

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JULY 10, 2008

1. 6:30 P.M. Commencement.

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

2. Posting of Agenda.

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

3. Canvassing of Election Returns.

Mayor Cahill announced the official final results of the June 3, 2008, statewide direct primary election of the Town Council members as follows: Christopher Martin, 639 votes; R. Scot Hunter, 538; Richard Strauss, 487; Don Santa 385; Doug Abrams, 357; Diane Durst, 325. The total votes cast in the election were 1,063 ballots, representing a 65% turnout.

4. Swearing-in Ceremony for R. Scot Hunter, Christopher Martin and Richard Strauss as Ross Town Council Members.

Continuing Council members R. Scot Hunter and Richard Strauss and newly elected Council member Chris Martin were sworn in by Mayor Cahill to four-year terms.

5. Election of Mayor.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to elect Council Member Cahill as Mayor. Motion carried unanimously.

6. Election of Mayor Pro Tempore.

Council Member Hunter moved and Council Member Martin seconded, to elect Council Member Strauss as Mayor Pro Tempore. Motion carried unanimously.

7. Minutes-June Minutes

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve the June 12th, 2008 minutes as amended. Motion carried unanimously

8. Demands.

The demands were met.

9. Open Time for Public Expression.

Mayor Cahill noted that he distributed an email last week in regard to evaluating Town employees. The Council welcomes community input. In addition to employee reviews, he along with Mayor Pro Tempore Strauss will examine the process of making these reviews and explore outside expertise. He has received a number of phone calls and emails on this topic and they are all here to make the Town a better place and they hope to continue this constructive input.

Stan Stern, Ross resident, stated that Ross has a problem and an opportunity. He pointed out that it is not about procedure, budget or new council members, but it is about communication. Many in Town want to communicate their thoughts of the Town Manager prior to Council's review. They desired their voices heard. He strongly agreed with the substance and tone of the letter from the Mayor. No performance review should be made public and agreed it is a private matter. The residents elected the Council to make decisions, but the Council needs a forum in an organized manner to hear from the residents. There is a real solution and suggested sending out a survey to evaluate staff. Citizens in this Town will fund and implement the exact survey for the benefit of the Town Council, so the Council can make an informed decision. The residents requested the Mayor's participation. He believed from the survey, the Council would hear opinions, learn from knowledge and see the reality of the Town of Ross. He further asked Town Council to unanimously support and endorse a survey in order for Ross residents to have an organized manner of communicating their concerns and comments.

Mayor Cahill and the Council agreed with the idea of a survey.

Stephanie Cook, Ross resident, noted that on September 11th she and her husband lost friends and asked if there would be an opportunity to change the meeting date to September 10th in order to respect those that lost their lives on 9/11. The Council and staff agreed to consider changing the September 11th Town Council meeting.

10. Report from Mayor Cahill.

Mayor Cahill reported on the fire departments involvement with a number of fires going on in the State. This year's fire season has started off with over 1,000 wildfires in Northern California to date, most caused by lightning. The Town participates along with all the other communities in Marin and across the state in emergency mutual aid whenever the need for firefighting resources becomes critical. The Ross Fire Department is typically assigned to protect homes in the wildland-urban interface from advancing fire. At present, the Ross crew is participating in a local government strike team assigned to the Butte County fire. Chief Heying received a letter from a grateful resident of Paradise in Butte County who described how Ross firefighters saved his home from certain destruction.

Also, as part of the Town's Centennial, a plaque commemorating 100-year anniversary of the incorporation of the Town of Ross will be unveiled on Thursday, August 21st at 4 pm at the front of Town Hall. All are welcome and encouraged to attend the ceremony.

Mayor Cahill announced that the Town Council will be holding a Council workshop, which will be noticed and open to the public. The workshop will occur in late July or August. The purpose of the workshop is to discuss and establish the five Council goals for the fiscal year ending June 2009.

At request of Council Member Hunter, the Council will be revisiting the Town's policy on anonymous correspondence at the September Council meeting.

II. Report from Committee Heads.

- Community Protection - Council Member Skall
 - Transportation Authority of Marin update

Mayor Pro Tempore Skall reported that there are items that may impact Ross such as an initiative to have SMART train travel through Larkspur and desired feedback from the Council in that regard.

Mayor Pro Tempore Strauss believed alternative transportation should be explored given the current situation. He then desired feedback from other communities. TAM Executive Director Dianne Steinhauser noted that TAM created a working group and information is available to the environmental effects, traffic and noise mitigation. There is a lot of attention in communities where rail crosses through, which has been addressed by SMART in great detail. She added that general perception is good. TAM has yet to take action, but with all the information gathered it has been well addressed. Funds are realizable, the financial plan is doable and it should be implemented as discussed. SMART will be on the ballot in November. It is a major transportation facility. TAM has been requested by SMART to consider a position and then they will get into the campaign as they approach November. The counties included in the election join Marin and Sonoma into a single vote, so 2/3rd vote of the two counties combined is needed.

Karolin Martin, Ross resident, expressed concern for the impacts in regard to SMART. Lillian Hanes, General Manager of SMART, explained that freight holds a perpetual easement when they took over ownership of the right-of-way. Freight can begin operations at any time. They are not dependant on SMART. With regard to SMART, they need sales tax to upgrade the tracks to Stage 4. They talked about converting Novato into the 8 crossing. There are no restrictions on freight. SMART controls dispatch required by law to allow them to operate, but specific times and length is through their agreement as well as implementing quiet zones.

Council Member Skall desired public input and those concerned should contact him.

Mayor Cahill directed staff to agendize the matter to further discuss.

12. Report from Ross Property Owners Association.

Wendy McPhee, RPOA representative, extended their gratitude to Chief Heying. RPOA appreciated his hard work and wished Chief Heying luck going forward. RPOA then provided Chief Heying with a gift certificate to Cafe Marmalade.

13. Flood Control Report.

Mayor Pro Tempore Strauss announced that the Town hosted a meeting of key players on June 26th, including the U.S. Army Corps of Engineers, Supervisor Hal Brown, County staff, Public Works, Town Manager Broad, Town Hydrologist and he to set criteria to move forward with bridge design. All endorsed the Town's draft design for Lagunitas Road Bridge, allowing the Town to proceed with environmental review and detailed design plans. A public scoping meeting for the Army Corps of Engineers' Unit 4 fish ladder replacement project has been scheduled for Wednesday, July 23rd from 7 to 9 pm. Notice from the Army Corps will be emailed. A scoping session for environmental review for the Lagunitas Road Bridge will be held soon. He further noted that all three of these meetings are significant steps as these projects move forward toward completion.

14. Selection of members to Town Council Committees and Town Representatives.

Town Committees:

- Community Protection – Hunter/Skall
- Public Works – Strauss/Martin
- General Government – Skall/Hunter
- Finance – Martin/Strauss

Other Committees:

- Joint Oversight – Cahill/Martin
- TAM – Skall
- MTA – Martin
- MCCMC Legislative – Cahill/Martin
- Flood Control County – Strauss/Martin
- ABAG – Skall

Non-Council Appointments:

- MERA – Tom Gaffney
- Ross Valley Paramedics – Bruce Hart
- Seniors – Lorraine Berry
- Mosquito Abatement – Wendy McPhee
- Solid Waste – Gary Broad
- Street Tree Working Group – Janell Hobart
- Town Chief of Protocol – Molly Gamble

Town Projects and Liaisons:

- Flood – Strauss/Martin
- Ross Rec – Martin
- Fire Consolidation – Hunter
- RPOA – Skall
- Leadership Council – Skall
- Facilities – Hunter/Martin
- Underground Utilities – Martin
- Ross School – Skall
- Marin Art & Garden Center – Hunter
- 37 Sir Francis Drake – Hunter/Martin
- Downtown Plan – Strauss/Martin

15. Town Council consideration of canceling the August 14, 2008 Town Council meeting.

Town Manager Broad summarized the staff report and recommended that the Council consider canceling the August 14th, 2008 Town Council meeting.

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

The Town Council unanimously agreed to cancel the August 14th, 2008 Town Council meeting.

16. **Resolution No. 1653 Commending the Outstanding Service of Public Safety Director Barry Heying.**

Mayor Cahill read Resolution No. 1653 into the record, commending Chief Heying for his dedicated service to the Town. The Council thanked Chief Heying and wished him continued success.

17. **Town Council consideration of adoption of Resolution No. 1654 Opposing Light Brown Apple Moth Spraying.**

This item was continued to a date uncertain.

18. **Town Council consideration of authorization of expenditures for Glenwood Avenue overlay project.**

Public Works Director Jarjoura summarized the staff report and recommended that the Council consider authorizing expenditures for Glenwood Avenue overlay project.

Mayor Cahill opened the public hearing on this item.

Carla Small, Ross resident, expressed concern for the amount of truck traffic that will occur on Glenwood for the next few years and desired a condition to be placed on the contractor that any damage to the roadway will be repaired. Public Works Director Jarjoura explained that a condition of approval is included in that regard.

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

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to award the contract to the lowest bidder, Ghilotti Brothers. Motion carried unanimously.

19. **Town Council consideration of authorization of expenditures for North Road, East /West Road and Hill Road Overlay Project and Wellington Ave, Garden Road and Prospect Avenue Overlay Project.**

Public Works Director Jarjoura summarized the staff report and recommended that the Council consider authorizing expenditures for North Road, East/West Road and Hill Road overlay project and Wellington Avenue, Garden Road and Prospect Avenue overlay project.

Council Member Martin discussed page 9 of the budget where a number of projects are mentioned with the exception of Wellington and asked staff how the numbers compare with projections and are they talking about the same amount of work as indicated on page 14. Public Works Director Jarjoura noted that Prop 1B was approved by the Town Council for 2008-09 projects, staff had a couple of projects existing from 07-08. North Road carried over into 2008-09 as well as Wellington and Garden.

Council Member Martin clarified with staff that some of the work is included in the budget and some is from 2007, so they may be reducing some of the numbers on the upcoming budget. Public Works Director Jarjoura noted that the \$149,000 that was taken from the budget included 10% for engineering. Staff explained that the budget is an estimate and it

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fluctuates. Staff hopes they are more or less in that ballpark. Staff further believed Ghilotti Brothers quality of work and performance is good.

Mayor Pro Tempore Strauss asked staff how long the bid is good for because they might want to look at ADA issues, curbs and gutters before the overlay is completed. He then recommended that the committee work with the Public Works Director. Public Works Director Jarjoura explained that included in the bid docs is a requirement that a letter from the Public Works Director is needed to proceed and that letter has not been issued as of yet. Also, the Town must review sidewalks, curbs and gutters and that is not directly related to paving the road. Staff further noted that a study was conducted by the consultant. Mayor Pro Tempore Strauss wanted to personally review that study along with the Public Works Director.

Mayor Cahill agreed to approve the matter subject to the Committee and Public Works Director Jarjoura reviewing the project with a letter of commencement sent.

Mayor Cahill opened the public hearing on this item,

Wendy McPhee, Ross resident, noted that Bolinas must be paved. It has been over 20 years and it needs to be addressed. The Council is aware of the poor condition of the road. Public Works Director Jarjoura had discussions with San Anselmo in regard to paving, but they are working on a major culvert project that will address all drainage issues on Bolinas, which will be a great improvement. Staff believed that the overlay will take place after that drainage work.

Town Manager Broad noted that they are jointly conducting a traffic calming study with Bolinas and that will have implications on the roadway. They hope to apply for TAM money for funding in the next year and the more the Town works with San Anselmo, the better chance all three projects will be conducted. Bolinas is not forgotten, but two other important components must be worked into that process.

Council Member Martin noted that construction along Branson School and Bolinas will be the main traffic route and that street will have more problems over the next year and wanted to be proactive and meet with San Anselmo to expedite a solution along with street repair and traffic calming in order to line up that funding. Mayor Pro Tempore Strauss announced that a meeting is scheduled for next Thursday.

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

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to authorize expenditures for North Road, East/West Road and Hill Road overlay project and Wellington Avenue, Garden Road and Prospect Avenue overlay project and award contract to the lowest bidder, Ghilotti Brothers subject to the Public Works Committee review. Motion carried unanimously.

20. Public Hearing: Levy Taxes/Assessment Pursuant to Ordinance 605 of the Ross Municipal Code – Fiscal Year 2008-09.

Town Manager Broad summarized the staff report and recommended that the Council have a public hearing on levy taxes/assessment pursuant to Ordinance 605 of the Ross Municipal – fiscal year 2008-09 and recommended that the Municipal Services Tax continue to be set at \$775 in fiscal year 2008-09.

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

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to keep the Municipal Service Tax at its current level of \$775 per parcel for the coming fiscal year. Motion carried unanimously.

21. A public workshop on the draft Town of Ross Budget for Fiscal Year 2008-2009 and Town Council consideration of adoption of the Fiscal Year 2008-09 budget.

Town Manager Broad summarized the staff report and recommended that the Town Council adopt fiscal year 2008-09 budget.

Council Member Martin pointed out that the main source of income is property tax, which seems stable, but wanted to be assured that they are expecting a 5% increase in property tax since they do not have other sources. Town Manager Broad explained that back in 2000 they received in excess 10% annual increases and the Town only gets 19% of every property tax dollar, so 80% of property tax goes to other sources such as the county, special districts or schools. The 5% figure was used last year and they came very close to that target, which is the number the county is also using. The Town is optimistic to remain at that level this year. Mayor Cahill noted that there is no guarantee, but it is an educated guess.

Mayor Cahill opened the public hearing on this item.

Carla Small, Ross resident, suggested that the Town have material available at the meetings for the public to review such as the budget or indicate to the public that material is available on the Town's website. Also, when looking at reserves such as money contemplated on the downtown, she felt fire and police infrastructure is much more important. Especially with disaster preparedness, they must attract good applicants and provide housing and infrastructure rather than planting more trees downtown. She believed adequate accommodations for police and fire should be the first priority. Council Member Hunter pointed out that funds are set aside for 37 Sir Francis Drake.

Charlie Goodman, Ross resident, stated that a workshop was scheduled two weeks ago and finds it fascinating that tonight within just a few minutes staff discussed the budget where in years passed there were multiple meetings scheduled. Also, the budget was discussed line item by line item. Council Member Hunter pointed out that staff had only provided a brief budget summary to the Council, not their full report. Town Manager Broad appreciated Ms. Small's comments about making information available at the meetings and most reports are on the Town's website, which will be mentioned in the agenda. Staff is happy to provide hard copies, if Council desired.

Council Member Martin suggested having a projector in order for the public to view and be able to participate. Town Manager Broad found that to be a creative solution.

Town Manager Broad continued with his budget presentation. He introduced the Town's Accountant Stu Korn who created the excel spreadsheet template for the budget. Town staff uses this in the process of preparing this year's budget. Staff met with the Council Finance Committee to work through the budget and they have been able to get the budget hearings down to a single hearing and then formally approve it at a regular Council meeting. The FY 08-09 budget includes almost \$1.4 million for road improvements, Shady Lane and Sir Francis Drake pathways construction, engineering for Lagunitas Road Bridge reconstruction, and development of a downtown plan. The pathway projects will be funded with two grants the Town received last year totally almost \$500,000. Most of the \$432,000 Lagunitas Road Bridge environmental review and engineering costs in this budget year will be paid from a Caltrans grant for 88.5% of the estimated \$3 million bridge project. The budget anticipates general fund revenues of \$5,334,724, a 2.8% increase over last year's budget. Although property tax revenue, which contributes almost half of the Town's total revenue, is projected to rise by 5%, fees for applications, permits and licenses, are expected to decrease 1.2% because of the general economic malaise. The General Services Tax will contribute approximately 12% of total general fund revenues. The most significant increase in spending occurs in public safety, which comprises more than 57% of all general fund expenditures. The public safety budget was increased 14.8% over the last year's estimated expenses, reflecting substantial increase in salary and additional benefits for police department staff and anticipated salary increase for the Town's firefighters to keep pace with salaries paid by surrounding communities.

Council Member Hunter asked staff about the excess augmentation fund. Town Manager Broad noted that Senator Carole Migden introduced a measure and brokered an agreement for a one-time payment last year, so ERAF will be less this year.

Council Member Hunter asked staff if there is room under "outside services" to add historical inventory in order to identify historic homes. He believed the last item on the agenda would be problematic because they did not have this inventory and the new General Plan called for such policy. Town Manager Broad stated that they are potentially looking at consultant services in human resources and it is possible to increase that item.

Mayor Pro Tempore Strauss stated that during the workshop they must identify priorities. Town Manager Broad agreed to leave the budget as proposed because specific money is not included related to parks and the Council and staff must review and receive public input to establish the goals, so that can be discussed at the retreat.

Council Member Martin discussed "outstanding services" and actual estimate was considerably under and asked staff if this projected expenditures for 2008-09 is to be less than indicated. Town Manager Broad responded that \$20,000 is for a contract plan checker. Also, under consultants they show \$40,000 rather than the \$20,000 spent. The consultant item reflects various consultant matters, including fire consolidation, so additional money was included to bring in consultant services, as needed.

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Council Member Martin noted that under “employee benefits” there is an increase of 7% for the year and asked if that trend will continue. Town Manager Broad noted that the increase in health insurance annually has averaged 10%. Some numbers increased from the salary increase. Workers comp is split between three different accounts.

Council Member Martin stated that under “creek maintenance” they project to spend less. Town Manager Broad noted that it is moved into the drainage fund expenditure. It is a \$10,000 item on page 16 under drainage fund for drainage improvements. As much as possible where a fund is devoted to a particular expense item for the community, restricted money is used to pay for items out of that fund.

Council Member Martin asked staff under “tree maintenance” if they spend \$10,000 for pruning; \$40,000 for removal; and \$5,000 for planting. Town Manager Broad explained that it is cheaper to plant a tree than remove. Public Works Director Jarjoura pointed out that oak and Dutch elm disease is occurring. Town Manager Broad stated that they have money in the budget for tree planting. If Council were to have a specific program to adopt for tree planting community wide that could be reviewed. Council Member Martin agreed to review with the committee.

Council Member Martin wondered with the 15% increase overall in regard to police and fire, what is the forecast for next year and the year after. Town Manager Broad did not believe they would go into double digits. For police, the contract locked in is cost of living with the maximum of 5% ranging from 3.5% to 5%. Fire is hard to know because several agencies are in negotiations at this time and some are asking for as much as 9% annual increases.

Mayor Pro Tempore Strauss wanted to make sure they are moving in the right direction and did not want to the Town to bankrupt as Vallejo. Town Manager Broad stated that it is a conundrum because Ross was at the bottom of the pay scale. Some staff will argue that even at the Larkspur level they are below and should be based on Marin County average levels. So even with 17% increase, they are willing to take part in the fire consolidation opportunity. Negotiating contracts continue to happen. Staff then noted that while some other Marin cities are struggling financially, the Town continues to operate on solid financial footing. Preliminary financial reports show the Town ended the 2007-08 fiscal year with a surplus of \$213,789, approximately 4% of the general fund budget.

Town Manager Broad discussed capital improvements that is money they successfully received outside grants for, which is very positive for the Town and community to get half a million dollars in projects paid for with outside sources. Capital improvements for police are modest. They have an opportunity to diversify their Police Department. Sergeant Jim Reis is interested in taking advantage of adding a motorcycle police officer. There is an opportunity to receive a motorcycle for under \$15,000. They are limited in their patrol and motorcycle officer could patrol the west end of Sir Francis Drake. Sergeant Reis believes this is a good opportunity. An officer is already trained to ride a motorcycle. Council Member Martin asked staff if that would have an impact on workers comp. Town Manager Broad noted that additional revenue would be received each month from the motorcycle. Sergeant Reis added that operating a motorcycle in Town is a high profile type of law enforcement tool. Very visible and can operate in narrow roadways and driveways. It gives access to the more restricted areas in Town, so better patrol. Having a motorcycle officer stationed around the school would be beneficial. A motorcycle officer is able to move through thick traffic

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conditions, monitor stop signs and stop lights more effectively. That motorcycle will be moving around in the daytime and early evening and will be a deterrent to drive irresponsible. Staff believed it would be a win/win for the Town and Police Department. The position would be rotated every two to three years. They are starting out with a pre-owned motorcycle and if it works out, maybe incorporate the motorcycle into a normal condition in Town.

Mayor Pro Tempore Strauss objected to this method of increasing the Town's revenue by going after residents. He finds it out of character with the Town and did not believe it is needed. Sergeant Reis felt it is a very effective tool. The Mill Valley model works very well. The motorcycle is not just used for traffic enforcement, but general patrol. High visible general patrol is good to keep burglaries and theft to a minimum. A new motorcycle runs around \$25,000 to \$30,000. Mill Valley's bike has low mileage, but the bike must have a radio system installed. Mill Valley is moving from Harley-Davidson motorcycles to BMW's. Every two-years they receive two patrol vehicles and staff is looking at purchasing a motorcycle to slow down the mileage on their patrol vehicles. Average life span for a vehicle is four years.

Mayor Cahill believed public safety must explore this idea, but not tonight. The Council agreed.

Town Manager Broad pointed out that the main two funds are the roadway fund and drainage fund. In the roadway improvement fund, the budget anticipates \$565,000 of revenue with \$400,000 from one-time monies from Prop 1B. The Public Works Department will review pavement ratings and based on conditions prioritizes roadway projects. Street pavement level has been raised with \$150,000 per year in money for overlay projects. This is a very ambitious schedule this year that takes in 11 different roadways. If completed, it will be a huge upgrade townwide.

Council Member Martin felt a good priority is San Anselmo and Bolinas, but felt the streets listed are all worthy of attention.

Town Manager Broad stated that they have the COPS fund revenue projected at \$90,000. They did intentionally get a full year paid up, which paid for one police officer with a balance of \$107,000 at the end of the year. They will be able to fund that one position. On page 21 in regard to the "facilities fund" they are adding \$100,000 for beginning work on downtown master plan. They could use this for necessary survey work, traffic engineering work and landscape architect work. They can always amend the budget for physical improvements, but this is to get the downtown plan moving forward. Mayor Pro Tempore Strauss noted that he along with Council Member Martin would meet and come back to the Town Council with their findings.

Town Manager Broad appreciated the Council helping to fine-tune this budget.

Douglas Abrams, Ross resident, asked the Council if a police chief decision has been determined. Mayor Cahill responded that determination on a police chief has not been made. Mr. Abrams asked staff about the interim fire chief and if that is in addition to the existing budget of the firehouse. Town Manager Broad responded that the Public Safety Director would be eliminated and the estimated cost of an interim deputy fire chief is \$182,000. There

is some incremental cost in promoting the sergeant to police chief and that would be the only change in staffing and police. He then asked if the Town would take on another fire personnel. Town Manager Broad stated that there would be the same number of staff and personnel as today because the police officers would stay the same. They would no longer have public safety director, just a fire deputy.

Mr. Abrams asked the Council if they need an interim fire chief. Council Member Hunter explained that they need an acting or deputy fire chief until a decision is made on fire consolidation, so it will likely be a member within.

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

Mayor Pro Tempore Strauss asked staff how the reserves are currently invested. Town Manager Broad responded that they are invested in the local agency investment fund (LAIF) and in bonds. It is all very secure and stable, such as bonds. It is basically a money market rate.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Martin seconded, to adopt the Ross FY 2008-09 General Fund Budget of \$5,191,350 with the changes as discussed by staff and Council tonight. Motion carried unanimously.

The Council took a short recess at 8:47pm.

22. Planning Application Consent Agenda.

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

- a. **51 Wellington, Variance, Design Review and Demolition Permit No. 1685**
Craig and Melissa Slayen, 51 Wellington Avenue, A.P. No. 72-071-15, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Demolition permit to allow modifications to each elevation of the residence, including replacement of the existing horizontal siding and windows with new painted wood shingles and windows. Variance and design review to allow a remodel and addition to the existing residence and landscape improvements that include: 1.) removal of the 2-car carport and its roof deck within the front yard setback; 2.) enclosure of the existing entry porch area, partially within the front yard setback (25 feet required, 20 feet proposed); 3.) addition of an attached, two-car, garage partially within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 32 feet proposed); 4.) reconstruction of the northwest corner of the residence, increasing the roof ridge over the area, within the rear yard setback (40 feet required, 0 feet proposed); 5.) landscape grading involving 85 cubic yards of cut and 135 cubic yards of fill; 6.) construction of fenced trash enclosure; 7.) 180 linear feet of new retaining walls up to 5 feet in height; and 8.) new terrace within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 10 feet proposed).

Lot area	11,275 square feet	
Existing Floor Area Ratio	29.6%	
Proposed Floor Area Ratio	31.9%	(20% permitted)
Existing Lot Coverage	26.6%	
Proposed Lot Coverage	25.0%	(20% permitted)

Mayor Cahill asked for a motion.

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

Conditions, 51 Wellington, Slayen

These conditions shall be reproduced on the plans submitted for a building permit:

1. The project and demolition shall substantially comply with the plans approved by the Town Council, dated June 27, 2008, except as otherwise provided below.
2. The new fireplaces shall be gas or EPA certified woodstoves that are Phase II certified or equivalent.
3. A Revocable Encroachment Permit is required from the Public Works Department for all work within the right-of-way.
4. The landscaping shown on the approved plans shall be installed prior to project final.
5. The tree house within the west side setback shall be removed.
6. Automatic garage door openers shall be installed. The garage shall be available for automobile storage at all times. No more than two electrical outlets shall be permitted in the garage and the area shall not be heated or air-conditioned.
7. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) A 24 hour monitored alarm system is required; 3.) Sprinklers are required; and 4.) Remove and clear all dead or dying flammable materials per RMC Chapter 12.12.
8. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
9. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
10. 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.
11. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JULY 10, 2009 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.

b. 57 Bridge Road, Variance and Design Review No. 1690

James Felchlin and Diane Oliver, 57 Bridge Road, A.P. No. 73-261-21, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Design review to allow the replacement of 56 linear feet of wood retaining wall and a 5-6 foot tall wood lattice fence with a new concrete retaining wall and 6 foot wood fence. The existing and new walls range from 4 to 6 feet in height, and are located close to the north property line. A height variance is required for the fence, since the combined height of the wall and fence is up to 12 feet tall (6 feet permitted).

Mayor Cahill asked for a motion.

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

57 Bridge Road Conditions

1. A building permit shall be required for the work.
2. The applicant shall survey the location of the property line or shall locate the boundary markers shown on the Record of Survey for Ward & Lang dated October 2000 and shall indicate these points on the site plan submitted for the building permit.
3. All work shall take place on the applicant's site unless adjacent property owners consent to work on their sites.
4. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The applicant is responsible for ensuring storm water runoff is maintained in its natural path.
5. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
6. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
7. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing

project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.

- 8. This project 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.
- 9. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JULY 10, 2009 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
- 10. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
- 11. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

c. 6 Skyland Way, Variance and Design Review No. 1691

Paul Fradelizio, 6 Skyland Way, A.P. No. 72-201-01, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). Design review and variance to allow the repair of an existing deck and construction of a 350 square foot addition to the deck.

Lot area	17,764 square feet	
Existing Floor Area Ratio	11.6%	
Proposed Floor Area Ratio	11.6%	(15% permitted)
Existing Lot Coverage	13.1%	
Proposed Lot Coverage	14.9%	(15% permitted)

The existing residence is nonconforming in setbacks.

Mayor Cahill asked for a motion.

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

6 Skyland Way Conditions of Approval

- 1. The project shall be constructed in substantial conformance with the approved plans. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the changes.
- 2. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear brush impinging on access roadway, roadway must have a

- vertical clearance of 14 feet; 2.) A street number must be posted {minimum four inches on contrasting background}; 3.) Remove and clear all dead or dying flammable materials from property (RMC Chapter 12.12).
3. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 4. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
 5. This project 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.
 6. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JULY 10, 2008 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
 7. 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.

d. 22 Chestnut Avenue, Extension of Time No. 1571

Suzanne and Joe Galuszka, 22 Chestnut Avenue, A.P. No. 73-301-15, R-1:B-20 (Single Family Residence, 20,000 Square Foot Minimum). A one-year time extension to June 14, 2009, for a variance and design review application approved on June 14, 2007, to allow landscape improvements including: 1.) a 20 foot by 24 foot pergola at the upper end of the driveway within a side yard setback (20 feet required, 2 feet proposed); 2.) new and replacement retaining walls up to 5 feet tall between the residence and the street; and 3.) new pedestrian path and landings within the east side yard setback.

Lot area	22,651 square feet
Existing Floor Area Ratio	8.8%
Proposed Floor Area Ratio	11.3% (15% permitted)
Existing Lot Coverage	19.2%
Proposed Lot Coverage	19.2% (15% permitted)

Mayor Cahill asked for a motion.

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

End of Planning Consent agenda.

23. 662 Goodhill Road, After-the-Fact Hillside Lot, Slope Stability Hazard Zone 3 and 4 Use Permit, and Design Review No. 92
Donald Santa, 662 Goodhill Road, A.P. No. 73-211-45, R-1:B-5A (Single Family Residence, 5 acre minimum lot size). Amendments to plans approved by the Town Council on July 9, 1998, and amended on July 8, 1999, September 14, 2000, February 8, 2001, March 8, 2001, and April 12, 2001, for a hillside lot, slope stability hazard zone 3 and 4 use permit, and design review for a new residence, pool house and garage/guest unit. After-the-fact design review approval is requested to allow over 1,800 linear feet of retaining walls constructed without planning approval and without building permits. After-the-fact design review approval is also requested for cut and fill for creation of terraced areas and paths not shown on the approved plans and also constructed without planning or building approval. An amendment to the prior conditions of approval is requested to allow after-the-fact approval for work done within designated “hillside protection zones” without prior Town approval. This amendment would require amending Resolution No. 1409 approved on July 8, 1999 and Resolution No. 1462 approved on April 12, 2001.

The application has been modified since the last public hearing to include design review for three terraced retaining walls, up to 8 feet tall, which would reduce the height of the terraced area that is currently retained by a wall up to 19+ feet tall.

The Council declared this work a public nuisance and has demanded that the nuisance be abated by July 9, 2008. The Council will consider a nuisance abatement order for the illegal construction at this hearing.

Senior Planner Semonian summarized the staff report and recommended that the Council approve the project and nuisance abatement order subject to the findings and conditions in the staff report. In order to ensure the building permit penalties are calculated appropriately, staff recommends that an independent consultant determine the value of the project for the building permit. The Council may establish the nuisance fine so that it may be imposed, if necessary.

Donald Santa, applicant, respectfully requested approval and is present to answer questions. He believed the plan speaks for itself. He apologized for this issue and humbly requested the Council’s approval.

Mayor Cahill asked realistically how long it would take to complete the work. Mr. Santa believed completion could occur within 20 days. Michael Yandel, landscape architect, asked if a building permit is required. Senior Planner Semonian responded in the affirmative but did not believe it would take very long.

Council Member Skall asked staff if that is 20 workdays or would that include weekends. Senior Planner Semonian responded that it includes weekends. Staff further noted that it could be extended.

Mayor Pro Tempore Strauss wanted contours provided to know the extent of the intrusion into the hillside protected zone. Mr. Santa thought the contours requested were submitted, and if not, then he must have misunderstood. Mayor Pro Tempore Strauss wanted to know the intrusion of the protected zone. He appreciated the natural grade, but it should be taken back to the 556 contour and step the walls. Senior Planner Semonian provided the prior site plans showing the elevations and estimated location of the walls for the Council's review.

Mayor Pro Tempore Strauss noted that what they are reading is not accurately reflected in the work that was done. He desired mitigation for the site. He was hoping for more clarity on that issue for a better understanding.

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

Mayor Pro Tempore Strauss indicated that from the center of the pool to the top of the wall is approximately 74 feet and approved was about 30 feet, so there is a benefit. Mr. Santa is not sure of the net result. In the general scope of all this, the concern was that the development be limited to the main elevation of the site in order to not disrupt the hillside. It was done in the spirit of the main elevation. The idea was to keep it a contained area. This is nearly 20-acres done respectfully to the engineering of the hill and beauty of the hill. He always respected the basic interest of the Town, which he takes great pride in.

Council Member Skall believed enough has been said about this project and desired the least amount of disturbance and wanted to be done with this matter.

Council Member Hunter felt the conditions outlined by staff are on point and is able to vote on this aspect of the application. In regard to the abatement portion, when they first discussed they noted 90-days because they thought it was doable. He understands the normal process is 20-days, but he is willing in order to get this matter completed to extend the timeframe to 30-days and then impose the penalty in regard to the abatement. Council Member Skall concurred. Council Member Martin also found that suggestion acceptable to have this project completed before the rainy season. Mayor Cahill agreed.

Mayor Cahill asked for a motion.

Council Member Martin moved and Council Member Skall seconded, to approve the proposal as outlined by staff and start a \$1,000 per day abatement fee if the project is not completed within 30-days. Motion carried 4-1. Strauss opposed.

Conditions of Approval 662 Goodhill Road, Santa, Design Review

The following conditions shall be reproduced on the first page(s) of the building permit plans:

1. All prior conditions of approval for the site, including the Hillside Protection Zone, shall have full force and effect.

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2. The block walls surrounding the site are approved as constructed, except that the west wall area shall be terraced so that no portion of the wall is greater than 8 feet tall and landscaped as shown on the Retaining Wall/Planting Plan dated May 2008.
3. An after-the-fact building permit is required for the work. Prior to project final, the applicant shall submit the evidence detailed in the Herzog report dated June 11, 2008, to confirm to staff's satisfaction, in consultation with the Town engineer, that the walls have been properly constructed.
4. The Town shall retain a construction consultant to determine the value of the retaining wall project for the building permit. The cost of the construction consultant shall be paid by the applicant.
5. If during the process of removing the walls it is determined that the walls do not meet the structural requirements as constructed, the walls shall be removed and the site re-graded and landscaped with native plants, under the supervision of an appropriate engineer.
6. The applicant shall also submit evidence, to be reviewed by the Town engineer, that confirms the wall and well in the area east of the driveway pose no hazards and will not result in hillside instability. This area east of the driveway shall be re-graded to a more natural configuration and landscaped with native redwoods and appropriate under-story plants to return it to its natural state and fill the gap in the native landscaping prior to final of the block retaining wall project.
7. 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.
8. All landscape up lighting shall be removed.
9. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
10. The original project is subject to the conditions of the Town of Ross Construction Completion Ordinance as amended in 2008. The construction shall not be deemed complete until final sign off is received from representatives of the building/public works, planning and public safety departments.
11. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
12. 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.
13. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing

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

Approve a Nuisance Abatement Order for 662 Goodhill Road

The Town Council of the Town of Ross ordered the nuisance at 662 Goodhill to be abated and administrative penalties to be imposed as established by the Town Council at the July 10, 2008, Council meeting.

1. Town staff shall mail written notice to the property owner demanding that the nuisance be abated by the removal of the illegally constructed walls or issuance of a building permit for the walls and modification of the walls as specified in the conditions of approval for the project adopted on July 10, 2008, within 10 days.
2. If the nuisance has not been abated within 10 days of the mailed notice, the notice shall be posted on the property and at Town Hall.
3. If the required corrective action is not taken within 10 days of the posting, the town staff is authorized to abate the violation and charge the costs thereof as a lien against the property.
4. If the required corrective action is not taken within 30 days of July 10, 2008, the applicant shall be charged a penalty of \$1,000 per day, subject to the maximums specified in the Town of Ross Municipal Code, until the Town Attorney determines that the nuisance abatement order has been complied with or until final inspection on the project, whichever occurs first. This penalty shall be billed to the property owner. Penalties assessed by the Council are a personal debt owed to the Town and, in addition to all other means of enforcement and collection, may be enforced and collected through the placement of a lien against the property.

24. **7 Woodhaven, Demolition Permit, Variance, Design Review, Hillside Lot/ Hazard Zone 4 Use Permit and Second Unit Permit No. 1680**
 Steve Bode, 7 Woodhaven Road, A.P. No. 73-021-04, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size). Demolition permit to allow the demolition of an existing residence and detached accessory structures totaling 1,961 square feet of floor area. Variance, design review, hillside lot/ hazard zone 4 use permit and second unit permit to allow the following: 1.) construction of a 4,861 square foot residence and attached two-car garage with a maximum ridge height of 28 feet; 2.) construction of a 1,140 square foot detached second unit above a two-car garage (700 square feet permitted), with a maximum ridge height of 18.5 to 23 feet (18 feet permitted); 3.) location of the new residence, second unit, driveway and landscape retaining walls within 50 feet of a watercourse contained in a culvert (25 to 50 foot setback recommended); 4.) 469 cubic yards of cut and 340 cubic yards of fill; and 5.) over 100 linear feet of new driveway and landscape retaining walls with a maximum height of 9 feet.

Existing and Proposed Conditions:*

Lot area	76,746 square feet
Present Floor Area Ratio	2.7%
Proposed Floor Area Ratio	7.8% (15% permitted)
Present Lot Coverage	2.7%

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Architect Hannum stated that it is a two-house property and intended to keep the idea that there are two units on this property. They desired a legal second unit and standards do not speak to what happens to the vehicles. Both units have two parking spaces. This property is a good example of what can be done. Garages are below grade and fit the criteria and the Town goals.

Council Member Hunter asked staff about the floor area calculation. Senior Planner Semonian has not been provided the accurate numbers on the road easements. Architect Hannum noted that Woodhaven is a private road. Senior Planner Semonian stated that the road could be expanded and that is the reason to deduct from the lot size because it is not a buildable part of the lot. Architect Hannum believed the house sits very well on the hillside with minimal impact. Mass and scale have not impacted anyone. Within square-footage tolerances, they met the standard of care to maximize the use of this property. Shaving off to save 100 feet will not have a material impact only in how the house settles.

Council Member Martin asked if the applicant is open to coming to some sort of terms with Town of Ross to use that facility as an affordable housing unit. Mr. Bode stated that the intent is lower income, but he would not want to add language on the deed because it has a material impact on the property.

Mayor Cahill opened the public hearing on this item.

Dick Treadwell, Woodhaven Road resident, expressed concern for the second unit in terms of size and location. Council Member Hunter asked the Treadwell's if they agreed to the modifications. Patricia Treadwell, Woodhaven Road resident, desired no second unit, but if lowered as staff recommended, with the modified windows and removal of the lawn area adjacent to their site, they could find it acceptable.

Nora Laherty, Upper Road West resident, expressed concern for the trees. If the bay tree is removed outside of their bedroom window that will impact their view. In addition, Upper Road West neighbors desired no truck staging or impacts occurring to Upper Road West. They live on a private road that they must maintain. She then read comments from the Fanoe's concerned about the trees and that the property line must be identified to avoid encroachment. Mr. Bode agreed to condition the project in regard to Upper Road West and is happy to work with the neighbors in regard to specific trees. In terms of the Fanoe's, a surveyor will clearly identify that property and the house itself will be staked by the same surveyor.

Neighbor directly across from Mr. Bode's lot understands the hillside lot guideline and believed this is a hillside lot and the concern is the impermeable space. He is concerned about water runoff because the drainage swale has not been well taken care of in the past. The way the hillside ordinance is interpreted it allows a wide range. The line of the slope is somewhat subjective. Great deal of water ends up concentrated. He has concerns if Mr. Bode wants to build over, but if under, then he has no objection.

Douglas Abrams, Canyon resident, asked the Council if story poles were erected. Mayor Cahill responded in the affirmative.

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

Council Member Skall discussed the garage and stated that the Council has approved sites with underground garages to eliminate visual impacts and height, so that should be considered. He is at a loss in terms of the easement. As to the neighbors issue, he is having difficulty understanding why the lawn is a point of contention. The lawn in his view is a reasonable request and should remain for the tenant. The windows have been addressed between the applicant and neighbor. He further noted that he is almost supportive.

Council Member Hunter wholeheartedly supported the application with the conditions as discussed by staff if not for the discrepancy with the hillside lot ordinance guideline. As far as the guesthouse, it is a single story house. He did not want to lose a second unit. He is not in favor of approving FAR that is substantially above the hillside guideline, and if that is resolved, then he would approve a variance for the second unit to be counted in the Town's inventory.

Council Member Martin stated that a lot of the material was provided late, which is not a benefit when having to review. He believed there is a good relationship between neighbors and recommended continuing this issue. The neighbors want to eliminate or reduce the impact of the second unit. He shares Council Member Hunter's concerns that the Town does not gain anything from an affordable housing point of view. The FAR is over and it becomes a massive development. He further recommended continuing the item to promote greater dialogue between the parties to hopefully resolve this matter.

Mayor Pro Tempore Strauss supported the staff report and further review of the project is the 500 sq. ft. that it is over. If they can find 127 sq. ft. they would follow the guidelines. The second unit is a benefit to the community. Permeable surface can mitigate the runoff. He agreed with no work on Upper Road West and hoped between the neighbors the trees and screening can be addressed. It is very difficult to design an uphill site and as designed is has a less impact. The lawn can be worked out between the neighbors as well as making the change to the windows. He further stated that if they find 127 sq. ft. it could be acceptable.

Council Member Hunter asked staff if the Council must grant a height variance for a second unit and a second unit size variance. Senior Planner Semonian responded that findings must be made to grant these variances. Staff suggested that the Town review the second unit provisions in the code because it is becoming a problem in regard to granting variances.

Mayor Cahill stated it is very important to encourage second units and buried garages. Excellence of design and site planning minimizes the environmental impacts. In his view the 127 sq. ft. is not going to make a difference in how the house appears from the street or a difference to the neighbors, only that the applicant will get a slightly smaller house. They have the ability as Town Council to allow the design as presented with the various conditions as outlined by staff.

Council Member Hunter noted that 400 sq. ft. was swept under the rug, so they are really approving almost 500 sq. ft. based on the calculations. Mayor Cahill stated that given the excellence of design, he could support the floor area.

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Mayor Pro Tempore Strauss believed it is easy to find 127 sq. ft., but he can go either way. Council Member Hunter is concerned about precedent and urged that everyone remember the de-minimus percentage over guideline that is being approved. Mayor Pro Tempore Strauss noted that every site and project is different. Mayor Cahill reiterated that they want to encourage second units and buried garages.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to approve the 7 Woodhaven project as presented with additional landscaping to mitigate the second units visual impact and with raised sill heights for the second unit windows that face 9 Woodhaven; provide permeable surfaces where possible to mitigate runoff; amend the conditions to prohibit use of Upper Road West; and make the findings to approve the variances associated with the second unit since the variances will allow for the creation of a housing unit to add to the Town inventory as called for in the Housing Element; including the additional conditions of approval as recommended by staff. Motion carried 4-1. Council Member Martin opposed.

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

1. 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.
2. The applicant shall repair any damage to the Town streets prior to project final. A videotape log, DVD format, clearly showing the existing condition of Woodhaven Road from Upper Road to the Town limits shall be presented to the Department of Public Works prior to the start of construction. Applicant is advised that, absent clear video evidence to the contrary, road damage must be repaired to the satisfaction of the Town prior to project final. Damage assessment will be at the sole discretion of the Town, and neighborhood input will be considered in making that assessment.
3. As agreed to by the applicant, the windows in the bathroom and bedroom area of the second unit shall be clerestory windows, with sill heights above eye level.
4. As agreed to by the applicant, the landscape plan shall include sufficient new evergreen screening landscaping between the second unit and the property line shared with 9 Woodhaven Road, sufficient to screen views between the sites.
5. Building permit plans shall include the actual area of the neighbor's driveway easement and the Woodhaven Road easement, which shall be deducted from the lot area.
6. The project construction shall comply with the approved plans. A licensed land surveyor shall string the location of the foundation. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the floor elevations of the garage, residence and second unit comply with the approved plans after they are constructed. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the roof heights comply with the approved plans after framing.
7. The applicant shall locate the utility easements on the site plan so that staff may confirm that the improvements will not interfere with the easements prior to issuance of a building permit.

8. The applicants shall submit a detailed arborist report that details the health of the oak tree proposed for retention near the residence as well as any other tree protected by Ross regulations. The report shall identify measures that must be taken before, during and after construction to protect and preserve the tree(s). 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.
9. The mechanical room must have a maximum ceiling height of 6.5 feet, measured from the roof framing to the floor. The door to access the area may not exceed this height. Walls shall be unfinished (may be concrete or low grade plywood) and electrical work is limited to a single light fixture and outlets and wiring dedicated to mechanical equipment.
10. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
11. Applicants shall recycle at least 50% of construction and demolition debris. If mixed debris boxes are used, the applicants shall inform the waste hauler of this condition prior to debris box pick up to ensure the box will be brought to the recycling area. Receipts that demonstrate the material was recycled must be submitted to the planning department prior to project final.
12. A construction management plan shall be submitted prior to issuance of a building permit showing the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans. Upper Road shall not be used for construction access.
13. Grading is prohibited between October 15 and April 15.
14. The applicants shall submit appropriate air quality permits to the building department prior to demolition of the existing structure.
15. 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 in the May 23, 2008, Geomorph report.
16. Except as otherwise noted in these conditions, landscaping shall be installed in conformance with the approved landscape plan prior to project final. Prior to project final, the applicants shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
17. The landscape plan shall be modified to include additional native California riparian woodland plants in all or part of the area lying within 25 feet of the centerline of the culvert to visually connect the redwood dominated riparian corridor downstream from the site with the oak-bay woodland corridor upstream from the graded area.
18. Any exterior lighting not shown on the approved plans shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.

19. 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.
20. 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 R.M.C. Chapter 12.12
 - c. The hydrant located at 4 Woodhaven must be upgraded to steamer type (one 4 ½" and two 2 ½" outlets)
 - d. Sprinklers are required – a 13R System.
 - e. A 4-inch supply line shall be provided from the pool drain to the street (to be determined by the fire marshal).
 - f. The access roadway shall be 14 feet to provide adequate fire or rescue operations.
 - g. The applicant shall clear all brush impinging on the access roadway.
 - h. The Roadway shall have a vertical clearance of 14 feet.
 - i. The siding shall have no gaps and Class A roofing is required.
 - j. A 24 hour monitored alarm system is required.
 - k. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
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.
22. Failure to secure required building permits and/or begin construction by July 10, 2009 will cause the approval to lapse without further notice.
23. 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.
24. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
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.

The Council took a short recess at 10:10pm.

25. 18 Canyon, Lot Line Adjustment and Conditional Exception from Subdivision Regulations No. 1692

Douglas Abrams, owner of Assessor's Parcels 72-031-27 (18 Canyon Road) and 072-031-44 (12 Canyon Road) and Faraz Naqvi, owner of Assessor's Parcel 072-031-28 (16 Canyon Road). The lots are zoned R-1:B-5A (Single Family Residential, Five Acre Minimum Lot Size). Lot line adjustment to allow the transfer of lot area from 18 Canyon Road to 16 and 12 Canyon Road. The net area of 16 Canyon Road would increase from 2.1 acres to 2.8 acres. The net area of 12 Canyon would increase from 4.3 acres to 5.1 acres. The net area of 18 Canyon would decrease from 1.5 acres to .7 acres. A conditional exception to the subdivision regulations is requested to allow 18 Canyon Road to further decrease below the 5-acre minimum lot size. All of the existing lots are nonconforming in size and do not have public street frontage.

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

Mayor Pro Tempore Strauss asked staff if they were legal lots with the original subdivision and are they all willing to add restrictions to not come back in at a future date. He wanted to protect the Town. Senior Planner Semonian noted that it would require an exception from the subdivision regulations. Town Attorney Hadden Roth stated that it is not a legal precedent.

Mayor Cahill asked staff if these adjustments do not result in any property owner getting potential development rights. Senior Planner Semonian stated that some would have additional floor area, but it will not be significant.

Doug Abrams, applicant, appreciated the neighbors in attendance tonight. He is willing to make the entire side an easement to avoid any development, which is a benefit to all. The maintenance issue has been a major one. Several trees had fallen in the past. They all support this proposal. They have protected the trees and the watershed and believed it is a positive outcome for all.

Mayor Pro Tempore Strauss complimented both Mr. Abrams and Mr. Bode on the pond areas. They look wonderful and is a very creative model for people to review.

Mayor Cahill opened the public hearing on this item.

Ms. Pomeroy, the- owner of a large lot nearby lot, expressed concern for the lot size. She also expressed concern for second units and guesthouses being built, which would add to the traffic congestion and amount of construction. The road is in a poor condition and must be addressed. She is worried about the future. She has 19-acres and desired restrictions for no further develop to occur. Senior Planner Semonian noted that second units are allowed. Mr. Abrams added that they are not adding a lot or creating more square-footage. It is maintaining the watershed.

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Mayor Cahill asked when the existing house would be completed. Mr. Abrams responded that July 24th is the broker open house and they will be repaving the road.

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

Council Member Hunter found the project acceptable and believed it is a great proposal. He appreciated the restriction of nothing over 18-inches. He supported the redrafting of the lot lines for the ponds. The Council concurred.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve Item 25 with the findings and conditions outlined in the staff report; with the additional condition that Mr. Abrams, on his lot, will place an easement that restricts building structures over 18-inches on the area of the lot that sits above his driveway; and that staff is authorized to approve a lot line adjustment to allow the retention ponds to be located on the Muren lot, so long as the 18 Canyon lot size remains as approved. Motion carried unanimously.

The lot line adjustment was approved subject to the following conditions:

1. The Town approves the lot line adjustment except as otherwise provided in these conditions.
2. The lot line adjustment shall not be recorded until the lot line adjustment/parcel map between the Lands of Glasser and Lands of Abrams, approved in 2007, is recorded.
3. An intent of this lot line adjustment is to preserve the uphill area of the existing 18 Canyon Road site from development. The area of 18 Canyon Road that is upslope of the driveway for 12 Canyon Road, which is being transferred to 12 Canyon Road, shall be preserved in its natural state and shall be limited from any development unless prior Town Council approval is obtained for the work. *An easement shall be included that prohibits structures over 18 inches from being constructed on this area of the lot.*
4. Final documents shall be submitted to the town planner for review for consistency with this approval before they are recorded.
5. Failure to record the lot line adjustment by July 10, 2009 shall cause the approval to lapse without further notice.
6. 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.

26. 3 Upper Ames, Variance and Design Review No. 1689

Lionel Conacher and Joan Dea, 3 Upper Ames Avenue, A.P. No. 73-201-02, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). A significant demolition and remodel of the existing residence, designed by Joseph Esherick, architect, in 1957-1958. Demolition permit to allow modifications to each elevation of the residence, including demolition of walls, the roof and garage. Design review for the following: 1.) addition of 2,481 square feet of floor area on the first and second story of the residence to create a 7,540 square foot residence and 712 square foot garage; 2.) landscape improvements that include construction of a new pool, 860 square foot pool house, pool patio area and sports court; and 3.) steel, lattice design, driveway gates up to 6 feet in height between new stone columns. Approval of setback variances would be necessary in order to locate portions of two parking/turnaround areas within the west side (25 feet required, 15 feet proposed) and south rear (40 feet required, 8 feet proposed) setback areas. No other variances are necessary for the project. The Town Council will determine if the existing residence is a historical resource and, if so, if further review is warranted under the California Environmental Quality Act.

Lot area	96,407 square feet	
Existing Floor Area Ratio	6.1%	
Proposed Floor Area Ratio	9.5%	(15% permitted)
Existing Lot Coverage	6.1%	
Proposed Lot Coverage	8.7%	(15% permitted)

Council Member Martin recused himself from the next item to avoid the appearance of a conflict. Mayor Cahill announced that he lives in a Joe Esherick home, but was informed by the Town Attorney that there is no conflict of interest and did not need to recuse himself from this item.

Senior Planner Semonian summarized the staff report and recommended that the Council listen to the consultants regarding the historical issue first, and then hear from the applicant and architect.

Ruth Todd, Page & Turnbull Consultants, explained that findings as outlined in their report for 3 Upper Road Ames have determined the structure to be a historic resource under CEQA. She then introduced Historian Gretchen Hilyard to discuss the report.

Gretchen Hilyard, historian, prepared a report that provides an in-depth analysis and brief architectural description and historic context for the Martin House and an evaluation of the property's eligibility for the California Register of Historical Resources. She explained that it is the professional opinion of Page & Turnbull that the Martin House appears to be eligible for the California Register of Historic Resources under Criterion C as a building that represents work of master architect Joseph Esherick. Esherick's residential design vocabulary included simple massing; careful attention to site location to capture the effects of sun and shade; conscientious detailing; the use of wood in its natural state for interior and exterior wall surfaces; attention to the confluence of indoor and outdoor spaces; and the unassuming materials, and landscaping. The combination of these features generated an individual character of each design in response to a client's specific program and aesthetic requirements. The Martin House displays all of the above architectural elements that

Esherick employed and exemplified the distinct architectural vocabulary characteristic of his residential designs.

Council Member Hunter asked Historian Hilyard if she reviewed the report from Cary and Co. Historian Hilyard has reviewed their report, but their report stated that it is not a representative work of a master. There are no regulations that it has to be the best of the master or only work of the master, just that it represents the work of a master.

Jared Polsky, project architect, stated that it is his understanding, having worked in Town for over 20 years is that Ross typically uses one of two historical consultants firms - Page & Turnbull and Carey and Co. Both very highly regarded. Staff solicited proposals from both firms and hired Page & Turnbull as the consultant. He asked staff before giving his clients approval, if they could hire Page & Turnbull for their research only. They asked if they could bifurcate their work and only hire them for preliminary research. Then the applicant would be given a choice as to who should move forward and produce the report. Staff agreed to this working arrangement. They were very specific. He met Ms. Hilyard of Page & Turnbull at the site on June 23rd and had a brief discussion with her the following day. She noted that she was leaning to finding the house historic. He noted that he had done research on Esherick homes and had not found any mention of this particular residence. Ms. Hilyard admitted that she would have not found the house to be an historic residence had it not been recently published in a book by Marc Treib. Mr. Polsky understood under the relevant federal and state criteria the house must be deemed significant within the masters body of work. He quoted from the historical guidelines published by the National Register "*a property is not eligible as the work of a master, however, simply because it was designed by a prominent architect.*" For example, and again he quoted, "*not every building designed by Frank Lloyd Wright is eligible under this portion of Criterion C.*" He then asked Ms. Hilyard to stop their work and asked Carey and Co. to do their own independent research. He met with Dr. Karen McNeill from Carey and Co. at the site on June 25. Dr. McNeill conducted very thorough research concerning Mr. Esherick and his client Mr. Martin. The results of their research are now before the Council as the only Historical Resource Evaluation that he knew as of 5:30 pm this afternoon. He understood at this late hour that Page & Turnbull have now prepared their own report. Carey and Co. concluded that even though the house is a good example of a highly influential master architect it does not meet the criteria for listing in the NRHP or the CRHR. They requested that the Conacher's have photographic documentation prepared per the Historic American Building Standard for posterity and future research, but again the house and property does not meet the criteria to be deemed an historic resource. He has great regard for Mr. Esherick. He was Dean at Cal when he completed his masters degree in 1977. He was a wonderful man and clearly an influential master architect. But that is not the issue. Though we all have great fondness and regard for Mr. Esherick, as the guidelines clearly state, not every house designed by or even representative of the work of a master should be deemed an historic resource. The Carey and Co. report is thorough scholarly and objective and clearly explains why this particular house should not be considered an historic resource. He then noted that Dr. McNeill was unable to attend tonight, so her colleague from Carey and Co. is present to explain their reasoning, their report and their conclusions.

Erica Shultz, architectural historian, determined that the house does not appear to be eligible for the California National Register. The house is designed by prominent architect Joseph Esherick, but not every building should be considered eligible. It must be placed within the entire body of their career. It must have some judgment that it is a significant

example within their work. The house was designed in the late 1950s and they prepared a list of buildings, which she provided to the Council and all are believed to be homes similar in design to the Martin House. They prepared slides as well for the Council's consideration that included the following:

- Kentwoodlands – 1947
- Bergin House – 1954
- Wieser House, Kent Woodlands, 1955
- Lehman House, Kent Woodlands, 1962

They used these examples along with the list and felt they were not significant examples or representation of his work.

Lionel Conacher, owner, was a art history major with specialty in modernism and is currently living in Toronto and hopes to move to Ross. The consistent theme was to not subdivide this property. They want to bring the house up to a current state and develop it in a way to live with his family for 2008. The house in its current state is not a house he is interested in moving into. If they had any inkling that this property would be deemed an historic property they would not have purchased it. Only the property is mentioned in the Ross history book. They hired Architect Polsky to design the extraordinarily beautiful house that would be a house the Town of Ross would be proud to have. They stayed true to the spirit and integrity of the existing structure. He stated with some certainty that were Joe Esherick alive today the existing house is not the house he would design on this property. Mr. Esherick was about moving forward. As to whether the house is historic or not, it is only an opinion. The two most prominent consultants have a divided opinion on this house. He felt the goal posts were moved during their process. The fact remains that this situation is one of opinion and one he did not see if more consultants are hired. The fact is that the home designed by Polsky Architects is within all the criteria in Town and very respectful of their neighbors. They believed the right direction would be that the Council grant approval and allow them to move forward and build this wonderful house and begin living in Ross.

Mayor Cahill opened the public hearing on this item.

George Homsey, Homsey Architectural Firm, stated that the Martin House is a fine example of architecture that was designed towards the end of the post war period in the Bay Area, known as the "Bay Area" style. The elements of this style recognize place and have an intriguing attitude of living pattern that engages its setting. Joe Esherick was an important part of that era, although Joe and other like him (*Wurster and Daily*) disdain of the term "style." Joe Esherick designed houses that fit easily into their settings, recognizing and incorporating the sense of the region. His talent and skill to work closely with his clients produced fine houses that not only suited the client's needs, but in addition became part of the fabric of the neighborhood. Joe understood well the nature of materials, and took a quiet pride in the knowledge and the process of construction. His restraint and sensibility produced buildings of remarkable character. The house is extraordinary in execution. It stands as an extraordinary example of its time. The building is designed for that site and engages it in a very interesting way. They embodied their instincts in design and environment. Recognizing and incorporating the region such as Marin County, Ross and bucolic setting. There is a lot of glass and openness making it unique. In a sense he felt a certain awkwardness being present tonight, he knew that Joe, although not a Quaker, but having been raised in Philadelphia, shared qualities of their beliefs: quietness, fairness and a disdain for

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ostentatious display. He too might feel uncomfortable with the arguments that would preserve a building for itself rather than allowing those who inhabit the building to modify it to suit their needs. In a sense what he felt is that Joe would have worked with the new owners to adapt the conditions to suit their requirements, but to have done so in a manner that would retain the important qualities of the building and at the same time satisfy the needs of the new owners.

Rich Perlstein, architect, pointed out that he was more interested in designing a barn like structure and the Martin's wanted big box. Also, the original drawings show the house designed with shingles and the Martin's designed vertical siding.

Todd Blake, Upper Ames Avenue resident, stated that the property at 10 Acorn in Kentfield was demolished and that property should have been preserved, which was Joe's own personal residence. Their own Gardner Daily house was adapted to their own personal style of living, but in keeping the style that Gardner Daily had designed. Architects always progress and that is what the Conacher's have done. The house is not of historic nature in his opinion. In the five years he lived at his house, not a single person stopped and looked at that house in a historical perspective. He further believed it would be a great disservice to the owners if this house is called "*historical*."

Glennis Briggs, EHDD Senior Associate, provided several images of the existing houses for the Council's discussion as well as provided a packet of information for their review.

EHDD Principal Martin noted that there is a difference between the national requirement and state and desired them to comment on discrepancy. Historian Hilyard responded that difference in degree of integrity necessary to qualify the resource. The same criteria has to be made for California and national register. Then they look to see if the building being considered has enough integrity to retain that criteria. In this case, they felt very strongly this is a very unique house and has undergone very few changes, if any in its entire lifetime, which is rare and it has a very high level of integrity.

Architect Polsky noted that there is a difference of opinion and the lead agency can make the determination and hoped it can be made tonight.

Consultant Todd stated that once included in historical resources any project that has adverse change many have significant effect on the environment. The Council must determine under CEQA guidelines whether or not historical resource of not using criteria embodied distinctive characteristic of type, region, period, method of construction or representative work of individual or possesses high artistic evidence.

Mayor Pro Tempore Strauss wished the owner understood the significance and believed Architect Polsky has designed a terrific house. With that program there is a missed opportunity to juxtapose the modern with the original and felt there is another opportunity. He wanted to provide guidance and believed individuals have the right to develop their property, but also respect the historical asset. He cannot make a final decision tonight.

Council Member Skall agreed that this is a major decision and he cannot make a clear decision tonight. Houses are extremely emotional. As to historical nature, it is 50/50 and maybe they need another voice. He does not have the background to make that decision.

Mayor Pro Tempore Strauss stated from a LEED standpoint it is better to preserve materials. Mayor Cahill noted that their plan is to reuse a number of the materials. Architect Polsky explained that they are intentionally reusing the hold house. Mayor Pro Tempore Strauss appreciated that aspect and sees a huge opportunity.

Council Member Hunter stated this is very difficult. Before the Town Council tonight are two sets of experts both highly qualified, so it is a difference of opinion. Whether a resource or replacement will be a resource it is for the Council to judge as to whether this resource as it stands should not be changed. Architecture is not stagnant and continues to evolve. He liked the new design, but he is unprepared to make a decision tonight.

Mr. Conacher added that he has worked extraordinarily hard to meet Council's objectives and went through ADR twice and the entire team worked hard. They chose this house because they are intending to move here in August of 2009 for his children to start school September 2009. The August meeting has been canceled and if this is deferred until September they will not have enough time to meet their timeline. Had they known that this would be an issue of historic nature, they would not have purchased the house. They adhered to the lot in spirit in every way possible and all neighbors are in support of this project. From his perspective, it greatly worries him in regard to time. They must look at an alternative because they will not move their family across the country and place them in a rental home.

Mayor Cahill is very torn. He is not sure he has the background to make a determination as to whether this house is historic under these guidelines. Both consultants have come to different conclusions. He feels for the applicants. It is unfortunate that they do not have a historic inventory in Town and it should be a priority to address. So much of this material has been submitted late, but he would be in favor of a continuance. Without a continuance to study this matter further, he would have to vote in favor of it being historic, but desired a continuance to study further.

Council Member Skall asked if the list of houses that Carey and Co. provided are all designated as historic. Architectural Historian Shultz noted that it is a list compiled from architectural books known to be houses in the area. Council Member Skall asked if they move forward with the changes and this is now not part of the historic architecture, is the Esherick legacy damaged. Mayor Cahill believed that is an excellent question, which is what the Council is struggling with. Council Member Skall asked how many homes must be representative of one architect's work. Mayor Pro Tempore Strauss stated that part of the fabric of the community is older homes. The historic survey must be conducted. Senior Planner Semonian noted that staff had no information to provide to the ADR at the time the house design was considered by the group. The ADR group was advised that they should proceed with review as if the structure was not historic, they were informed that it was being reviewed. Consultant Todd noted that it must be based on evidence and the Council must know more about what is occurring before a decision is made otherwise the decision can be challenged.

EHDD representative explained that the photographic study they have recommended becomes part of public records, so measured drawings, photographs and reports are available for those studying Esherick's work. Mr. Conacher offered to do that.

Consultant Todd stated the appropriate next step would be for the Town to conduct an historic inventory in order to gather the list of Esherick designed homes in the area and evaluate them from their level of integrity and see how they compare to this house. The Council must know how this house compares with the other houses.

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

Mayor Cahill asked for a motion.

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

Council Member Martin reconvened his position on the Town Council and Town Attorney Hadden Roth left the Town Council meeting.

27. Correspondence.

- **Marin Community Food Bank – Fundraiser**

The Town Council agreed to support the fundraiser director Council Member Hunter to contact Executive Director Anne Rogers from the Marin Community Food Bank.

28. Other Business-None

29. Adjournment.

By order of Mayor Cahill, the meeting adjourned at 11:26 pm.

William Cahill, Mayor

ATTEST:

Gary Broad, Town Manager