; and Town Attorney Hadden Roth

2. Posting of agenda.

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

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

4. Closed Session:

Council Member Russell recused himself from Closed Session Item a.

- a. Conference with Legal Counsel – Pending litigation, pursuant to Government Code Section 54956.9(a), Bourhis, et al, plaintiffs v Lord, et al, defendants, Case No. CV060796 Marin Superior Court, complaints filed representing multiple properties related to the December 31, 2005 flood.

Council Member Russell reconvened his position on the Town Council.

- b. Conference with Legal Counsel – Pending litigation, pursuant to Government Code Section 54956.9(a), Allstate Insurance, plaintiffs v. Town of Ross, defendant, Case No. CIV1002272, County of Marin Civil Division.

- c. Personnel Matter, Government Code Section 54957(b.)(1), annual evaluation of the Town Manager.

5. 6:30 P.M. Open Session. Council will return to open session and announce actions taken, if any. The Council approved arbitration in regard to Closed Session Item b and awarded in the amount of \$3,423.

6. Minutes –December 9th & 13th

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to approve the minutes of the Ross Town Council meeting on December 9, 2010 as amended. Motion carried unanimously. Hunter absent.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to approve the minutes of the Ross Town Council meeting on December 13, 2010 as amended. Motion carried unanimously. Hunter absent.

7. Demands.

The demands were met.

8. Town Council consideration/adoption of Resolution No. 1730 commending Public Works Director/Building Official Mel Jarjoura upon his retirement.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to adopt Resolution No. 1730, commending Public Works Director/Building Official Mel Jarjoura upon his retirement. Motion carried unanimously. Hunter absent.

The Council adopted a resolution commending Public Works Director and Building Official Mel Jarjoura upon his retirement. Mr. Jarjoura has been with the Town of Ross since 1999, when he was hired as the Town's building inspector. He was promoted to Acting Director of Public Works in 2001 and promoted again the following year to Director of Public Works and Building Official.

During his tenure, Mr. Jarjoura oversaw a number of public works projects, including construction of new pathways and numerous roadway and drainage improvements. Perhaps his crowning achievement was the replacement of the Lagunitas Road Bridge, for which he secured federal financing.

The resolution states, "*Mel Jarjoura will be remembered for his honesty, integrity, commitment to the Town, availability to the public, willingness to listen to residents and address their concerns, and his efforts to always achieve harmony, all of which will be sorely missed.*" Mr. Jarjoura received a standing ovation, as well as a framed resolution and parting gifts from the Town and RPOA.

9. **Employee Appreciation Program and presentation of awards to Town employees Police Officer Kevin McKendry, Police Officer Danny Moy and Administrative Manager Linda Lopez.**

The Council recognized three employees for their years of dedicated service to the Town. Police Officer Kevin McKendry, Police Officer Danny Moy, and Administrative Manager Linda Lopez received awards and a small gift of appreciation. Each has worked for the Town for five years.

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

11. **Report from Mayor.**

Mayor Martin reported that, as many of are aware, Town Council meetings can continue until the early morning hours. It is not the Council's intention to wear the public down. It is Council's objective to adjourn these meetings at a reasonable hour. Effective tonight, the Mayor will enforce the three-minute rule for each speaker, and in a reasonable manner facilitate the progress of each agenda item, avoiding protracted discussion unless a particular issue clearly merits such deliberation.

Mayor Martin acknowledged and commended Council Member Russell for chairing the first Brown Act-compliant Finance Committee meeting in the Town's recent history. The Finance Committee, along with the Public Works Committee which meets monthly, are both opportunities for Town residents, businesses, and the public-at-large to access and participate in publicly-noticed open meetings held during accessible hours. The Town of Ross has two other standing committees, General Government and Public Safety, which will also begin to have regular public meetings in compliance with the Brown Act. When governmental meetings are open to the public, and when rules and decisions are open to discussion, they accomplish greater transparency as well as develop better-informed citizens. Initial review of issues at the committee level will relieve the burden on Council

meetings and assist with adjourning these meetings at a reasonable hour.

Next week, Mayor Pro Tempore Small, Council Member Russell, and Mayor Martin are going to a boot camp for elected officials in Sacramento. The League of California Cities, an association of cities and towns that work together to influence better public policy decisions, annually organizes a New Mayors and Council Members Academy. The Academy is an opportunity to meet other elected officials around the State and also to learn about the duties and responsibilities of being an elected representative. Discussion will include an examination of the State's current fiscal meltdown and financial oversight duties.

There are three openings on the Advisory Design Review (ADR) Group. Applications are available on the Town's website and are due on January 15th. The Town is seeking two residents with professional design backgrounds and one resident that does not need design experience.

12. Report from Committee Heads.

Public Works - Council member Small

- Public Works Committee Update

Mayor Pro Tempore Small reported that at the January 11th Public Works Committee meeting, Town Hydrologist Matt Smeltzer discussed results from his preliminary study for reducing stormwater street inundation and overflow on Bolinas Avenue. He reviewed recommendations for upper and lower Bolinas Avenue and some possible improvements to Fernhill Creek. The final report will be available for public review after January 25th, and Town Hydrologist Smeltzer will make a presentation at the February Council meeting.

The Lagunitas Road Bridge is scheduled to be closed Tuesday and Wednesday, January 18th and 19th, for the placement of the electroliers, sand blasting of the bridge decking, and thermoplastic striping of the roadway. Raising of the rose bush and planting of the Magnolia trees should be completed within the week.

The final punch list items are being completed on the Sir Francis Drake Boulevard pedestrian pathway project. Forty Valley Oaks will be planted along the roadway within the week. Thanks to the Street Tree Committee for notifying residents of the tree planting.

Project Planner Christine O'Rourke gave a presentation of plans drawn up for Frederick Allen Park by Sandy Reed from ZAC Landscape Architects. The work needs to be completed by March 31, 2011, in order to capture \$226,340 in available State park funds. The plan will be posted on the website.

Mayor Pro Tempore Carla Small will send a letter to Ann Gors, CEO of Kentfield Rehabilitation Hospital and Specialty Hospital asking their staff and guests to not smoke in Allen Park. The Town's ordinance prohibits smoking on Town-owned properties and parks. If necessary, the Town will post a "no smoking" sign and begin issuing tickets to violators.

- Director of Public Works Recruitment Update
Finance - Council member Russell

Council Member Russell reported that on December 17th, 2010, the Finance Committee held its first public meeting. Although there was limited attendance from residents, the Committee worked its way through a full agenda in an hour and a half. The Committee

reviewed the Town's budget and financials, including Lagunitas Road Bridge project costs and reimbursements. No rude surprises were reported and, most importantly, the Town's property and parcel tax revenues came in a little ahead of budget. The Committee also reviewed and made recommendations for revisions to the current time limits for construction completion and the Building Department's process for determining building permit project valuations and fees. The Committee is expected to review a proposed revised ordinance for construction completion time limits at its next public meeting, as well as a new draft ordinance for establishing building permit project valuations and permit fees. This will assure residents the Town is providing a consistent and transparent approach to these issues. The next Committee meeting will occur in February on a date to be scheduled.

- Finance Committee Update
Public Safety -Council member Hunter
- Police Chief Recruitment Update

Town Manager Gary Broad reported on behalf of Council Member Hunter that the Town has made a job offer to one of the previous finalists for the public works director position. The candidate has met with Mayor Martin, Council Member Strauss, and a number of staff, and all feel he will make an excellent fit for the Town. Staff will notify the community as soon as the Town receives a signed acceptance. Staff explained that the police chief recruitment takes longer due to the extended background and medical process. Staff further believes this is an exciting time for the community and staff to have two new department heads in place.

13. Report from Ross Property Owners Association.

Cate Babcock, RPOA, discussed streetlight outage and requested that the police during their rounds recognize at night what lights are out. They also requested that the exact process be outlined in *The Morning After* so residents can be informed in regard to the appropriate steps.

14. Flood Control Report.

Mayor Martin reported that the first draft of the Stetson Feasibility Study will be released this month. The County of Marin has been having ongoing discussions with the Army Corps of Engineers concerning Unit 4, which is the Army Corps project within the Town of Ross following downstream of Corte Madera Creek. The County is trying to get the Army Corps to extend the boundaries on their current study to actually go up stream from Lagunitas Bridge. Bank stabilization and channel capacity are the issues and the County and Army Corps are trying to synchronize these improvements.

15. Consent Agenda.

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

a. 6 Hill Road, Extension of Time for Variance, Design Review and Demolition Permit No. 1769

Matt and Courtney Seashols, 6 Hill Road, A.P. No. 073-172-05, R-1:B-10 (Single Family Residence, 10,000 sq. ft. min. lot size), Medium Low Density (3-6 units per acre). Request for a one-year time extension to February 11, 2012, for the project approved February 11, 2010, for a variance, design review and demolition permit for a significant remodel and small addition to an existing residence. The project involves modifications to each elevation of the residence and a change to the roofline, which

would increase the maximum ridge height by 5 feet. A covered entry is proposed within the front yard setback (25 feet required, 6 feet proposed). The project also includes modifications to the roof of the garage, located within required setbacks (25 feet required, 0 feet existing and proposed), which would increase the maximum ridge height by 3 feet. The applicants propose a 217 square foot addition to the north side of the residence and new second floor decks on the south elevation. The landscape plan includes approximately 185 linear feet of new, terraced, retaining walls, ranging from 1 to 5.5 feet in height. The applicants propose to create a new lawn area within the south side yard and modify existing terraces within the southeast corner of the site, within required setbacks. The site grading includes 76 cubic yards of cut and 123 cubic yards of fill.

Lot area	12,731 sq. ft.	
Existing Floor Area	23.5%	
Approved Floor Area	25.3%	(20% permitted)
Existing Lot Coverage	19.6%	
Approved Lot Coverage	21.8%	(20% permitted)

The existing residence, garage and patios are nonconforming in setbacks.

Mayor Martin asked for a motion.

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

6 Hill Road Conditions of Approval:

Motion to approve the requested time extension with the findings and conditions in the original approval dated February 10, 2010.

- b. Town Council adoption of Ordinance No. 622 to amend the hillside lot development regulations. The amendment would add language to the Hillside Lot Ordinance to clarify the intent of the Council that the hillside lot floor area ratio formula applies only to lots with an average slope of 30% or greater.

Mayor Martin asked for a motion.

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

End of Consent agenda.

- 16. Presentation from Marin Sanitary Service (MSS) on: a) MSS and Marin County update on achieving goals of Zero Waste; and b) presentation on the proposed MSS Residential Food Waste Composting Program. Town Council consideration/action on Resolution No. 1731 granting Marin Sanitary Service a 6.5% rate increase for 2011, effective January 1, 2011 and Town Council

consideration of implementation of a new Residential Food Waste Collection Service with a cost of 4.39% of current rates.

Patty Garbarino, MSS President, covered trends in the community industry of solid waste management, what is coming forward in terms of new development in that area, and a projection developed with residents of their service area in the County of Marin of a world of zero waste. They have been serving Ross since 1948. MSS has a worldwide reputation and record of innovation in the solid waste industry. MSS was the first countywide curbside recycling program in the nation. MSS was the first materials recovery facility for mixed waste and container collection of residential yard waste as well as spilt cart collection of curbside recyclables. Their success is made possible by partnering with Marin's environmental movement. Together, as advocates, their work has resulted in avoided landfill costs and a cleaner environment. MSS has achieved one of the highest diversion rates in the United States, but tons of solid waste generation has steadily increased over the last decade.

MSS President Garbarino believed enhanced commercial recycling could potentially increase overall diversion by 6%. Since 2007, the company has operated a commercial food waste composting pilot program at the MSS facility. Recently, MSS presented and participated in webinars presented by League of California Cities and IReuse to review the goals of California. The draft ordinance contains many sections that are very similar in scope to MSS, which is increasing recycling and diversion rates from commercial customers. MSS is working continuously with local businesses and performing onsite waste audits of each customer's waste stream, at least once per year, with the goal of increasing recycling collection and diversion. A pilot program allowing residential customers to include food waste with yard waste was rolled out in early 2010 to Ross Valley, Lucas Valley and Fairfax. Composting residential food waste and green waste using state-of-the-art technology called, "Engineered Compost Systems (ECS) technology." The only permitted site with available capacity to compost food and green waste is located in Zamora, Ca. In order to expand food waste and green waste composting program, yard waste services must be converted from biweekly to weekly, as California regulations mandate. The expansion would cost 1.5 million. Challenges for food waste composting programs are permitting and contamination. Good waste organisms are the second largest category of municipal solid waste currently sent to landfills. The primary goal of food waste to energy is diversion of organic waste from the landfill. Commercial food waste would be collected and taken to the transfer station. Construction would take place at the end of this year and it would take approximately 13 weeks. MSS has exceeded the State requirements by upgrading its entire fleet in advance of the December 21, 2010 deadline. CARB (*California Air Resource Board*) has recognized MSS for early compliance with inquiries to reduce public exposures to harmful diesel smoke. MSS took early action by retiring trucks earlier than usual, replacing them with the cleanest diesel engines and upgrading more than 45 trucks. MSS removed 134 truck hours from the road without any impact to quality of service. New programs are enhanced with commercial and multifamily recycling, increased diversion, residential food composting and carpet recycling. She further noted that the \$2.64 increase in rate includes food waste composting. She further noted "it is not only the farmer who is outstanding in his field."

Mayor Pro Tempore Small pointed out that since the green can is picked up every other week, residents are allowed to put out additional cans, and asked if that will continue. MSS President Garbarino responded in the affirmative.

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Council Member Russell asked if this would occur over a number of years in regard to increases. MSS President Garbarino could not speak to next year. They are just below the median rates charged. Several are interested in backyard composting. It is not blessed by the health department, when done outdoors in an urban area, it enhances greenhouse gas production, so together as a community is optimal.

Council Member Strauss asked about feasibility because he is not sure he can fill the can every week. MSS President Garbarino noted that other communities, including Tiburon, Belvedere and Mill Valley have already instituted curbside food waste collection and composting. The pilot program has been very favorable. She further noted that with food waste, it is a good idea to use the can rather than black bags.

Mayor Pro Tempore Small noted that many residents have wanted weekly green can pick up for a long time. The food waste collection program would allow additional yard waste removal while providing environmental benefits. The Town's recently approved Climate Action Plan calculated that removing all of the Town's food waste from the landfill would eliminate 138 metric tons of greenhouse gasses each year and reduce community emissions by 0.8%.

Mayor Martin believed this is an outstanding company and noted appreciation. In terms of the rate change, it is almost an 11% increase and expressed concern for senior rates. He then desired an explanation in regard to the senior minimum rate charge and the size of that container. MSS President Garbarino noted that no one has applied. The container for the senior program is a 32-gallon container. The current rate is \$19 per month, which will increase by 10%. The rate increase is across the board. Mayor Martin asked if other cities approved the new rates or is it still under discussion. MSS President Garbarino noted that the second San Rafael hearing is scheduled in February. San Anselmo and Fairfax are not within the franchise group. Next week they will make a presentation to Larkspur and the County of Marin is in early February.

Mayor Martin noted that other jurisdictions are trying to develop ideas. Sustainable San Rafael desired twice per month pick up. MSS President Garbarino is meeting with Jim from Sustainable San Rafael who is a proponent of backyard composting, but in urban areas it increases rate production. By heightened awareness in general with a comprehensive program it helps those to participate.

Mayor Martin opened the public hearing on this item.

Cate Babcock, Ross resident, desired the current status in regard to recycling Styrofoam. MSS President Garbarino noted that recycling styrofoam is not happening. She advised everyone to take all the peanuts back to the FedEx Store.

Anne Hickey, Ross resident, discussed the senior program and asked why it is not offered to the rest. MSS President Garbarino noted it is a grandfathered program and not legal anymore.

Loraine Berry, Ames Avenue resident, has been backyard composting for several years and desired weekly pick up of green waste. She has more leaves that she can handle. If she went for the senior program would that mean that her pick up would be every other week for the

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green and residential food waste also. MSS President Garbarino noted just the black can. The senior program would be the 32-gallon can. The 20-gallon looks like the 32 with a false bottom. She would have the green waste picked up every week. MSS President Garbarino agreed to check the plan and report back to Ms. Berry. Ms. Berry felt it should be done, but at a minimum cost to residents.

Council Member Strauss asked if Empire Waste Management compares. MSS President Garbarino stated Empire Waste Management has lower rates, but the company does not pay union wages or benefits. She believed it is comparing apples to oranges.

Council Member Russell stated the 4.39% is to add food waste component, and asked if there is a specific rationale for the 6.9%. MSS President Garbarino indicated that it covers the landfill fees and fuel. She further noted that it is the annual rate adjustment.

Council Member Strauss believed they are tied into a guaranteed profit margin. MSS President Garbarino explained that they have a projected profit, which they have not seen in four years.

Joan Irvin, Marin Food Scrape Recycling Taskforce, is working with districts on food scrape recycling. She strongly supports residential food scrape composting to reach zero waste goals. In addition to apple peels and coffee grounds, now residents can add chicken bones, meat scraps, food-soiled paper, and paper towels. Everyone must realize there is an educational process, just the same when separating out recyclables. They are ready to help provide education and seminars. They will supplement public educational activities that occur with MSS. Alameda has been doing it for over seven years and San Francisco has been doing it for over five years. She strongly supported this program and hoped Council will vote in favor.

Lynn Langford, Bolinas Avenue resident, pointed out that once she started composting food scrapes, she noticed that the size of her garbage went from 64 to 32-gallons, which saves money per month. She reduced the volume of her garbage, so in her mind it is a net positive all the way around. During the rainy season she cannot get the black can to reach 140 degrees, so what is being proposed is a much more effective program, so she strongly supports the process.

Mayor Pro Tempore Small added that when driving up and down Lagunitas on trash day, several have extra bags that cannot fit into their can, which cost an extra \$5 per bag. This type of program, especially that allows pizza boxes and paper towels, she did not foresee ever needing that additional bag. She is paying more for the extra bags than for this increase. Also, the senior program could save many and agreed that staff should include information in *The Morning After* to inform residents.

Marva Sheehan, HF&H Consultants, reviewed MSS's rate application for a 9.55% solid waste rate increase and determined that a 6.5% increase is appropriate. In the report, they project an operating ratio that is based on the amount of cost and total compensation and then determine what rates need to be in order to generate that compensation. If the rates do not generate that revenue, it comes right out of their profit numbers. The 2.11% is a result of the fact that revenues have declined over the past few years. In setting rates for 2011, they

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must get back to the base. They are not making up for it, just setting rates for 2011, which is a projected profit.

Council Member Strauss stated if they encourage residents to go to a smaller can there will be a shortfall. Consultant Sheehan explained that when trucks go out to pick up the smaller or larger cans, the cost is the same, and so it will stay constant. They are looking at different types of rate setting, since the method used for years is not working because several are encouraged to reduce. Also, they are working with other jurisdictions to develop a better rate setting process.

Council Member Strauss expressed concern for the increase in regular trash collection rates. MSS President Garbarino explained that the increased cost includes employee benefits, fuel, and landfill disposal rates were primarily responsible for the proposed rate increase. Management has not seen an increase in any salaries in a very long time.

Mayor Pro Tempore Small discussed the goal of increasing green waste to then pick up the black cans every other week, and if that occurred, would residents get a decrease. MSS President Garbarino responded in the affirmative. She added that it is a hope and the decrease of 134 hours was a savings on the rate as well.

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 Strauss finds the rate increase very surprising at this point in time.

Mayor Pro Tempore Small asked if they wait until February to make a determination, would it affect the start date of March 1st. MSS President Garbarino believed it would not impact the start date. They anticipate ordering the trucks.

Mayor Martin appreciated the program, service as well as the company. Discussions are occurring with other jurisdictions to develop ideas to reduce rates, so he would prefer to hold this over one month to see if anything develops. He further believed a 10.89% increase is very significant for residents.

Council Member Strauss asked the number of small cans currently in Ross. MSS President Garbarino stated in terms of the 32-gallon can, 339 residents out of the 800 homes.

Mayor Pro Tempore Small believed there is a benefit to this program. Since there is no delay to begin in March, and it will allow more public comment, she agreed to continue the matter to the February Town Council meeting.

Council Member Russell asked if they have any choice in regard to the 6.5% increase. MSS President Garbarino imagined the Town does, but she must review the contract and agreed to report back findings next month.

The Council agreed to continue discussion of a MSS rate increase of 6.5% and a proposed residential food waste collection program that would increase rates by an additional 4.39%.

If approved, residential food waste would be collected with yard waste, and green cans

would be picked up weekly instead of bi-weekly. MSS President Garbarino explained that health laws require weekly pick up of food waste. The food waste would be transported to a facility in Zamora, where it would be composted with yard waste and food-soiled paper (e.g., *pizza boxes and paper towels*).

Although rates would increase, residents could trim their waste collection costs by switching to smaller cans. The diversion of food waste, which typically takes up about 10-15% of garbage can space, might make a smaller can more feasible. Seniors could also take advantage of a special program that allows regular trash in a 32-gallon can to be picked up every other week at a reduced rate.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Russell seconded, to continue Resolution No. 1731, granting Marin Sanitary Service a 6.5% rate increase for 2011, effective January 1, 2011 and Town Council consideration of implementation of a new Residential Food Waste Collection Service with a cost of 4.39% of current rates to the February Town Council meeting. Motion carried unanimously. Hunter absent.

17. Follow-up discussion/action related to PG&E Smart Meter deployment in Ross and discussion of preparing an urgency ordinance establishing a moratorium on Smart Meter deployment in Ross

Mayor Martin reported that in December, the Council held a public hearing about the installation of SmartMeters in the Town of Ross. Many residents expressed concern about the health, personal intrusion, and choice. The Town sent a letter to PG&E CEO and the Public Utilities Presidents requesting a ceasing of the installations until the final report on the safety of the devices is completed by the California Council of Science and Technology. The Town has not received a response to that letter requesting a suspension of the deployment of SmartMeters in Ross until California Council on Science and Technology study on the safety of meters was completed. Several other cities, towns and counties, including Marin, have decided to address this lack of action or response by PG&E and PUC by adopting urgency ordinances imposing moratoriums on further installation of SmartMeters until issues have been adequately addressed. The draft of that report stated that PG&E SmartMeter electromagnetic field (EMF) emissions are below emissions from many household appliances. However, the report could not determine if the accumulation of EMF emissions was detrimental to long-term health. Mayor Martin also noted that PG&E plans to relocate a wireless transmitter originally proposed for 2 Lagunitas Road, across from the Ross School.

Council Member Strauss recommended adding language to replace meters that have already been installed with the old style meter. Mayor Pro Tempore Small concurred. PG&E is the first, so it will go down the road with many different entities. It is important, even if it is ceremonial, maybe other companies will think twice.

Mayor Martin pointed out that there is no health data on accumulation of radio frequency waves along with radiation, at a future date the effects on bodies and animals may become very apparent. Years after asbestos was introduced, many were not cognizant of the long-term impact and the same is true with tobacco and X-rays. He is concerned about the lack of

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response, which is due to the way State legislatures began to regulate public utilities by taking it out of local jurisdictions and giving it to a State entity that has not regulated it thoroughly enough, which has become ever apparent in the last few months.

Mayor Martin opened the public hearing on this item.

Peter Nelson, Circle Drive resident, only placed a notice on his electrical meter as discussed last meeting, and PG&E installed a SmartMeter on his gas meter since there was no note. Mayor Martin heard complaints as well as in regard to access gates being left opened and pets getting out.

Senior Planner Elise Semonian pointed out that the presentation the Council had on SmartMeters indicated that the meters themselves are not generating any transmission since technology is not in place and asked when that will occur. PG&E representative explained that after full deployment in the County, then four months after that is when the network is applied.

Mayor Pro Tempore Small stated it is interesting, if the meters are not emitting anything, then why are sensor lights going on and off throughout the day.

Loraine Berry, Ames Avenue resident, had a SmartMeter installed. She noted that she is a “*science groupie*” and until the scientific evidence is present, she errs on the side of caution. The accumulative effect is a concern such as with plastics in food. They have been experimenting to see long-range effects and that is not the way to reform good science. She is not sure where she stands since there is no data available. She further noted that her motion sensor has been going on and off during the day, so it may be the SmartMeter.

Bill Nicholson, Garden Road resident, pointed out that there are multiple kinds of SmartMeters with very different radio frequencies after reading the article in the IJ. He believed this report being discussed would address the issues.

Mr. Nelson asked if the SmartMeter that is installed is inactive, does it have within it the radio frequency or is there a separate device that must be added at a later date. PG&E representative responded that to her knowledge no radio frequencies are being emitted at this point.

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 Russell believed the reality is that they have no choice but to continue to allow PG&E to install these SmartMeters, but the question in his mind is whether PG&E will ultimately turn the system on and collect information and produce radio waves. He has an open mind in regard to SmartMeters, but several residents are concerned and interested, so he agreed to continue the matter another month.

Mayor Pro Tempore Small recommended that the Town prepare an ordinance to be introduced at the February Town Council meeting. It may bring out additional discussion from residents. Town Attorney Hadden Roth noted if it is an urgency, it could be adopted at the same meeting as introduction.

Mayor Martin asked if Ross has a franchise agreement with PG&E. PG&E representative agreed to investigate and report back findings.

The Council agreed to prepare an urgency ordinance establishing a moratorium on SmartMeter deployment in Ross. The ordinance will be modeled off the County of Marin's recently approved ordinance and would be considered for adoption at the February Council meeting.

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to proceed with the urgency ordinance imposing a temporary moratorium on installation of SmartMeters and related equipment to be introduced and possibly adopted at the Town Council February meeting. Motion carried unanimously. Hunter absent.

Council Member Russell wanted the ordinance to address residences that already have SmartMeters installed because his concern is when the system is turned on.

Council Member Strauss and Mayor Pro Tempore Small agreed to resend the first motion in order to include the suggestion of Council Member Russell to remove the meters that have already been installed and replace with the old style meter, which to their knowledge are no longer available. Mayor Martin felt if they alter the motion, they would not have the same solidarity with the County of Marin. He added that the Town is in a position that virtually any action taken is probably in effective. PG&E has authority granted by the State of California to pretty much do what they want, so he preferred to be consistent with other jurisdictions to show that they mirror each other.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to re-establish the original motion, to proceed with the urgency ordinance imposing a temporary moratorium on installation of SmartMeters and related equipment to be introduced and possibly adopted at the February Town Council meeting. Motion carried unanimously. Hunter absent.

Mayor Pro Tempore Small asked the PG&E representative to investigate the unusually high number of streetlight bulb outages. The Council asked residents to please report outages to Public Works Department Secretary Simone Jamotte at 435-1453 x106 or sjamotte@townofross.org.

The Council asked residents to provide a description of the street light location and the pole number, which is located on the pole and ends with a capital "K." The Town can then inform PG&E of the street light bulbs that need to be replaced.

Town Attorney Hadden Roth left the Town Council meeting at 8:32 p.m.

18. No Action Items:

a. Council correspondence received

- Second request related to paying for the fence adjustment at Sir Francis Drake - Staff agreed to respond

b. Future Council items

- Consider proposed alternative configurations for Ross School fields - meeting will be scheduled in two weeks to receive public input
- Presentation on Downtown Plan/Common
- Plaque on the Lagunitas Bridge noting historical aspect with photograph of 1910 buggy - receive input from Ross Historical Society
- Town Hydrologist Matt Smeltzer drainage report on Bolinas Avenue

19. Discussion of the five Town Council goals for FY 2010-2011 developed at the Town Council retreat and the implementation of these goals.

a. Attic and basement regulations

Council Member Russell will hold a community workshop on potential modifications to Town policies regarding improvement of attics and basements on January 25th at 7 p.m. at Town Hall. The workshop will include discussion of a proposal to allow residents to finish off existing attic and basement spaces so long as there are no material negative impacts for neighbors. New policies or regulations could ultimately allow more finished attic and basement spaces.

At the Council's retreat last year, Council Member Russell was tasked with a Council goal to review the Town's regulations on attics and basements. He has been involved in a number of discussions with staff to rationalize and modernize the Town's approach to attics and basements. The Advisory Design Review (ADR) Group also discussed how new regulations might affect a couple of sample properties at its December 28, 2010, meeting. Residents are strongly encouraged to participate in the January 25th workshop. He further looked forward to healthy exchange of ideas and views.

b. Right-of-way regulations

Mayor Pro Tempore Small reported that the first meeting was held on Tuesday, January 11th to highlight major issues. There are several codes that relate, but in different chapters that are not user-friendly. They are working on making that more manageable and helpful to residents. Also, they talked about enforcement and looking at design guidelines. Another workshop will be held in February.

c. Approach to future Public Safety facilities and organization

Mayor Martin is still working on a white paper, which is almost completed and then a blue ribbon committee will be formed.

d. Downtown, including commercial district and interface with Ross Common and Lagunitas, signs and parking

Council Member Strauss will make a presentation to the Council on the downtown area at the February Town Council meeting. Two meetings were held in regard to the Common. Ross School and Ross Recreation developed three different diagrams for the playing field. The community and neighbors were invited. Ross Recreation and the School Board made no decision. A meeting will be scheduled in two weeks to receive public input.

e. Town and Marin Art & Garden Center relationship

No report. Council Member Hunter not in attendance.

20. **10 Ames Avenue, Amendment to Variance and Design Review No. 1794**
Bradley and Kristen Matsik, 10 Ames Avenue, A.P. No. 073-181-08, R-1:B-20 (Single Family Residential, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre). Amendment to plans approved on October 14, 2010, for a significant remodel of the residence and garage. The applicant requests setback variances associated with landscape improvements including a new barbeque area within the west side yard setback (13.25 feet proposed, 20 feet required) and patio area within the rear yard setback (29' proposed, 40 feet required). New permeable paving is proposed to replace the asphalt driveway surface. Design review is requested for a new 6' tall painted wood picket fence at the front property line (4' permitted).

Effective lot area	17,935 square feet
Existing Floor Area Ratio	22.5%
Proposed Floor Area Ratio	19.3% (15% permitted)
Existing Lot Coverage	27.5%
Proposed Lot Coverage	25.9% (15% permitted)
Existing Impervious Areas	22.9%
Proposed Impervious Areas	8.3%

The existing residence and garage are nonconforming in setbacks.

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

Kristine Matsik, applicant, had nothing further to add to the presentation.

Mayor Martin opened the public hearing on this item.

Loraine Berry, Ames Avenue resident, expressed concern for the 6-foot fence in front, which is out of character with the neighborhood. She added that no one discussed such a fence with her and further objected to a 6-foot barricade. Senior Planner Semonian pointed out that the notice did include the 6-foot fence, but the applicants have since withdrawn the taller fence request from the application.

Mayor Martin commented on the tree material and how the oaks were protected and commended Town staff and the applicant for trying to protect those oak trees. The contractor is not parking any heavy material over the drip line of those trees, which is a procedure welcomed by the community.

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 Small appreciated the lighting plan. She believed it is nice outdoor living. In order to preserve the trees in front and how the lot is configured, it pushed the applicant into the setback. She had concerns about the fire pit, but after visiting the site, it is a nice plan as configured.

Council Member Russell found it hard to figure out the location of the barbeque when visiting the site. Given that all the affected neighbors are supportive, he noted support as well.

Mayor Martin and Council Member Strauss had no objection to the project.

Mayor Martin asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Small seconded, to approve the Matsik, 10 Ames Avenue, Amendment to Demolition Permit and Variance for landscape improvements as submitted. Motion carried unanimously. Hunter absent.

Conditions of Approval for 10 Ames landscaping:

This approval is for the site landscape improvements but not for the application for the proposed 6-foot tall fence, which has been withdrawn. These conditions shall be reproduced on the plans submitted for a building permit:

1. The project shall substantially comply with the plans approved by the Town Council, dated December 18, 2010, except as otherwise provided below.
2. The asphalt driveway shall be removed and replaced with pavers set on sand or gravel material. The pavers selected and the base material shall allow for water absorption. The driveway shall not be resurfaced with an impervious surface without prior Town Council approval.
3. The front yard landscaping shall be designed with plants and irrigation that is compatible with the water requirements of the large oak trees.
4. The barbecue area shall have a 10-foot clearance from overhanging vegetation.
5. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN PLANNER APPROVAL.** Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to the issuance of any building permits or prior to any modification.
6. All new fireplaces shall be gas or EPA certified woodstoves that are Phase II certified or equivalent.
7. A Revocable Encroachment Permit is required from the Public Works Department for all work within the right-of-way.
8. The landscaping shown on the approved plans shall be installed prior to project final.
9. 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.
10. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
11. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JANUARY 13, 2012, WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**

12. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
13. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
14. 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.
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.

21. **126 Winding Way, Amendment to Variance, Design Review, Hillside Lot and Demolition Permit No. 1736**
 Douglas and Miranda Abrams, 126 Winding Way, A.P. No. 072-091-14, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Amendment to plans approved on December 10, 2009, for design review, hillside lot permit, variances, tree removal permit and a demolition permit to allow a significant remodel and addition to the existing residence, originally designed by Bay Area architect Bernard Maybeck. The modifications requested include: 1.) elimination of the previously approved one car garage under the main floor; 2.) retention of the existing front deck and enclosure of the existing carport to form a new one-car garage; 3.) minor modifications to each elevation of the residence and the pattern of exterior materials that focuses new siding materials from stone to wood board and batten; 4.) modification of the roofline at one area of the residence; 5.) gray stained redwood shingles, rather than natural redwood shingles; 6.) revised drainage plan; 7.) 90 linear feet of additional landscape retaining walls up to 4' tall and 80 linear feet of additional landscape retaining walls ranging from 4' to 6' tall; and 8.) pool equipment vault within the side yard setback (9 feet proposed, 25 feet required in 2009, 45 feet required as of 9/2010). Total floor area of 4,661 square feet is proposed. A variance from the requirement for two covered parking spaces will be considered

Gross lot area	54,108 square feet
Net lot area (less road easement)	44,201 square feet
Existing Floor Area	8.2%
Approved Floor Area	10.2% (15% permitted*)

Proposed Floor Area	10.6%	
Existing Lot Coverage	7.0%	
Approved Lot Coverage	8.6%	
Proposed Lot Coverage	9.2%	(15% permitted)

**The slope of the lot is 35.3%. The 2009 Town Hillside Lot Ordinance guidelines recommended a maximum floor area of 4,223 square feet based on the gross lot area (not deducting the roadway easement area). The current Town Hillside Lot Ordinance floor area would permit a maximum floor area of 3,285 square feet. The existing residence is nonconforming in number of stories (2 permitted) and covered parking (2 spaces required).*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council do the following approve the project subject to the findings and conditions in the staff report, which included retention of the existing carport structure and not a garage.

Council Member Russell stated to effectively make sure they stay within the original FAR would be to not carry out the improvement. Senior Planner Semonian noted they could reduce the size of additions or garage to comply with the floor area previously approved. Council Member Russell pointed out that they need to undo what the Council previously approved, or ignore the HLO and increase the FAR for this particular property. Whether it is a carport or garage, it is still FAR. He further believed the Council is between a rock and a hard place on this issue.

Council Member Strauss clarified with staff that the foundation is in place. Senior Planner Semonian responded that there is no permit issued for the approved additions, just the retaining wall work and some improvements to the existing residence. A building permit for the larger project has not been submitted or approved, as the applicants could not provide the approved covered parking. The design could still be changed. Staff was pleased with the design. The new hillside lot guidelines limit the aggregate height of retaining walls to 18 feet. This project does not comply with this new guideline, but they aren't significantly changing what was approved by the Council before the new guidelines were adopted.

Mayor Pro Tempore Small believed this house is unique given the fact that it is a historical residence.

Charles Theobald, architect, stated looking back at the approval in 2009, if there ever was a reason to allow more FAR it would be this type of project. It is a historical gem. The owner is going to great efforts to restore a historical home. The owner is committed to keeping it an architectural gem. They must distinguish between Maybeck and the subsequent work. Preservationist encouraged them to remove the carport and repair the home with the original look showing the access stairs. In 18 months, reductions have been made that bring it back closer to what it was originally. They reduced the previous design by about 50 sq. ft., and simplified all elements, so it is logical to improve other parts of the project. No one wants to see the fireplace, which is a major architectural feature of this site, so they must maintain at all cost. It was strongly suggested and required to have covered parking. They are in a push/pull with the preservationist and the Town, so they impressed upon the preservationist that the Town wants the parking, so this is the solution. In terms of light, it will be seen from the street. It is optimistic to think that a carport will be as clean as an

enclosed garage. Reality of today's living, carports are not as clean as garages. He then provided photographs of the experience as one would drive up to the house for the Council's consideration. Based on viewpoints, the top guardrail portion of the design is visible. Above the top retaining wall that is made out of the beautiful stone, there is a protection rail. The landscaping architect is providing additional greener. There will be even more obscuring of the carport or garage element. A garage would be quieter and a less light intrusion situation. As an architect, the right solution in this case is to have a garage.

Mayor Martin opened the public hearing on this item.

Mark Goldstein, Winding Way resident, has great appreciation for the property and architectural significant of the Maybeck house. It was fully landscaped with mature trees. Now they have a 20-foot retaining wall topped off with fence railing to be landscaped, so 24 ft. of fencing material as well as a solid stone-faced wall. Another 60 yards of walls are being proposed on the property as well as this carport. The mass of the building itself and the mass of the walls is grossly out of scale with the neighborhood. It is offensive to him as he walks out his door. He encouraged the Council to give great consideration to the mass and scale of the house as proposed. The enclosure of the carport will just further enlarge the apparent mass of the house. In terms of the additional 60 yards of retaining walls, he wanted to know the location and the impacts.

Architect Theobald provided a photograph of Mr. Goldstein's home and understands the frustration of retaining walls. This project has gone on for quite some time. Two ADR meetings were held and Mr. Goldstein had ample opportunity to voice his opinions and concerns in order to work through matters. This design greatly increased the safety of the driveway. The auto court design has been positioned perfectly for minimal damage to trees and to minimize the impact of this retaining wall from the street. In terms of the additional landscaped walls, most of them are minor. There is an additional cutting area up above the pool area, but that is not visible. An additional wall was built along Winding Way in order to make the street better and for a more attractive appearance.

Mr. Goldstein indicated that he is addressing the new proposal. His concern is that with each iteration the scope of the house and retaining walls becomes extended. The next iteration would be a request for a "moat and drawbridge." At some point, the Council has responsibility to the community and neighbors to maintain a scale and style that is consistent with the neighborhood.

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 Russell is uncomfortable with the issues of the retaining walls and felt somewhat blindsided in that regard. In terms of the carport or garage, he reiterated that the Council is between a rock and hard place. Whichever decision is made, the Council will find that they have to go back on what the Council previously approved, if not, then an increase in FAR must occur. The house should look as nice as possible if there is an increase in FAR. Placing a proper garage is more sensible in his view. He believed the Council must do what is best for the house, so he supported a nice garage. In terms of the retaining walls, he wanted to continue that matter for better input.

Senior Planner Semonian noted that, with the exception of the new wall along the street, all new walls are located in the pool area, not near the driveway or street. Staff agreed the walls may exceed the permitted height, but staff has been assured that they are no greater than 6 ft. in height. Staff recommended that it be made part of the conditions. Staff pointed out there is no new wall proposed between the residence and the neighbor's house.

Mayor Pro Tempore Small pointed out that the carport exists and it would be a matter of putting in walls. They want to have at least two covered parking spaces since many rather not view vehicles. She has an issue with lighting, and desired the least amount of lights, but still maintain safety during the evening outside. She recommended that the applicant consider incorporating some kind of additional landscaping to help mitigate the situation. She believed if the appearance were softened it would be helpful.

Doug Abrams, applicant, stated none of the walls are higher than 6 ft. He explained that when the banks were restored to proper grade all walls were 6 ft. or less. One little spot is 6 ft. 2-in. The upper wall planter box will be filled with plants. Also, he has reached out to every neighbor. Regarding the softening, none of the landscaping has been put in. The entire part of the property will be left native. He is planting 27 oak trees, so there will be a massive amount of plantings on the second wall. He further noted that a tremendous amount of landscaping would occur on this property.

Council Member Russell stated if they divorced out the retaining wall portion, would that delay the project. Mr. Abrams responded that it would tremendously slow down the project. He pointed out that the walls are not germane to the conversation. The walls are not on the agenda. Council Member Russell pointed out that Mr. Goldstein raised the issues of the walls. Mr. Abrams explained that the walls on the application are behind the pool, not the walls being discussed by Mr. Goldstein.

Mayor Pro Tempore Small clarified with staff that there are some walls on Winding Way. Senior Planner Semonian noted that a stretch of walls that hold up the embankment are after-the-fact, but the stone faced walls being discussed have been permitted and constructed, so it would be unfair to go withdraw the approval for the walls at this time.

Council Member Strauss stated given the historical nature of the structure, he is comfortable with the staff report. He liked the open carport and felt staff was on point in the staff report. Mr. Abrams stated a carport leaves one question, whether Maybeck built it. With a garage, one would really know that the garage is new and the rest is old. The original carport had fluorescent lights, and when thinking about lighting in the carport everyone will view the lights, but with a garage all lights would be hidden. They also thought about headlights shining on the property. Council Member Strauss recommended landscaping. Mr. Abrams noted that the staircase could not be landscaped. In terms of use, a garage would be cleaner since clutter would not be viewed. He further noted that Carey & Co. preferred a garage. Senior Planner Semonian added that the area for the carport was approved as a parking area.

Mayor Martin believed with the native plantings and softening the walls it will be an acceptable outcome. The house itself is an outstanding project. There have been too many times when historical homes have been demolished and he believed they are doing an outstanding job. The original Maybeck did not have a garage, so he finds the proposal acceptable with a garage or a carport.

Council Member Strauss stated if there is consensus amongst the Council in terms of a garage, he would be supportive. Mayor Pro Tempore Small would consider since the basic structure is already present. A carport may end up impacting the neighbors with additional noise and headlights. In order to comply with FAR, they may end up impacting the neighbors.

Council Member Russell stated it is an existing space, so they should be able to use it and it should look attractive as well as limit impacts on neighbors. He further noted that he is more comfortable with a garage.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Russell seconded, to approve Abrams, 126 Winding Way, Hillside Lot, Variance, Design Review and Demolition Permit No. 1736, subject to the following findings and conditions. Motion carried unanimously. Hunter absent.

126 Winding Way Conditions:

The Council moves to approve the project subject to the following additional findings and conditions of approval:

- A. Approve the proposed plan to eliminate the garage proposed at the understory of the residence, which would result in demolition and reconstruction of a historic detail of the Maybeck residence;
- B. Approve a floor area ratio variance to allow the applicants to construct a new, attached, one car garage in the area of the existing carport structure and also allow construction of the previously-approved additions to the residence. The existing structure is historic. Additional floor area requested is justified based on preservation of the historic structure and to provide floor area to separate the new additions from the historic construction. Having enclosed and covered parking is a substantial property right and enclosed parking will minimize impacts to neighbors from light and noise associated with open parking or an open carport;
- C. Deny the new enclosure of the utilities proposed for the west side of the residence as plans have not been submitted for this detail and as inconsistent with the Hillside Lot Ordinance guidelines, which recommend limiting bulk and mass of hillside development; and
- D. Approve setback variances and amendments to the prior approval for the other plan modifications proposed based on the findings in the December 2009 staff report.

The approvals subject to the following conditions of approval, which shall be reproduced on the first pages of the building permit plans:

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on December 10, 2009, and as amended on January 13, 2011.
2. As specified on December 10, 2009, the retaining walls supporting the parking turnaround shall be no greater than 6 feet.
3. The applicants shall submit a detailed construction schedule with the building

- permit application that details how the project will be completed within the applicable time limit for completion of construction.
4. The applicant shall obtain an after-the-fact revocable encroachment permit for the rock wall work within the Winding Way right of way from the Department of Public Works and a revocable encroachment permit for all other work within the Winding Way right of way. The permit shall include such plan as required by Pubic Works staff. The permit shall be recorded at the Marin County Recorder's Office prior to any additional construction in the right-of-way. Any improvements constructed on adjacent sites shall be removed if written permission for the work is not obtained from the applicable property owner(s) and submitted to the Town.
 5. The under story area below the residence and addition is required to be retained as unfinished, low ceiling height, space that may only be used for storage and not for a wine cellar, laundry room, or any other use. All areas that are not included as floor area on the plans shall not be conditioned or improved unless otherwise approved by the Town Council. The floor level existing as of 2009 shall not be changed and existing support posts shall remain in the area unless their removal is necessary for approved construction. The height of the entrance doors shall not increase over what is existing. No new lighting or electrical work is approved for the understory areas except those dedicated to mechanical equipment. Existing light fixtures may remain or may be replaced with similar models. New under floor areas shall have sloping and unfinished floors, as shown on the plan sections. The understory areas shall remain unfinished. Any electrical or mechanical equipment or panels that must be enclosed in a finished space should be located in an area approved for finished space. Staff is authorized to make exceptions to this condition as necessary to comply with the building code.
 6. The Building Official may apply provisions of the historic building code to the project as necessary for the approved design.
 7. The plans submitted for the building permit shall be reviewed by Carey & Co. to ensure that the project continues to comply with the Secretary of Interior Standards for Rehabilitation. Prior to project final for the project, the applicant shall submit a letter from Carey & Co. to the planning department verifying the project was completed in compliance with the Secretary of Interior Standards.
 8. A construction management plan shall be submitted prior to issuance of a building permit showing the work schedule, storage, travel routes, tree protection, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans. Construction vehicles should follow Canyon Road to Winding Way and return by the same route to minimize traffic impacts on Winding Way.
 9. No grading is permitted without a grading permit approved by the Town. Grading activity is prohibited between October 15 and April 15.
 10. The pool equipment and any other exterior mechanical equipment shall be placed in a soundproof enclosure, insulated, and/or vented so that its operation is not heard from adjacent sites.
 11. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety:

- a. A street number must be posted {minimum 4 inches on contrasting background}
- b. All dead or dying flammable material must be removed as per RMC Chapter 12.12
- c. A new hydrant shall be installed, per the Fire Marshal
- d. Sprinklers are required.
- e. The applicant shall clear all brush impinging on the access roadway.
- f. The Roadway shall have a vertical clearance of 14 feet.
- g. A 24 hour monitored alarm system is required.

The fire chief may make exceptions to preserve the historic character defining features of the property.

12. A grading and drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. Off site runoff shall be limited to existing conditions. The drainage plan shall comply with all recommendations of the Town Hydrologist.
13. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
14. The applicants shall submit a detailed arborist report that details the health of all tree proposed for retention near the proposed improvements as well as any other tree protected by Ross regulations (such as trees on adjacent sites that may be impacted by construction). The report shall identify measures that must be taken before, during and after construction to protect and preserve the trees, which shall be incorporated into the project plans. The applicant shall provide staff with a letter or report from the arborist that confirms that the arborist review the construction level drawings (including foundation plans, any proposed trenching for utilities, landscape plan, etc.) to prepare the tree protection plan.
15. No brightly colored temporary fencing is permitted where it may be seen by neighbors or the public.
16. The landscaping shall be installed in accordance with the approve landscape plan prior to project final.
17. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from downslope sites). No up lighting is approved.
18. The applicants shall comply with all requirements of the Marin Municipal Water District for water service prior to project final. Landscaping shall comply with the MMWD water-conserving landscape ordinance.
19. The applicants shall pay required Town fees of \$3 for every cubic yard of off-haul resulting from this project. Final off-haul amounts shall be calculated by the project civil engineer with calculations submitted to the Director of Public Works prior to the project final.
20. 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.
21. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
 22. 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.
 23. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 24. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE.
 25. 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.
22. **88 Wellington Avenue, Variance, Design Review, and Hillside 1809**
Steve and Chris Simpson, 88 Wellington Avenue, A.P. No. 72-121-17, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre). Request for design review, hillside lot permit and variances associated with converting the existing basement area to a family room, which would add 480 square feet of floor area to the nonconforming residence. The project would involve 35 cubic yards of cut to lower the floor of the basement to comply with building code requirements for habitable space. Total floor area of 2,123 square feet is proposed.

Lot area	4,648 sq. ft.	
Existing Floor Area	35.3%	
Proposed Floor Area	45.7%	(20% permitted)*
Existing Lot Coverage	26.4%	
Proposed Lot Coverage	26.4%	(20% permitted)
Existing Impervious Areas	55.8%	
Proposed Impervious Areas	56.8%	

The existing residence is nonconforming in setbacks.

**The Town Engineer has calculated the slope of the site as 29.2%, the project falls under the hillside lot regulations because the site is partially within Slope Stability Zone 3. A maximum of 423 square feet of floor area is permitted under the current Hillside Lot Ordinance.*

Senior Planner Elise Semonian summarized the staff report and recommended that if the Council believes the recommended findings can be made to support the variances requested for this application, then the Council should approve the application subject to the findings and conditions outlined in the staff report.

John Clarke, architect, explained that the addition is 480 sq. ft. and they will be adding French doors to meet building code requirements for natural light, ventilation and egress. They have been working closely with staff since January 2010 to bring the matter to Town Council. Staff recommended that they submit in November because staff felt findings could be made without a policy in place for a basement conversion. The matter was before the ADR group and they recognized that they had ample parking. The FAR process is in place to address unusual circumstances that prohibit a property from experiencing the same privileges as surrounding properties. This is a unique lot in size. It is in the HLO area. When they apply those enhanced setbacks, there is zero buildable area, if a new lot today. They worked with staff to evaluate the FAR request, evaluating if it were a lot that satisfied the 10,000 sq. ft. minimum lot size. It is still below the average size home in the area. The project itself satisfies the intent of the FAR, limits the mass and bulk of a property. The proposed work is all within the existing footprint. There is no increase in mass or bulk. The staff report outlined the findings for the Council to grant the variance. He further noted that adjacent neighbors have no objection and hope the Council follows staff's recommendation.

Council Member asked if this property would be reassessed in terms of tax evaluation. Architect Clarke responded in the affirmative. Council Member Russell noted that there is a real benefit to the Town that the tax evaluation will increase.

Mayor Martin opened the public hearing on this item.

William Nicholson, Garden Road resident, stated the 2005 Housing Element of the Town's General Plan was placed on the website. He suggested the website be updated with the current housing element and a printed copy of the housing element be placed with a printed copy of the Town's General Plan for public viewing. Referring to the letter to the Council dated January 10th, this lot and house is already far over sized for this parcel. The lot is a single-family lot, which is categorized as R-1:B-10 with 10,000 sq. ft. minimum lot size and 20% permitted building coverage. Zoning Code 18.16.090 for single-family residence states, "the maximum FAR requirements are 20% of the lot area." The lot area is defined as the physical lot, which as described is 4,648 sq. ft. Under Zoning Code 18.39.00, HLO regulations, there is

calculation from maximum FAR that apparently leads to the 423 sq. ft. shown in the notice. The 2010 Housing Element on page 87 emphasizes preservation of existing lots, quantity and quality of houses and discourages a reduction in the affordable housing stock. H.2.3 on page 87 emphasized the long-term maintenance and improvement of existing housing and encourages rehabilitation of older housing and preservation of neighborhood character, and where possible supply moderate to low-income housing. In terms of what is moderate in Ross, this is at least moderate, if not low-income. Enlarging 88 Wellington does not achieve this purpose. The letter from the architect indicated that staff reviewed the FAR as if the lot size was 10,000 sq. ft., which contradicts all regulations. The importance of neighbor opinion should be to identify problems in this application. Agreement by neighbors should not be a basis for approval of this variance application. Approval of this variance application may set precedence for the enlargement of many smaller houses in Ross, which will violate the 2010 Housing Element. He was informed this morning by staff that there are many probably applications of this nature on the horizon. The Council is beginning to consider finishing attics and basements and this process must be completed before any applications of this nature are a threat. Completion of this process may involve modifications to the General Plan, housing element and zoning regulations. Addressing these variances applications on a case-by-case basis will lead to unfairness and inconsistencies. The Town needs very clear guidance. The applicant bought a small house on a small lot and there has not been and is no basis to expect this house could be enlarged. This variance application should be defined or at least continued until clear policies have been written about finishing attics and basements.

Dyanne Howley, Winship resident, looked forward to the Town being consistent with the FAR at 20%. She remodeled her house two years ago and was held very close to that number. She is concerned that if converting illegal space or space previous owners have developed to bring to safety, will encourage the rest to build and then receive approval after-the-fact.

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 Small understands the staff report and the space has existed. She is concerned about making any decision until the Council has defined and vetted attics and basements as done with the HLO. She understands the space is present, but there is a bathroom and closet space, so this essentially becomes a four-bedroom home. Design review indicated that there is ample parking, but she is not sure where. She debated several times where to place her vehicle when visiting the site. With a four-bedroom home, she did not see how that lot could manage a four-bedroom home. If forced is forced to vote tonight without an ordinance that has been vetted by the public, then she would vote against. Otherwise she suggested continuing this matter until this process is vetted by the residents of Ross and gives the Council clear guidelines in order to move forward. She looked forward to Council Member Russell's goal and this matter being vetted by the community.

Council Member Strauss agreed this matter must be vetted. It is existing space that does not impact anyone, which is the reason a review is needed. He also supported a continuance.

Architect Clarke noted it is new space being created downstairs in order to bring it up to new building code. They want to be removed from Ross' "blacklist." Council Member Russell desired consistency and to be transparent. He believed it is better to go through a process to

have consistency. He believed it makes the most sense to receive input from the public in order to make a decision.

Architect Clarke added that if the findings for a project can be made based on the configuration of the lot and strict application of the zoning ordinance, whether or not it is a basement project, it should be evaluated under those findings. The variance process is present to pick up the black and white and does not address the uniqueness of the lot. This project satisfies several findings that must be made. It satisfies the unusual lot size and further noted that it also satisfies property rights with no impact to the public welfare.

Mayor Martin agreed they need greater clarity and consistency with how the Town approaches such projects. Also, work was done without a permit and he is not sure of the condition, structurally of that work, and whether the electrical was wired according to code. He further desired clarity on basements and attics before moving forward.

Mayor Martin asked for a motion.

Council Member Russell moved and Mayor Pro Tempore Small seconded, to continue Simpson, 88 Wellington, After-the-Fact request for Design Review, Hillside Lot and Variances until the Council has clarity on basements and attics. Motion carried unanimously. Hunter absent.

Council Member Russell recommended that staff push back all applications in that regard until such decisions are made in order to have clear policy. The Council and staff agreed.

The Council took a short recess at 9:56 p.m. and then reconvened with the next agenda item at 10:07 p.m.

23. **111 Upper Road, Variance, Design Review and Hillside Lot Permit No. 1815**
Astrid Deeth and Bo Stehlin, 111 Upper Road, A.P. No. 073-022-06, R-1:B-5A (Single Family Residence, 5 acre minimum lot size), Very Low Density (.1 - 1 units per acre). Design review and hillside lot application for an addition and remodel to the residence, resulting in a net increase in floor area of 326 square feet. The project includes replacement of windows, repair and replacement of shingle siding, modifications to areas of the roofline, modification to the east-facing second floor deck, and creation of a new entry on the lower level of the lower level of the residence (on the east side). The resulting residence would be 5,556 square feet in size. Setback variances are requested for the modifications to the residence, which would be located within the side yard setback (29 feet proposed, 25 feet required under standard zoning regulations, 45 feet required under hillside lot ordinance) and rear yard setback (32.5 feet existing, 40 feet required under standard regulations, 70 feet required under hillside lot ordinance).

Effective Lot Area	65,340 square feet
Existing Floor Area Ratio	8.0%
Proposed Floor Area Ratio	8.5% (15% permitted*)
Existing Lot Coverage	5.9%
Proposed Lot Coverage	6.4% (15% permitted)
Existing Impervious Areas	13.7%
Proposed Impervious Areas	14.1%

The existing residence is nonconforming in setbacks.

**The slope of the site is 28% using a contour method of calculating slope, which results is a more conservative (steeper) estimate than the Town's slope formula. Based on this slope, 5,655 square feet of floor area would be permitted under the current Hillside Lot Ordinance.*

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

Astrid Deeth, applicant, fell in love with the property, setting and location, but the house is in need of some improvements. Downstairs is completely disconnected. In order to get to the front door they must walk into the backyard. It is a beautiful backyard and they desired a dedicated space with an entry. They have many friends in Ross and love the Town and charm of Ross.

Steven Willrich, architect, provided several architectural images depicting the exposed exterior detailing. Part of the project is the desire to create a formal entry as well as introduce a new stairway, which is part of the addition that will connect the two floors as well as update and make improvements to the interior circulation to the lower level, so it is not discontinuous interior spaces. They propose an addition to the existing living room at the rear of the property with fantastic views of Baldwin Mt. There is also a minor addition to the master bedroom again at the rear of the property. On the east side, which is the new front elevation there is a proposed renovation of an existing deck to replace the metal wire railing system. They propose to replace with more traditional painted wood railing system. Also, replace exterior doors and windows that are currently single-pane glass with more energy efficient doorways with divided lights. The staff report highlights that the proposed project is consistent with existing massing. Most of the work will occur within the existing footprint and is also setback sufficiently from neighboring structures. The downslope neighbor that is most immediate is in full support of the project.

Mayor Martin opened the public hearing on this item.

Lee Pearce, Upper Road resident, noted support of the project. They received the plans and had no objection. They just lived through the remodel of this house, and wondered the timeframe for construction since they do share the common road. They also have some concern for the road as well. Architect Willrich responded that the project would start over the course of this winter. They are very sensitive to the neighbors and part of the process would be to submit a traffic management plan. Bo Stehlin, applicant, indicated that the goal is to be back in the house by no later than the end of the summer.

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 Strauss is comfortable with what is proposed. He is very familiar with the project and noted support. Mayor Martin believed it is an outstanding parcel. Mayor Pro Tempore Small and Council Member Russell had no objection.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Russell seconded, to approve Deeth/Stehlin, 111 Upper Road, Hillside Lot Application, Variance and Design Review as submitted. Motion carried unanimously. Hunter absent.

111 Upper Road Conditions of Approval:

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

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on January 13, 2011. Plans submitted for the building permit shall reflect any modifications required by the Town Council and these conditions.
2. All costs for town consultant, such as the town hydrologist, review of the project shall be paid prior to building permit issuance. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final. Any screening landscaping damaged during construction shall be replaced prior to project final. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
3. A copy of the building permit shall be posted and emergency contact information shall be up to date at all times.
4. Working Hours shall adhere to Ross Municipal Code sections 9.20.035 and 9.20.060.
5. This project must comply with all engineering reports prepared by the applicants engineering professionals any peer review recommendations and review by the town hydrologist. Any conflict in the recommendations shall be resolved by staff, the town engineer or the town hydrologist.
6. A detailed construction and traffic management plan shall be submitted for the review and approval of the Director of Public Works and town planner prior to the issuance of a building permit. The submitted plan shall include, but shall not be limited to, provisions ensuring that job site personnel shall be present whenever road closures or delays occur for any period of time to advise traffic of the road closure or delay. The plan shall include the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans.
7. The applicant shall provide written notification to affected property owners and neighbors prior to road closures or delays. Signs containing details of the proposed closure or delay must be posted at least 48 hours in advance.
8. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.
9. Applicants shall comply with all requirements of the Marin Municipal Water District prior to project final. Project development shall comply with the requirements of the Ross Valley Sanitary District prior to project final.
10. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following: a) sprinklers are required (a 13R system is required); b) a 24-hour monitored alarm system is required with smoke/water flow; c) all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property; d) the street number must be posted (minimum 4 inches on contrasting background), e.)

- the roadway must have a vertical clearance of 14 feet; and f.) all brush impinging on the access roadway must be cleared as determined necessary by Public Safety.
11. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
 12. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
 13. **NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, INCLUDING CHANGES TO THE MATERIALS AND MATERIAL COLORS, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE. THE APPLICANT IS ADVISED THAT CHANGES MADE TO THE DESIGN DURING CONSTRUCTION MAY DELAY THE COMPLETION OF THE PROJECT AND WILL NOT EXTEND THE PERMITTED CONSTRUCTION PERIOD.**
 14. Failure to secure required building permits and/or begin construction by January 13, 2012 will cause the approval to lapse without further notice.
 15. 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.
 16. 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. **41 Upper Road, Variance, Design Review and Hillside Lot Permit No. 1814**
Mitch and Isobel Wiener, 41 Upper Road, A.P. No. 073-062-07, R-1:B-5A (Single Family Residence, 5-acre minimum lot size), Very Low Density (.1 - 1 units per acre). Design review, hillside lot application and variance to allow: 1.) excavation of existing crawl space to create a new media room, laundry room and wine cellar at the lower level of the residence, including modifications to existing finished spaces (no

exterior changes are proposed); and 2.) construction of dormers to create a new 288 sq. ft. addition in the attic above the detached garage for a new guest bedroom. The resulting residence would be 7,173 square feet in size. The additions would comply with all required setbacks. The project includes 63 cubic yards of cut.

Lot Area	74,005 square feet
Existing Floor Area Ratio	7.2%
Proposed Floor Area Ratio	9.7% (15% permitted)*
Existing Lot Coverage	6.7%
Proposed Lot Coverage	6.7% (15% permitted)
Existing/Proposed Impervious Areas	no change proposed

**The slope of the site is 27.5%. The project falls under the hillside lot regulations because the site is partially within Slope Stability Zones 3 and 4. A maximum of 6,402 square feet of floor area is permitted under the current Hillside Lot Ordinance floor area formula which, due to a technical error that is proposed to be corrected in January 2011, currently applies to lots with less than 30% slope.*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the design review and hillside lot applications subject to the findings and conditions outlined in the staff report.

Mayor Martin asked staff in terms of procedure, is there is anyway to expedite the permit. Senior Planner Semonian indicated that the Council could approve the hillside lot FAR variance. However, the Council should make it clear that this is a technicality, since the floor area will be in compliance in one month, and it would not be considered precedent for FAR variances for other projects.

Council Member Russell discussed the calculation of slope for the site.

Mitch Wiener, applicant, had nothing further to add.

Council Member Russell asked if it made a difference to pull a permit this month or next month. Mr. Wiener hoped to start as soon as possible.

Mayor Martin opened the public hearing on this item.

Peter Nelson, Circle Drive resident, does not get the sense that the Council is familiar with the fact that there is a County run computer slope for every single parcel in the Town of Ross. It is available free without any charge to the Town instantly without any delay. It may come up with a number that is different in terms of the line method. It should be routine on every lot to just use the County method at least as a reference point. It is already calculated and the Town subscribes to the service and it is free. Senior Planner Semonian noted that it ends up being a lower number for residents and will result in a lower floor area number unless the formula is adjusted. Lots with regular contours would get a windfall of floor area. It is the same problem. It would be simple to use the County method and less expensive to applicants, but it results in much less floor area for residents. Mr. Nelson just recommended that it be used as a reference point.

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 Russell had no objection to the project. Mayor Martin and Council Member Strauss concurred.

Mayor Pro Tempore Small did not want to penalize the applicant for a Town glitch and supported approval of the project.

Mayor Martin asked for a motion.

Mayor Pro Tempore Small moved and Council Member Strauss seconded, to approve Wiener, 41 Upper Road, Variance, Design Review and Hillside Lot Permit No. 1814; approving the hillside lot FAR variance since it is a technicality and the project will comply with the floor area when the new ordinance takes effect; and subject to the other findings and conditions outlined in the staff report. Motion carried unanimously. Hunter absent.

41 Upper Road Conditions of Approval:

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

1. Except as otherwise provided in these conditions, the project shall comply with the plans approved by the Town Council on January 13, 2011. Plans submitted for the building permit shall reflect any modifications required by the Town Council and these conditions.
2. Materials, including windows, color palette and details, shall match the existing residence and garage.
3. Care should be taken to protect trees and other screening vegetation during excavation and construction. New screening landscaping shall replace any landscaping lost to construction activities. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
4. All costs for town consultant, such as the town hydrologist, review of the project shall be paid prior to building permit issuance. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
5. A copy of the building permit shall be posted and emergency contact information shall be up to date at all times.
6. Working Hours shall adhere to Ross Municipal Code sections 9.20.035 and 9.20.060.
7. This project must comply with all engineering reports prepared by the applicants engineering professionals any peer review recommendations and review by the town hydrologist. Any conflict in the recommendations shall be resolved by staff, the town engineer or the town hydrologist.

8. A detailed construction and traffic management plan shall be submitted for the review and approval of the Director of Public Works and town planner prior to the issuance of a building permit. The submitted plan shall include, but shall not be limited to, provisions ensuring that job site personnel shall be present whenever road closures or delays occur for any period of time to advise traffic of the road closure or delay. The plan shall include the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The plan shall detail the path for removing excavated material from the site. The construction management plan shall be incorporated into the job set of plans.
9. Road closures will only be permitted with prior authorization of the Town. The applicant shall provide written notification to affected property owners and neighbors prior to road closures or delays. Signs containing details of the proposed closure or delay must be posted at least 48 hours in advance.
10. The applicant shall document the condition of Upper Road by video on CD and shall submit the information to the Public Works department prior to issuance of a building permit. The applicant shall work with the Public Works Department to repair any damage caused by the construction.
11. The Town Engineer may limit the size and/or weight of construction vehicles and may require the applicant to make any repairs necessary to ensure road stability for construction vehicles or to post a bond, in an amount to be fixed by the Town Engineer, guaranteeing that the applicant will repair damage to the roadway. The Town may also require as a condition to the granting of a permit that the applicant submit a certificate of a responsible insurance company showing that the applicant is insured in an amount to be fixed by the Town against any loss or damage to persons or property arising directly or indirectly from the construction project.
12. The project shall comply with the Town stormwater ordinance (Chapter 15.54) and a drainage plan and hydrologic/hydraulic analysis shall be submitted with the building permit application that results in, at a minimum, no net increase in the rate and volume of peak runoff at the site compared to pre-project conditions. Construction of the drainage system shall be supervised, inspected and accepted by a professional engineer and certified as-built drawings of the constructed facilities and a letter of certification shall be provided to the Town prior to project final.
13. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.
14. Applicants shall comply with all requirements of the Marin Municipal Water District and Ross Valley Sanitary District prior to project final.
15. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following: a) sprinklers shall be required (a 13R system is required) unless waived by Public Safety; b) a 24-hour monitored alarm system is required with smoke/water flow; c) all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property; d) the street number must be posted (minimum 4 inches on contrasting background), e.) the roadway must have a vertical clearance of 14 feet; and f.) all brush impinging on the access roadway must be cleared as determined necessary by Public Safety.

16. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
17. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
18. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, INCLUDING CHANGES TO THE MATERIALS AND MATERIAL COLORS, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE. THE APPLICANT IS ADVISED THAT CHANGES MADE TO THE DESIGN DURING CONSTRUCTION MAY DELAY THE COMPLETION OF THE PROJECT AND WILL NOT EXTEND THE PERMITTED CONSTRUCTION PERIOD.
19. Failure to secure required building permits and/or begin construction by January 13, 2012 will cause the approval to lapse without further notice.
20. 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.
21. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.
25. **79 Bolinas Avenue, Amendment to Variance No. 1801**
Jessica Bendy and Chris Pedrick, 79 Bolinas Avenue, A.P. No. 073-041-19, R-1 (Single Family Residential, 5,000 sq. ft. min. lot size), Medium Density (6-10 Units/Acre). Amendment to plans approved on October 14, 2010, for a setback variance to allow the reconstruction of the southwest corner of the residence and a modification of the main roofline over the rear portion of the structure. The applicants request

permission to extend the roof of the front porch 8 feet towards the street to cover the existing deck, partially within the east side yard setback (11.25 feet proposed, 15 feet required) and front yard setback (14 feet proposed, 25 feet required). The applicants additionally request to enclose the expanded front porch, which would add approximately 180 square feet of new floor area to the site. A setback variance is also requested to elevate the detached garage structure 1.5 feet above grade to replace the foundation and prevent water intrusion into the structure.

Lot area	8,000 square feet
Existing Floor Area Ratio	21.7%
Approved Floor Area Ratio	21.8%
Proposed Floor Area Ratio	24.0% (20% permitted)
Existing Lot Coverage	26.3%
Approved Lot Coverage	26.5%
Proposed Lot Coverage	26.5% (20% permitted)

The existing residence and garage are nonconforming in setbacks. No change to impervious surfaces is proposed.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the porch extension, but not its enclosure, and approve the garage construction at least 3 ft. from the side property line, subject to the findings and conditions outlined in the staff report.

Mayor Martin wondered what happens in the driveway and asked staff if the elevation in the driveway is changing. Senior Planner Semonian explained that part of the slope would be inside the garage. It is a minimal elevation change to get to an approach.

Ace Robey, General Contractor, proposed to raise the garage because the foundation currently is cracked, so the easiest solution and the most cost effective is to raise it directly up with a proper vapor barrier. Also, place a notch in the front of the garage where the door is located to prevent water from flowing down the driveway. There is no vapor barrier at this time and believed this is a simple solution. Senior Planner Semonian noted that the regulations permit replacement of the foundation, but the increase in the building height necessitates the variance request.

Council Member Strauss noted that the garage is currently not code compliant on the property line. He felt it would be better to tear it down and move it over. General Contractor Robey stated then they would have to modify the driveway. Council Member Strauss believed it could be slipped back.

Senior Planner Semonian discussed the shed attached to the garage. The floor area of the shed is roughly equivalent to the floor area proposed for the front porch. Overall site development would become more conforming with setbacks if the shed was removed and the enclosure of the porch was approved. This would be acceptable to staff. General Contractor Robey pointed out that currently it is usable space, which is storage.

Chris Pedrick, applicant, stated that any items left in the garage rust within one week. His wife desired to retain the shed for a storage area for her potting tools. He further added that there was a large storage shed when they moved in, which staff required to be removed.

Council Member Strauss believed bringing the mudroom out takes away from the cottage appearance. General Contractor Robey indicated that the roof is being pulled out. The roof stops 16-in. back. Council Member Strauss recommended pulling it back further. General Contractor Robey tried to maintain a drip edge. Council Member Strauss thinks it would have a more attractive appearance to have the architecture of the front edge. Pulling the roof back allows light to get into the living room. An entry on the left edge of the windows would provide a foyer before the living and dining rooms. General Contractor Robey noted that the stairs are existing, and the front door would remain as is. They are making an atrium and not proposing to enclose anything.

Council Member Strauss felt it is not well thought out and will appear as if it were tacked on. General Contractor Robey explained that they are basically using what they have without adding to the house. Council Member Strauss believed they could use what they have and make it appear much more attractive. In terms of the garage, it should be code compliant. General Contractor Robey indicated that one option is to leave it and place a one-hour firewall. Council Member Strauss suggested being careful with the eaves in terms of the property line.

Mayor Martin asked staff if any permeable surface is being proposed. Senior Planner Semonian indicated that the surface is not changing. General Contractor Robey indicated that they are at 26.5% and propose the same. Mr. Pedrick pointed out that when it rains, the porch always puddles since it is not enclosed.

Mayor Martin opened the public hearing on this item.

Peter Nelson, Circle Drive resident, suggested a possible hardship in order to receive both the shed and mudroom.

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

Mayor Pro Tempore Small noted support for the staff report.

Council Member Russell suggested continuing in order for Mr. Pedrick to discuss with his wife what is desired. Mr. Pedrick knows his wife desired storage. Council Member Russell explained that if they approve staff's recommendation that extra space would not be allowed. Mr. Pedrick would consult with his wife to see if it would be acceptable to lose the space in back in order to have extra space in the house. Council Member Strauss agreed to either act on this matter tonight or continue.

General Contractor Robey indicated that most homes in the area are at 25% floor area, so they are under the floor area that exists for most lot area in the immediate area. They are not asking to add on 1,000 sq. ft. or be out of scale with the rest of the neighborhood. Council Member Strauss is not sure the applicant is clear on what is desired, and architecturally, it would be a great idea to take another look at this project. He suggested the Council continue

the item in order to allow the applicant an opportunity to develop a solution. He believed the garage should conform to the building code. He recommended pulling the enclosed porch area back. He further pointed out that, in his view, the roof covering should not come all the way out to the front edge.

Council Member Russell pointed out that on Bolinas Avenue every home is way above the FAR and many have enclosed porches. He is sympathetic to the concept of enclosing the porch. However, the Town has rules that residents must follow in terms of the FAR. Rules apply equally to everyone. If they are going to allow this, then it should be done within the existing rules, so they must swap the floor area. Council Member Strauss suggested scaling back the mudroom.

Mayor Pro Tempore Small is very worried, especially in neighborhoods where there are homes that have gone significantly over in many years past. She is concerned about allowing someone to go over the FAR because two doors down did so. Then everyone will start inching up, and then what is the purpose of having a rule. She is not crazy about going over that percentage. The garage sounds to be more important than the enclosed porch, so she could approve the one-hour fire rated wall and garage improvements, but not an increase to the FAR.

Mayor Martin looked forward to the matter coming back with more thought and working on the aspects desired. He desired some portion of the front porch to be retained. He agreed with Council Member Strauss that it is an important quality of Bolinas Avenue, so that should be maintained. General Contractor Robey noted that they are leaving the porch and agreed to come back with more details and a design showing a front porch as desired by the Council.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Russell seconded, to continue Item No. 25, 79 Bolinas Avenue to a date uncertain. Motion carried unanimously. Hunter absent.

26. 33 Winship Avenue, Variance and Design Review No. 1808

This item has been continued.

Chris and Mary Ann Neumann, 33 Winship Avenue, A.P. No. 72-153-09, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre). Application for design review and variances associated with a remodel of the main and lower levels of the residence. The project includes excavation and construction to bring existing finished areas within the lower level up to building code requirements for habitable space. The existing residence is nonconforming in setbacks and is located in the north side yard (15 feet required, 8 feet existing and proposed), south side yard (15 feet required, 10.5 feet existing and proposed), and rear yard (40 feet required, 31 feet existing and proposed). The project would allow the approximately 6' by 30' stairwell and atrium addition at the rear of the residence, approved after-the-fact in 2006, to be incorporated into the main floor plan and to be reconstructed if necessary. The applicants propose to enclose part of the front porch for an entry. The project would involve 78 cubic yards of cut to lower the elevation of the lower floor. Staff calculates the existing floor area

to be 2,135 square feet (including the one-car garage). Total floor area of 2,819 square feet is proposed.

Lot area (approximate)	5,500 square feet	
Existing Floor Area Ratio	38.8%	
Proposed Floor Area Ratio	51.2%	(20% permitted)
Existing Lot Coverage	32.3%	
Proposed Lot Coverage	32.3%	(20% permitted)
Existing Impervious Areas	39.8%	
Proposed Impervious Areas	39.8%	

The existing residence is nonconforming in setbacks.

27. Adjournment.

By order of Mayor Martin, the meeting adjourned at 10:55 p.m.

Christopher Martin, Mayor

ATTEST:

Gary Broad, Town Manager