

## SPECIAL MEETING of the ROSS TOWN COUNCIL THURSDAY, JULY 15, 2010

1. 6:00 P.M. Commencement.

Present: Mayor Strauss; Mayor Pro Tempore Hunter; Council Member Small, Council Member Martin; Council Member Russell; and Town Attorney Hadden Roth

2. Posting of Agenda.

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

3. Swearing-in Ceremony for P. Rupert Russell and Carla Small as Ross Town Council Members.

Newly elected Council Members Rupert Russell and Carla Small were sworn in by Mayor Strauss.

4. Town Council consideration of adoption of Resolution No. 1714 declaring results of statewide direct primary election of June 8, 2010.

Mayor Strauss announced the official final results of the June 8, 2010, statewide direct primary election of Town Council Members as follows: Carla Small, 536 votes; P. Rupert Russell, 409; Iris Winey, 267; and Mark Fritts, 261. The total votes cast in the election were 882 ballots, representing a 53% turnout.

Mayor Strauss asked for a motion.

Council Member Martin moved and Mayor Pro Tempore Hunter seconded, to adopt Resolution No. 1714, declaring results of statewide direct primary election of June 8, 2010. Motion carried unanimously.

5. Open time for matters pertaining to the closed session in agenda item 6 - None

6. Closed Session.

Labor Relations - Government Code Section 54957.6 related to negotiations between the Town of Ross (Gary Broad, Town Manager, Richard Strauss and Scot Hunter, Ross Town Council, as Town Representatives) and the Ross Professional Firefighters Association, Local 1775.

7. Open Session. Council will return to open session and announce action taken, if any. Mayor Strauss announced that there was no reportable action.

8. a. Election of Mayor.

Mayor Pro Tempore Hunter, on behalf of the Council and staff, thanked Mayor Strauss for his outstanding service and then read the following statement into the record:

*"For the last several decades, the tradition in Ross has been that at the end of the Mayor's term, the Mayor Pro Tempore moves over to the Mayor's position and a new pro tem is selected. Having been the Mayor of Ross for close to 1½ years during my first term on Council, I know how much of a commitment the position requires*

*and after some soul searching with my wife Mary Lee, I have decided that we cannot make a commitment to the position at the present time. As a result, I would like to remove my name from consideration for Mayor in the upcoming vote and I will support whoever the Council chooses to appoint.”*

**Council Member Small moved and Council Member Russell seconded, to nominate and appoint Council Member Martin as Mayor of the Ross Town Council. Motion carried unanimously.**

Mayor Martin noted that he is very honored and is looking forward to working with his colleagues and staff to help the citizens of Ross become more involved in their local government.

**b. Election of Mayor Pro Tempore.**

**Mayor Martin moved and Council Member Russell seconded, to nominate and appoint Council Member Small as Mayor Pro Tempore of the Ross Town Council. Motion carried unanimously.**

**9. Minutes - June**

Mayor Martin asked for a motion.

**Council Member Strauss moved and Council Member Russell seconded, to approve the Minutes of June 10, 2010 as amended. Motion carried unanimously.**

**10. Demands.**

The demands were met.

**11. Open Time for Public Expression**

Council Member Strauss discussed “*Smart Meters*” and noted that he has received several calls in regard to whether it is “*smart*” or not. He recommended that the matter be discussed at the Council’s upcoming workshop. He further believed the Town must move cautiously in regard to smart meters.

**12. Report from Mayor – No report.**

**13. Report from Committee Heads.**

Public Works - Council member Martin

- Public Works Committee Update – No report

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

Wendy McPhee, RPOA representative, indicated that Chief of Protocol Roseanne Lourdeaux did a wonderful job with the Fourth of July celebration. Chief of Protocol Lourdeaux noted that it was very difficult to find volunteers and more help is needed. RPOA believed the Town should establish a committee for the Fourth of July event because it is too much for one individual to handle. Also, RPOA asked that the Council appoint a Council Member to represent the Town Council at their RPOA Board meetings.

**15. Flood Control Report.**

Mayor Martin reported that one week ago, Supervisor Hal Brown, and Marin County Public Works Director Farhad Mansourian gathered all the Town Managers, Public Works Directors and representatives from the Flood Districts, to discuss flood control and the Corte Madera Creek. The Town of Ross was well represented with Council Member Strauss, Town Manager Gary Broad, and Public Works Director Mel Jarjoura. The purpose of the meeting was to announce the launching of a funded effort to reduce flooding of the Corte Madera Creek. With \$40 million generated by the Ross Valley flood fee, the County of Marin will pursue available Federal and State funding to achieve the estimated \$100 million to address flooding. This comprehensive approach will affect every community along the Corte Madera Creek. It will include detention basins upstream from Ross, deepening the creek channel, removing the fish ladder, and removing the accumulated silt from the Corte Madera channel as it meets San Francisco Bay. This will require coordinated effort from all jurisdictions, including the Army Corps of Engineers. It has taken many, many years to get to this point, and at last, there may be a solution implemented within the next seven 7 to 10 years. It will take a collective involvement, commitment and tenacity to make this a reality.

Council Member Strauss noted that funds would be spent on whatever is most beneficial. Also, they must look at funding for the bridge since that is a top priority on the list.

Mayor Martin announced that at the August Town Council meeting the Army Corps Project Unit 4 Manager, Facundo Funes, will provide an update on the engineering design and environmental studies.

**16. Selection of members to Town Council Committees and Town Representatives.**

Mayor Martin announced that selection of Town Council Committees and Town Representatives would occur next month. Council Member Hunter agreed to attend the TAM (*Transportation Authority of Marin*) meeting next Thursday.

*Mayor Martin and Council Member Russell recused themselves from agenda Item "a" in order to avoid the appearance of a conflict.*

**17. Consent Agenda.**

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

**a. 97 Shady Lane, Design Review No. 1654**

Archdiocese of San Francisco, 97 Shady Lane, St. Anselm Catholic Church, A.P. No. 73-051-22, R-1 and R-1:B-10 (Single Family Residential), Limited Quasi-Public/Private Service. Design review of request to install two 20-foot tall pole-mounted light fixtures and several 36" tall bollard lights to illuminate the parking lot and pedestrian paths at the church site. The applicants propose to have the lights automatically shut off at 10 p.m. unless there is a later event.

Lot area	30,600 sq. ft.	
Existing Floor Area	45.7%	
Approved Floor Area	46.2%	(20% permitted)
Existing Lot Coverage	43.5%	
Approved Lot Coverage	50.3%	(20% permitted)

*The existing structure is nonconforming in setbacks.*

Mayor Pro Tempore Small asked for a motion.

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

**97 Shady Lane Conditions:**

1. The lighting proposed on the June 28, 2010 Site Plan –Lighting and Elevations and Light Fixture Information dated May 25, 2010, is approved. The lights shall be on a timer programmed to shut off the lighting at 9:00 p.m., unless there is a later event. Lower fixtures may remain on after 9:00 p.m. to illuminate paths and provide security for the residents of the site. The Town reserves the right to require the lights to be shut off earlier or to require the wattage to be reduced and the replacement of the ballasts if the lighting it is found to create glare or annoyance for adjacent property owners, considering that the lighting system will provide a greater amount of illumination right after installation and the light levels will decline as the system ages.
2. All planting beds shall have the ability to absorb runoff so drainage is maximized.
3. An arborist report shall be submitted with tree protection measures to be followed during construction, including precautions to be taken during removal of the asphalt around the trees to be preserved.
4. The curb cut arrangement must be worked out at the corner of Shady Lane and Bolinas, so the crosswalk does not end up on the driveway.
5. The first option for colors is accepted, but if at any time the applicant wants to make a change, it must be brought back to the Council for that purpose.
6. The use permitted under this use permit shall be established and conducted in conformity with the description in the materials presented by the applicant and the existing church use. This use permit approval is based upon and limited to maintaining the intensity and hours of the existing church uses as described by the applicant and compliance with the conditions of approval. Any deviations from the project description or conditions must be reviewed and approved by the Town Planner for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
7. The applicant shall maintain the number of parking spaces proposed. In addition, the off-site parking at the corner of Sir Francis Drake Boulevard and Bolinas Avenue AP 073-052-25 shall be maintained for the church use.
8. All buildings, grounds, parking areas and landscaping shall be maintained in a neat and orderly manner at all times.
9. The meeting room shall be used in association with the existing church uses and not for outside groups not associated with the church use. An amendment to the use permit is required to amend this condition.
10. The applicant is responsible for ensuring that the project will comply with all applicable disabled access regulations.
11. All encroachments into the public right of way require prior approval of a revocable encroachment permit from the Director of Public Works.

12. This project shall comply with the following requirements of the Department of Public Safety: 1.) Sprinklers are required; 2.) A street number must be posted; 3.) A Knox lock box is required; 4.) a 24 hour monitored alarm system is required.
13. NO CHANGES FROM THE APPROVED PLANS AND USE SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.
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.
15. All exterior lighting shall be shielded and downcast and shall not extend off site.
16. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
17. 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.

*Mayor Martin and Council Member Russell reconvened their positions on the Ross Town Council.*

**b. 18 Canyon Road, Variance and Design Review No. 1655**

Douglas Abrams, 18 Canyon Road, A.P. No. 72-031-27, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). A one-year time extension to May 14, 2011, for a variance and design review application approved May 14, 2009, to allow 1.) conversion of 216 square feet of garage storage space to living space within side yard setback (25 feet required, 8 feet proposed); 2.) expansion of master bedroom at main level and addition of two new bedrooms at upper level within front yard setback (25 feet required, 5 feet proposed).

Lot area (less road easement)	23,598 square feet	
Existing Floor Area Ratio	13.2%	
Proposed Floor Area Ratio	14.8%	(15% permitted)
Existing Lot Coverage	10.7%	
Proposed Lot Coverage	11.2%	(15% permitted)

*The existing residence is nonconforming in setbacks, maximum height, and number of stories.*

Mayor Martin asked for a motion.

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

**18 Canyon Extension Conditions:**

1. The building permit plans shall reflect the deletion of the new deck area upslope of the proposed master bedroom addition and an exterior door shall be provided to the proposed living space at the garage level.
2. A building permit is required for the project. No work is permitted at the site until a building permit has been issued.
3. Sprinklers shall be extended to the new construction.
4. All exterior lighting shall be low wattage, shielded and downcast. No lighting of exterior walls or fences is permitted.
5. Under Ross Municipal Code Section 18.41.020, design review is required for any construction, improvements, grading/filling or any other site work within twenty-five feet of the top bank of the watercourse that runs through the site (including areas running in the culvert) and the high water mark of the detention ponds, whether or not a building permit is required.
6. The following conditions relate to maintenance of the drainage facilities at the site:
  - a. The applicant shall record CC&R's regarding the maintenance of the drainage facilities for 18 Canyon Road (APN 072-031-27) and 10 Canyon Road (APN 072-025-01). The C.C. & R's shall provide notice to all present and future property owners of the existence of the drainage facilities and the maintenance and repair obligations. They shall provide notice to all property owners that the detention basins, stormwater piping, drainage inlets and drainage channels that were approved by the Town shall not be modified or removed without prior approval of the Town of Ross Public Works Department.
  - b. The owner of the site is responsible for ongoing inspection, cleaning, maintenance and repair as necessary, but at least once a year, of all drainage facilities including detention basins, stormwater piping, drainage inlets and drainage channels, installed at the site.
  - c. The Town of Ross, in its sole discretion, may enter the property and make such repairs or undertake such maintenance work as is necessary in the event that the property owners fail to maintain or repair the drainage facilities. The Town of Ross will be reimbursed by the property owner for all costs in repairing or maintaining the structures. The failure to maintain or repair shall be deemed a public nuisance and the Town shall have the right to abate the nuisance, assess the cost thereof, and cause collection of said assessments to be made on the tax roll and as a personal obligation of the owner(s) in the manner provided for by the Ross Town Code and state law.
7. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
8. 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.
9. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.

10. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
11. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
12. 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 and prior to any modifications.
13. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
14. The 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. 15 Woodside Way, Design Review No. 1787**

Susanne and Peter Chase, 15 Woodside Way, A.P. No. 73-252-06, R-1:B-6 (Single Family Residence, 6,000 sq. ft. minimum lot size), Medium Density (6-10 units per acre). Watercourse design review and variances associated with a 144 square foot, 2-story, addition to the south side of the residence, in the area of an existing deck, approximately 7 feet from the seasonal stream (25-foot setback required). The addition would add a new 8.5' by 8.5' laundry room at the lower level and a new 8.5' by 8.5' dining room at the upper level. The applicants would remove the existing laundry area on the lower level. The roof overhang would extend into the side yard setback (15 feet required, 13.5 feet proposed). Total development of 1,338 square feet is proposed.

Lot area	6,900 square feet
Existing Floor Area	17.6%
Proposed Floor Area	19.4% (20% permitted)
Existing Lot Coverage	19.5%
Proposed Lot Coverage	19.5% (20% permitted)
Existing Impervious Areas	25.0%
Proposed Impervious Areas	26.8%

*The residence and carport are nonconforming in setbacks. No uncovered parking provided (1 space required).*

Mayor Martin asked for a motion.

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

15 Woodside Way Conditions:

1. The project shall be constructed in substantial conformance with the plans designed by Millworks Design/Construction, dated April 31, 2010 [sic], approved by the Town Council.
2. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
3. The applicant shall install a small-sized low-tech stormwater storage facility to detain/attenuate roof runoff from the addition and all or part of the existing roof surface, rather than discharging directly onto the landscape or via a gravel trench dissipater, such as described in town hydrologist Matt Smeltzer’s email to the project architect dated July 2, 2010.
4. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) The property must be cleared of all dead or dying flammable materials; and 3.) A local alarm system is required.
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. 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 for review and approval prior to the issuance of any building permits or construction in conflict with the approved plans.
7. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JULY 15, 2011 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
8. 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.
9. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney’s fees and costs and participates in the defense in good faith.

End of Consent agenda.

18. Town Council further consideration of Ordinance No. 620, amending the Town’s hillside development regulations, including potential ordinance re-introduction with limits on deck area for hillside lots. A summary of the changes proposed: 1.) Hillside lot floor area ratio would become a mandatory

development regulation and not a guideline. A variance would be necessary to exceed the maximum permitted floor area for a hillside site; 2.) No change to the method of calculating average lot slope is proposed; 3.) A new hillside lot floor area ratio formula is proposed. The formula levels out the current floor area thresholds and would reduce the maximum permitted floor area for some lots and increase the maximum permitted floor area for other lots; 4.) The hillside lot ordinance would apply to most hillside projects that are currently subject to design review, such as additions that are 200 square feet or greater and certain retaining wall projects; 5.) New guidelines would permit the Town Council to consider the design and privacy impacts of decks and take into consideration aesthetic impacts of tall building walls; 6.) The ordinance reinstates larger setbacks requirements for hillside lots as a strongly recommended guideline. The Council may allow reduced setbacks to protect creeks, trees, or to allow development on a more level area of a site, and 7.) Published notice of a hillside lot hearing would no longer be required. Public notices would be mailed to all property owners within 500 feet of a site and posted at the site and two other locations. The ordinance would regulate all property within the Town of Ross with an average slope of thirty percent (30%) or greater or that is wholly or partially within Hazard Zones 3 or 4 as identified on the town slope stability map. The draft ordinance, a red-line draft of the changes, and other materials are available at the Town website.

Senior Planner Elise Semonian summarized the staff report and explained that staff revised draft Ordinance No. 620 in response to the changes suggested by the Council at hearings held on May 13 and June 10, 2010. The Council introduced the ordinance at its June meeting. Under State law, the Council may only adopt ordinances at regular Council meetings. Therefore, staff recommends that the Council receive any public comment on the proposed ordinance, discuss the ordinance, and re-introduce Ordinance No. 620 amending the Town's hillside development regulations with any additional changes, waive the reading of the full ordinance text, and schedule the ordinance for adoption at the regular Town Council meeting in August.

Council Member Strauss noted that the Council would have discretion in terms of deck size as written rather than modifying. Council Member Hunter recommended modifying Section 18.39.090(b) to state, "should" rather than "shall," to read, "*The maximum area of decks over 18-inches in height should be limited to 25% of the maximum permitted floor area for the site under this chapter.*"

Council Member Russell asked staff to explain the reasoning for "limited to 25%. Senior Planner Semonian responded that 25% seemed reasonable based on the size of a home. 30% becomes fairly large. Staff added that the limit would be helpful for new houses, but the concern is how it would impact existing residences.

Mayor Martin noted that the ordinance contains new language for how decks might be built out. With a maximum, the Council could be encouraging those to build toward that maximum rather than present a design that would be compatible. Senior Planner Semonian indicated that although staff did not recommend the regulation, members of the public and the ADR Group have suggested that the Town Council consider adopting a specific limit for deck area.

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Council Member Strauss discussed the condition regarding visible concrete walls and believed board formed concrete and other walls with a concrete finish may be appropriate, depending on the design. He recommended keeping the wording of the guideline to provide the Council with some discretion.

Mayor Pro Tempore Small made the suggestion about visible concrete and concrete block having an appropriate architectural finish. Sitting through all the Hillside Lot Ordinance (HLO) meetings as well as ADR meetings, there has been a consistent line of thought to have some kind of guideline with decks and that it be reasonable with some kind of expectation. Several members of ADR felt there should be more of a guideline in the HLO regarding decks than what was mentioned at the last meeting. She added that there is the possibility of building up to 25%, but it also provides a reasonable expectation and that is what she hoped to accomplish. Council Member Strauss did not want to be so prescribed to every architect in the Town of Ross. He believed if the concrete is very poor, then Council has the ability to make modifications.

Council Member Hunter discussed Section 18.39.090 (c) – “Grading and Retaining Walls” and recommended that the Council delete the word, “*strive*” to read, “*Applicants should balance cut and fill on site.*”

Mayor Martin opened the public hearing on this item.

John d'Alessio, Crest Road Avenue resident, agreed that the Town should have some limit placed on decks and believed the language proposed would set a reasonable expectation, so he favored the 25% limit.

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

Council Member Strauss stated with regard to decks, he would hate to restrict architects. He believed a general idea is appropriate, but then the Council should make the determination after review. He expressed concern that a deck area limitation would unnecessarily constrain architects. He felt that the Council could adequately address issues regarding project bulk and mass during design review. Each home is individual and the Council should have discretion. He further recommended maintaining the language as proposed without the limit.

Mayor Pro Tempore Small noted mixed feelings in terms of deck size and pointed out that before the HLO decks were included. Council Member Russell believed there is a need to have guidelines and suggested that the Council adopt the language provided by staff, including the 25% limit in order to have a goal of 25%.

Council Member Strauss recommended that the Council direct staff to work with the comments provided and craft the appropriate language. Senior Planner Semonian suggested the following language: “*Decks, particularly elevated decks, should enhance the appearance of a house and be of a scale and style which are compatible with the house, adjacent development, and the surroundings. The Town Council may limit deck and patio area based on considerations of aesthetics, potential for noise, bulk*

*and mass, privacy of adjacent sites, and visibility. The maximum guideline area of decks over 18-inches in height (including car decks) is 25% of the maximum permitted floor area for the site under this chapter.”*

Senior Planner Semonian summarized the changes to Ordinance No. 620 as follows:

\* Section 18.39.020:

*(b) A hillside lot application is also required on improved parcels having thirty percent or greater overall natural or building site slope, or containing Hazard Zones 3 or 4, for the following projects and for staged, phased or cumulative improvements that exceed these thresholds:*

\* Deck condition should read:

*(6) Decks, particularly elevated decks, should enhance the appearance of a house and be of a scale and style, which are compatible with the house, adjacent development, and the surroundings. The Town Council may limit deck and patio area based on considerations of aesthetics, potential for noise, bulk and mass, privacy of adjacent sites, and visibility. The maximum guideline area of decks over 18-inches in height (including car decks) is 25% of the maximum permitted floor area for the site under this chapter.*

\* Grading condition should read:

*(c) Grading and retaining walls. Grading, cutting and filling and retaining walls should be minimized for hillside development by using build-ing techniques, which reflect the natural topography of the site. Applicants should balance cut and fill on site. Graded slopes shall not exceed 2:1. Individual retaining walls shall not exceed a height of six feet. Terraced retaining walls should be at least three feet apart to allow for screening vegetation. The aggregate height of retaining walls should not exceed eighteen feet for any particular slope. Upslope walls up to four feet in height may be constructed of pressure-treated timber. All walls up to six feet in height may be constructed of reinforced concrete block. All other walls shall be constructed of reinforced concrete. Visible concrete and concrete block walls should have an appropriate architectural finish.*

The Council agreed to include a suggested guideline for deck area to be limited to 25% of the allowable floor area as well introduce Ordinance No. 620.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to waive reading and introduce Ordinance No. 620, amending the Town hillside lot regulations including the modification to Section 18.39.020(b) as outlined above by staff. Motion carried unanimously.

Council Member Hunter moved and Council Member Strauss seconded, to modify Section 18.39.090(d)(6) to state, *“Decks, particularly elevated decks, should enhance the appearance of a house and be of a scale and style, which are compatible with the house, adjacent development, and the surroundings. The Town Council may limit deck and patio area based on considerations of aesthetics, potential for noise, bulk and mass, privacy of adjacent sites, and visibility. The maximum guideline area of decks over 18 inches in height (including car decks) is 25% of the maximum permitted floor area for the site under this chapter.”* Motion carried unanimously.

The Council will consider adoption of the Hillside Lot Ordinance at the August Town Council meeting.

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

**19. Town Council authorization of expenditures and awarding of contract for the Sir Francis Drake Boulevard Pedestrian Pathway Project, including final selection of pathway material of either asphalt, colored asphalt, or decomposed granite with a binder.**

Public Works Director Mel Jarjoura summarized the staff report and recommended that the Council approve the bid and authorize expenditures for the construction and award the contract to John Benward Company, Inc. in the amount of \$218,261.91 for the Sir Francis Drake Boulevard pathway project. The Council could alternatively award John Benward Company \$199,805.01 for asphalt only or \$241,923.69 for decomposed granite with binder. However, staff recommends the colored asphalt. Staff explained that the Council has approved the project and concept and the fine-tuning was left for a later day. The Town will provide 38 trees and the contractor will install those trees at a cost of \$12,000, which is included in the bid, but the cost of the trees is not included in the bid. In terms of landscaping, if a homeowner or resident wishes to provide some landscaping it would be appropriate along with maintenance, but the Town is not providing any landscaping.

Council Member Hunter desired to know the reputation of John Benward Company. Public Works Director Jarjoura investigated the company and they were the lowest responsible bidder and their proposal complies with all the requirements set forth in the bid documents.

Mayor Pro Tempore Small asked staff if they have samples of the colored asphalt. Public Works Director Jarjoura provided the Council with color samples for their consideration.

Council Member Hunter desired to know the thoughts of the citizens in regard to the material. Public Works Director Jarjoura indicated that decomposed granite was discussed, but maintenance would be an issue on Sir Francis Drake. Council Member Hunter asked staff if a color preference was indicated from the residents. Public Works Director Jarjoura responded that earth tone colors were desired.

Council Member Russell asked staff if a pervious surface was discussed. Public Works Director Jarjoura responded in the affirmative. Staff explained that maintenance is an issue with a pervious surface. Staff added that with a 4-foot path, water will naturally dissipate into the ground. Jeff Peters, Questa Project Engineer, recommended asphalt for its durability and lower maintenance requirements in this high traffic area. Silt from floodwaters can clog pervious materials. In general, pathways and trails are exempted from most stormwater rules such as C3 regulations, so they are given leeway when calculating pervious surface.

Council Member Russell noted that the Town recently adopted the stormwater ordinance and believed the Town should take that into account wherever possible, but understands that in this case it is not possible. Town Manager Broad pointed out that this must be an ADA compliant pathway as well.

Mayor Pro Tempore Small discussed the budget and asked staff if the budget includes the possible additional money for cost overruns. Public Works Director Jarjoura noted that the \$218,261.91 is assumed, and staff adds 10%, which is \$21,826 for change order/supervision.

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Staff noted that \$240,000 would cover the cost overruns. Staff further explained that if decomposed granite is added to the project then the Town would be over budget.

Council Member Strauss asked staff if a bicycle lane will be provided in both directions. Public Works Director Jarjoura noted that wherever feasible a bicycle lane in both directions will be provided, but a bicycle lane on the bridge is not feasible. Staff further noted that with the pathway, they are trying to maintain 4 feet. Council Member Strauss noted that MCBC desired a bicycle lane in both directions. Public Works Director Jarjoura noted that staff will incorporate Traffic Engineer David Parisi's comments.

Council Member Hunter recommended that the Council allow the Public Works Committee the ability to choose the color. Council Member Strauss believed more discussion must occur.

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

Andy Peri, MCBC representative, requested that the pathway be moved to maximize the amount of space in order to maintain 4 ft. or more, if possible.

Mary O'Brien, 43 Sir Francis Drake Boulevard, noted confusion since there is no discussion about parking or consideration in terms of where vehicles will be parked. She hopes the Council has good color sense. She would love to review the samples. She wanted to know how this will appear before it becomes a permanent part of the Town. She believed this path should enable the residents to live better and be safer as well as beautify the entrance to the Town. She further objected to removing all parking in the area.

Gian Giusti, 41 Sir Francis Drake resident, objected to the pathway looking like more of the roadway. He desired decomposed crushed granite for a more attractive appearance, and if not, then the color of the asphalt should be natural. He wanted to discuss how this path will appear in front of his home and objected to a berm in front of his driveway. He further requested that his egress/ingress remain as it is today.

Patti Cohn, 47 Sir Francis Drake resident, expressed concern for safety due to the width between the roadway and pathway. Her other concern is aesthetics. She expressed concern for an asphalt jungle. \$12,000 for 38 trees is not much since significant mature trees are being removed. She added that this proposal is not a gateway to the community. Also, practicality is a concern in terms of parking. This proposal will eliminate all parking in the area and create an asphalt jungle. She believed decomposed granite would be more aesthetically pleasing, but questioned whether decompose granite is appropriate due to the amount of water runoff. Mayor Pro Tempore Small clarified that the \$12,000 is for the installation of the trees by the contractor, not for the cost of the trees.

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

Questa Project Engineer Peters stated before work is done, he agreed to stake the area for each property owner in order to provide them an opportunity to review and fine-tune the project. He noted that driveways would not be blocked. Also, they tried to maximize the amount of distance from Sir Francis Drake Boulevard for safety purposes and provide a

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designated Class II bikeway, where possible. He further agreed to work with the individual property owners.

Council Member Strauss wondered whether asphalt is the appropriate material, and personally desired the decomposed granite in order to have some sort of consistency. He further pointed out that the Tree Committee has been discussing the enhancement of Sir Francis Drake as well.

Mayor Pro Tempore Small asked staff if the neighbors have been given a sense of the pathway appearance. Public Works Director Jarjoura noted that they will fine-tune. Questa Project Engineer Peters and staff walked the pathway with residents. Staff added that the path has not changed or deviated from the pathway that was proposed and approved. Questa Project Engineer Peters indicated that he is willing to work with the residents.

Public Works Director Jarjoura noted that the color would fade, but there is a street print that would integrate into the asphalt and stay for 15 to 20 years without maintenance. It would provide the texture of asphalt. It is not a smooth finish as concrete. Decomposed granite cost around \$91,000. The issue with decomposed granite is maintenance and the ability to maintain an ADA compliant pathway. Questa Project Engineer Peters pointed out that decomposed granite is a nuisance issue as well. Even with a binder it is not designed to have vehicles. It is a weaker material, especially when wet. There are several utility and sewer lines that may require maintenance from time-to-time, and with colored asphalt it is much easier to patch. To achieve the same color and binder with decomposed granite is much more difficult. He further noted that decomposed granite is more challenging and problematic due to maintenance. It settles and cracks and does not hold up well.

Council Member Strauss stated that decomposed granite is a real material and colored asphalt will draw attention. There is a planting area where there can be 18-inches of under plantings along with regular asphalt. He did not believe they get a big bang with color. If he had to choose a color, he preferred gray to match the existing pathway. Patching colored asphalt is a concern as well. He preferred to minimize ongoing maintenance. In terms of drainage, he pointed out that water would travel across the path and sheet off.

Council Member Russell recommended some sort of barrier between the pathway and the roadway for safety. At the most dangerous areas possibly, he recommended creating some additional protection for those walking along the path. The purpose is to encourage more pedestrian traffic and believed additional safety measures should be considered. Council Member Strauss noted that bicyclist and pedestrians currently walk in a very unsafe situation, so by providing a pathway, it will be much safer than the current situation. He further believed even if the lane were narrower, a designated lane would be much safer.

Mayor Pro Tempore Small believed the pathway must have somewhat of a contrast to the asphalt to avoid confusion. She further desired more resident input in terms of the colored asphalt.

Council Member Strauss suggested using decomposed granite with a binder. Council Member Hunter noted that their experts are indicating a maintenance nightmare with decomposed granite. The original plan was to use asphalt since it is stronger material. Council Member Strauss desired a tree-lined street, so the more trees the better in his view.

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Council Member Hunter recommended that staff have one more walk-through with the residents to discuss whether color or no color would be appropriate. He further believed the contract could be approved tonight.

Questa Project Engineer Peters noted with a binder, ADA compliance can be achieved, but then it deteriorates where it no longer meets ADA compliance. ADA compliance can be achieved with stabilized granite, but it is unpredictable. The binder helps, but it deteriorates and without a binder it is very problematic. Public Works Director Jarjoura noted that tree roots must be taken into consideration as well.

Town Manager Broad noted that there is a timing issue. They cannot wait until the next Public Works meeting to discuss without delaying the project. Public Works Director Jarjoura added that this is a Caltrans project and subject to procedure.

Mayor Pro Tempore Small asked staff if a special Public Works meeting could be scheduled to further discuss this matter. Town Manager Broad indicated that the Council could appoint two members to attend a special meeting on this matter.

Council Member Strauss stated that if they used colored asphalt or colored concrete that the color should match decomposed granite as much as possible for a differentiation. Public Works Director Jarjoura recommended that the Council assign a Council Member to be a liaison to meet with neighbors.

Council Member Strauss noted this is a Town wide decision. He hopes to make a decision tonight on the color. The project engineer will walk the path with residents to fine-tune. There have been several meetings on this matter. He recommended that the Council choose a color tonight and suggested that the color match decomposed granite. He also desired real samples. Mayor Pro Tempore Small agreed the color should coordinate with the Town and it should appear as decomposed granite as much as possible.

Mayor Pro Tempore Small and Council Member Strauss agreed to form an Ad Hoc Committee in order to review a sample of the selected colored asphalt with the goal of matching the color closest to decomposed granite.

Council Member Hunter announced to the audience that the plan is available at Town Hall for those interested in reviewing.

The Council agreed to award the Sir Francis Drake Boulevard pathway construction project to John Benward Company for \$218,262. Benward's bid was more than \$50,000 below the engineer's estimate for the project and 30% lower than the nearly \$313,000 highest bid.

The Council also discussed the advantages and disadvantages of three contemplated pathway surfaces: asphalt, colored asphalt and decomposed granite. The Council selected colored asphalt with a decomposed granite color as the pathway material. The pathway construction along Sir Francis Drake Boulevard from the Kentfield border to Bolinas Avenue will run from July 26 through September 3.

Mayor Pro Tempore Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to accept John Benward Company, Inc. quote for \$218,262.91 for colored asphalt, and that the color shall be determined by a Special Ad Hoc Committee of Mayor Pro Tempore Small and Council Member Strauss as soon as actual samples can be provided. Motion carried unanimously. Mayor Martin recused.

*Mayor Martin reconvened his position on the Ross Town Council.*

**20. Presentation of the draft Town of Ross Budget for Fiscal Year 2010-2011 and Town Council consideration of adoption of the budget.**

Town Manager Gary Broad explained that the budget includes capital outlays for the Sir Francis Drake Boulevard pathway and roadway resurfacing projects, the construction of the new Lagunitas Road Bridge, and improvements to Frederick Allen Park and the south Post Office parking lot. As outlined in the staff report, Ross secured local, state, and federal grant money to fund many of these improvements. Of the nearly \$9 million in budgeted expenditures from all funds, outside grants will cover almost 26% of the cost. The budget projects property tax revenue, which comprises nearly 50% of general fund revenue, will be unchanged. Building permit fees are expected to decrease almost 17% to \$330,000, continuing a downward trend since a high of nearly \$525,000 in FY 08-09. General government expenditures, which includes administration, finance, planning, building and public works operating expenses, are reduced 6.5% below last fiscal year's estimated expenditures. Nearly all staff salaries were held at last year's rates, although costs such as health and workers' compensation insurance continue to escalate.

Town Manager Broad reported that the Police Department budget saw a similar 6.6% budget cutback, while the Fire Department budget increased by 2.1% due to payroll costs for retiring Fire Captain Bruce Selfridge. The Public Safety budget comprises approximately 65% of this year's general fund budget. The Town general fund, emergency fund, equipment replacement and facility fund reserves are projected to total a healthy \$5,599,785 at year's end, up substantially from \$2,159,230 in 2003. Town Manager Broad further recommended that the Council adopt the FY 2010-2011 budget.

Mayor Martin asked staff about the expenditures and clarified that it includes all funds. Town Manager Broad responded that the accountant totaled all the funds. Mayor Martin believed 26% is an impressive figure.

Council Member Russell asked staff which would have the most risk in terms of grants. Town Manager Broad noted that the police grant could be at risk since it is funded by the State, but staff did not see any risk with the rest of the grants.

Mayor Martin desired clarification from staff on the Allen Park grant. Town Manager Broad explained that the grant was \$220,000, and after conversations with the State, \$6,000 was left over from another grant application, so it should be amended to \$226,000 of bond money.

Town Manager Broad also noted that most anticipated revenue for next year has been based on revenue from last year and consideration of the prior two years.

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Council Member Russell desired clarification from staff on the miscellaneous section. Town Manager Broad explained that rather than having two small miscellaneous line items in Public Safety, staff just combined the two lines.

Mayor Martin noted that a 3% cost of living increase was given to employees earning under \$100,000 last year and asked staff to discuss. Town Manager Broad explained that a cost of living increase was not included in the budget this year due to the tight budget and tight fiscal times. Cost of living has been given to employees until now and most communities are not giving cost of living increases due to the economy.

In response to a question on the flood litigation, Town Manager Broad stated as long as any settlement does not go above insurance limit, the Town will not have any additional cost, except Town Attorney Hadden Roth's time and working with the outside attorney, which is hopefully reflected in the \$70,000. Staff further noted that it is almost definite to see increases in liability insurance costs in future years, especially with the flood litigation.

In terms of the fire captain line item, under fire payroll cost shows an increase from \$299,592 to \$376,000. It would have a decrease, except with the retirement of Fire Captain Bruce Selfridge under MOU payout for 900 hours of sick leave, and for retirement, comp time and holiday pay. In talking with the accountant, it is in effect paying out of the General Fund. The only way for it to show up in the financials is to add it to the financials. At the last minute this was added to the budget. It reflects an \$86,000 one-time cost.

Mayor Pro Tempore Small asked staff to add that line item as a separate line item to avoid confusion. Town Manager Broad agreed to add a retirement cost line item. Town Manager Broad further noted that \$9,000 must be spent to repair the leaky roof on the firehouse as well.

Town Manager Broad believed trees should be under a capital account rather than operating cost. Mayor Martin noted that the Tree Committee is asking for a water trailer and hitch since several trees are dying from a lack of water. The Tree Committee volunteered their services in regard to watering the trees. The cost is roughly \$6,000 for a used water trailer and hitch.

Council Member Small clarified with staff that the \$20,000 for trees includes the entire Town, not just Sir Francis Drake Boulevard. Town Manager Broad responded in the affirmative. Public Works Director Jarjoura recommended adding another \$10,000 in the budget for trees, for a total of \$30,000. Mayor Pro Tempore Small wanted to move forward sooner than later since the trees need to be watered or otherwise they will die. Mayor Martin noted that most trees on Shady Lane are being maintained through a drip line. The concern is that the newly planted trees must be watered. With this heat, the trees need to be watered every two days and the Tree Committee is looking at an adoption program in that regard. Town Manager Broad believed it would be short-sighted to put money into trees every year without watering, so it makes sense to spend the \$6,000 to purchase a water trailer and hitch, which could be included into the capital improvement budget. Staff also recommended increasing the street planting to \$25,000 or \$30,000 and consider moving this expense into the facilities fund.

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Mayor Martin asked staff if the \$55,000 includes all hardware for the police vehicle. Town Manager Broad responded in the affirmative. Council Member Russell is more in favor of having police officers walk or ride a bicycle. He preferred deferring purchasing a police vehicle for another year. Town Manager Broad recommended keeping it in the budget for now in order to allow Police Chief Jim Reis an opportunity to come before the Council before purchasing the vehicle.

Council Member Russell asked staff what is driving the overlay project in terms of Winship. Town Manager Broad explained that it is based on the pavement management conditions. Council Member Russell wanted to review the project before moving forward. Town Manager Broad indicated that as the Town has money available, they review the worst streets based on the pavement management index and repair the roads. Council Member Russell believed if items can be deferred for one year that would be appropriate since the budget is slightly in the black. Town Manager Broad pointed out that this money can only be used for roadway projects. Mayor Martin noted that they have deferred in the past and that is the reason for the four carryovers.

Mayor Martin believed it would be helpful in the future to have an accounting of where the budget was spent.

Mayor Pro Tempore Small asked staff who would work on the plan for the park. Town Manager Broad recommended adding that item to the next Public Works meeting.

Mayor Martin desired more detail in regard to "*General Plan Implementation*" rather than being so vague. Town Manager Broad agreed to provide more specific language to the Council.

Mayor Martin asked staff if URS bills are included in the estimate. Public Works Director Jarjoura responded in the affirmative.

Council Member Strauss recommended using some of the funds for frontage improvements in terms of curbs and gutters. Public Works Director Jarjoura explained that any change order, if approved, would be sent to Caltrans to approve, which will become an add-on cost.

Mayor Martin asked staff to discuss page 19 in regard to the drainage fund. Town Manager Broad explained that it would improve drainage in the parking lot. Half would be paid out of the drainage fund and half would be paid out of the facilities fund. In discussions with a park representative, it may be possible to fund some percentage of the parking lot improvements from the park grant.

Town Manager Broad recommended adding money into the facilities fund for tree planting, curb and gutter. Council Member Strauss suggested planting four magnolias. It is critical to install plants since the bridgework has started. Mayor Martin noted that the Tree Committee estimated \$250 per tree including labor and soil. They asked for 100 trees with an estimate of \$25,000. The Council and staff suggested increasing the tree budget to \$25,000.

Mayor Martin discussed the \$20,000 for potential police chief recruitment and \$12,000 for the downtown parking study. Town Manager Broad believed it might be possible for the downtown parking study to be less than \$12,000. An individual must be hired to conduct an

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assessment. In terms of the potential police chief recruitment, \$20,000 - \$22,000 is a fair assessment, which is tentative.

Mayor Pro Tempore Small believed an outside consultant is not needed and felt an assessment could be done in-house. Also, she is uncomfortable adding a budgeted item without having definitive information in terms of recruitment of a police chief. She is personally a big advocate of live feed even with a low cost stationary camera. Mayor Martin noted that Marin County Telecommunications Center provided an estimate for live streaming, which can be discussed at their upcoming workshop.

Town Manager Broad agreed to add \$50,000 for parking, landscaping and magnolias. Council Member Strauss recommended scheduling a meeting with Construction Management Resident Engineer Nick Panayotou as soon as possible in order to get a better estimate in terms of curbs and gutters.

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

Council Member Russell recommended that in the future the budget discussion occur before the end of the fiscal year. Council Member Hunter explained that normally it is done by June, but this year the Council waited specifically so the newly seated Town Council members could approve the budget.

Mayor Pro Tempore Small recommended having a special workshop next year to discuss the budget rather than make residents sit through their detailed discussion. Town Manager Broad agreed and Council Member Hunter pointed out that this was the normal practice in previous years. Mayor Pro Tempore Small reiterated her desire to discuss live feed in terms of their Council meetings at some point. Council Member Strauss recommended discussing at their upcoming workshop.

Council Member Hunter recommended maintaining the patrol vehicle in the budget at this time in order to allow Police Chief Jim Reis the ability to come before the Council since he was unable to attend tonight's meeting. The Council and staff agreed.

Town Manager Broad summarized the amendments to the FY 2010-2011 budget for the Council's consideration:

- Not including the three items in the cover sheet
- Park Fund should be changed to \$226,000 to cover expenditures/revenue
- Fire Department:
  - Place the \$86,000 of Captain Selfridge retirement into separate line item
- Facilities Fund:
  - Move the tree planting and median beautification from Capital Improvements into Facilities Fund.
  - Increase the amount for trees to \$25,000
  - Add \$6,000 item for water trailer & hitch as recommended by the Tree Committee

- Include up to \$50,000 for Lagunitas Road, Sir Francis Drake frontage and Town Hall improvements and meet with Resident Engineer Panayotou to discuss
- Drainage Fund:
  - Include the approximately \$50,000 that was left from FY09-10 for mapping
- General Plan Update:
  - More specificity on General Plan Implementation
  - Maintain patrol vehicle at this time, but have Police Chief Reis come before Town Council
- Live stream discussion will come before the Council at their workshop

The Council agreed to approve the Fiscal Year 2010-2011 Budget with projected revenues of \$5,338,215 and operating and capital improvement expenditures of \$5,316,411, almost \$200,000 less than last year's budget. Despite a projected decline in general fund revenue of 2.6%, Council Member and Finance Committee Chair Hunter and Town Manager Broad presented a budget with a \$21,804 surplus and noted that the Town is fortunate to be able to continue to provide the same level of excellent municipal services to our residents plus fund new capital improvements.

Mayor Martin asked for a motion.

**Council Member Hunter moved and Mayor Pro Tempore Small seconded, to approve the Ross Town Council Fiscal Year Budget for 2010-2011 with the modifications as discussed. Motion carried unanimously.**

*The Council took a short recess at 10:33 p.m. and then reconvened at 10:46 p.m. with the next agenda item.*

**21. Public Hearing: Levy Taxes/Assessment pursuant to Ordinance No. 582 of the Ross Municipal Code. Council consideration/action on continuing the FY 2010-11 municipal services tax at \$775 – a maximum of \$1,000 permitted.**

Town Manager Gary Broad summarized the staff report and recommended that the Council consider and take action on continuing the FY 2010-11 municipal services at \$775 – a maximum of \$1,000 permitted.

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

The Council agreed to keep the Town's Municipal Services Tax at \$775 per developed parcel. The tax has been at \$775 for the past three years. Ross voters first approved the 4-year Municipal Services Tax in 1984 to support public safety and other municipal services. The current tax is in effect through 2012 and will contribute \$642,000 to this year's Town budget, approximately 12% of total general fund revenues.

Mayor Martin asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve Municipal Service Tax for FY 2010-2011 at \$775. Motion carried unanimously.

22. Town Council to consider adoption of the Town of Ross 2010 Bicycle and Pedestrian Plan.

Project Planner Christine O'Rourke reported on the Bicycle and Pedestrian Plan that designates a bikeway system that provides routes to schools and significant destinations in Town as well as links between Ross and neighboring communities. The plan includes existing bike routes along Poplar Avenue, Ross Common, Lagunitas Road, and Shady Lane. New bike routes along Fernhill, Glenwood, Norwood, Bolinas, and Laurel Grove Avenues are also identified. These routes would be established with bike route signs, and possibly shared roadway bicycle markings and "*Share the Road*" signs, on the roadways.

The plan calls for a bike lane on Sir Francis Drake Boulevard wherever the roadway can accommodate a 4-foot striped and stenciled Class II bike lane. The Town has engaged the services of a traffic engineer to determine the feasibility and location of this bike lane, which may not be continuous along the entire length of Sir Francis Drake Boulevard. The bike lane will be addressed during the upcoming repaving of Sir Francis Drake Boulevard.

The plan also includes programs to encourage cycling to large public and private events, and to provide bike parking at downtown locations, the Post Office, the tennis courts, Ross Common, Town Hall, and Natalie Coffin Greene Park. In response to residents' concerns about cyclists disregarding traffic laws, the plan includes a program to enforce existing traffic laws and ensure that bicyclists stop for posted stop signs, ride single file and ride as close to the right edge of the roadway as practical.

Council Member Russell asked staff if it is feasible to create a bike lane on Ross Common or near the downtown merchants. Public Works Director Jarjoura stated it must be investigated along with input from MCBC. As of now, it is not a designated bike route, but it is included in the Class III bikeway.

Mayor Martin opened the public hearing on this item.

Andy Peri, MCBC representative, stated that a bicycle lane behind diagonal parking is not recommended due to safety concerns, but believed Consultant David Parisi should review. Also, he did not read in the draft about riding as close to the edge as possible. One concern is that it might be interpreted in some random way, and at times there is debris and hoped the enforcement regime will follow the California vehicle code. He thanked the Council and staff for moving forward with this process. MCBC is very pleased with the updates that have occurred to the document. He asked the Council to consider a law being proposed for "*Complete Streets*," which is a resolution stating that any work being done on roadways must consider the needs of pedestrians, bicyclists, the disabled, and transit users. He asked the Council to consider and pass a resolution on "*Complete Streets*" at a future meeting. Also, in terms of the vehicle license fee ballot measure for November, it will require that a "*Complete Streets*" resolution be passed in cities that receive funding for Class I bike and pedestrian paths. Also, he wanted to see the 20% goal of walking and biking included in the document.

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Project Planner O'Rourke agreed to add the goal into the "Complete Streets" resolution, which will be brought back to the Council next month.

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

The Council agreed to adopt the Town of Ross Bicycle and Pedestrian Plan, which identifies routes, facilities and programs intended to increase cycling and walking throughout Town and promote safety.

Mayor Martin asked for a motion.

**Council Member Strauss moved and Council Member Hunter seconded, to adopt the Town of Ross 2010 Bicycle and Pedestrian Plan with the conditions and findings outlined in the staff report. Motion carried unanimously.**

23. **Town Council preliminary discussion of potential 2010-2011 goals and selection of a workshop date and location for a meeting on FY 2010-11 Town Council goals.**

Mayor Martin recommended scheduling a workshop between August 16<sup>th</sup> - 20<sup>th</sup> and agreed to send out an email to discuss potential dates.

24. **Town Council discussion/action on request for temporary closure of Shady Lane and other alternatives for Brian Maxwell Family Day Run on Sunday, October 3, 2010.**

Town Manager Gary Broad summarized the staff report and recommended that the Council discuss the request for temporary closure of Shady Lane and other alternatives for Brian Maxwell Family Day Run on Sunday, October 3, 2010.

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

The Council agreed to accept the Public Safety's recommendation if the road should be closed or simply have monitors.

Mayor Martin asked for a motion.

**Council Member Russell moved and Mayor Pro Tempore Small seconded, to accept the Public Safety's recommendation if the road should be closed or simply have monitors. Motion carried unanimously.**

25. **15 Fernhill Avenue, Nuisance Abatement No. 1751**  
Charles Almond, 15 Fernhill Avenue, A.P. No. 73-091-36, R-1:B-20 (Single Family Residential, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre), Zone X (outside 1-percent annual chance floodplain), southeast corner within Zone A (1-percent annual chance floodplain). Town Council consideration of a nuisance

abatement order to cause the story poles (which have been in place since 2009) and visible mechanical equipment (installed by a prior owner) within a side yard setback to be abated or removed.

Senior Planner Elise Semonian announced that the matter has been resolved and no action is required by the Council.

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

**26. 59 Winship Avenue, Variance No. 1761**

Robert and Carol Momsen, 59 Winship Avenue, A.P. No. 72-162-02, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3-6 units per acre). Variances associated with new landscaping at the site. The applicants propose to expand a patio area within the rear yard setback (40 feet required, 25 feet proposed) and install a barbecue and trellis within the north side yard setback (15 feet required, 1 foot proposed). The landscape plan includes removal of two 6" birch trees to the south of the residence. A drainage plan for the site is under consideration.

Lot area	9,583 square feet
Approved Floor Area	33.9%
Proposed Floor Area	33.9% (20% permitted)
Existing Lot Coverage	29.3%
Proposed Lot Coverage	29.3% (20% permitted)
Existing Impervious Areas	47.0%
Proposed Impervious Areas	35.0%

*The garage is nonconforming in setbacks.*

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

Mayor Martin asked staff to discuss the barbecue and the next-door neighbor. Senior Planner Semonian responded that the next-door neighbor has not responded. As noted in the staff report, staff does not anticipate it will be an issue since the garage is adjacent to these improvements and the neighbor's garage is at a higher level. The barbecue would not impact the neighbor since it is not close to their house. Also, the wall of the garage is solid and any construction 5 ft. from a property line must meet fire safety codes.

Ken Hertel, project architect, noted that he is present to answer any questions of the Council. The Council had no questions.

Mayor Martin 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 Martin asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve the project at 59 Winship Avenue subject to the findings and conditions outlined in the staff report. Motion carried unanimously.

Conditions:

1. The removal of the maple is not approved. Grading shall be avoided within the dripline of protected trees and trenching for drainage and utilities shall be performed by hand and under the supervision of an arborist on site during the work.
2. The drainage plan shall be modified to locate all drainage facilities on site and to incorporate changes recommended by Matt Smeltzer, town hydrologist. Revised drainage plans shall be submitted to the building department and installed prior to project final.
3. The work within 5 feet of the property line shall be one-hour fire assembly material or shall be moved at least 5 feet from the property line.
4. Landscaping shall be installed as shown on the approved plans prior to project final.
5. All landscape and irrigation plans must be designed in accordance with the most current Marin Municipal Water District (MMWD) landscape requirements. The applicant shall demonstrate to the planning department staff that the project complies with the MMWD requirements, or is exempt.
6. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
7. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to the issuance of any building permits or construction in conflict with the approved plans.
8. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JULY 15, 2011 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
9. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
10. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
11. 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.
12. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so

long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

27. 39 Fernhill Avenue, No. 1789

*This item has been continued to the August 12, 2010 meeting.*

The Branson School, 39 Fernhill Avenue, A.P. Nos. 73-072-04, 73-082-01, 73-082-12, 73-141-03 and 73-151-05, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size), Limited Quasi-Public/Private Service, Zones A and C (areas of minimal flooding, creek is in area of 100 year flood). Request for an amendment to school use permit for a new, approximately 650 square foot, one-bedroom apartment to be created within an existing building near the Newhouse building with the addition of a kitchen and shower. The unit would be used by a household associated with the school. The school would dedicate one existing parking space adjacent to the building to the unit. The addition of the new unit would bring the total units associated with the school site up to 10.

*Existing and proposed conditions for all Branson-owned parcels:*

Lot area	707,897 square feet	
Existing Floor Area Ratio	15.0%	
Proposed Floor Area Ratio	15.0%	(15% permitted)
Existing Lot Coverage	11.1%	
Proposed Lot Coverage	11.1%	(15% permitted)

28. 57 Laurel Grove Avenue, No. 1758

Jennifer Maxwell, 57 Laurel Grove Avenue, A.P. No. 72-181-08, R-1:B-A (Single Family Residence, 1-acre minimum lot size), Very Low Density (.1 - 1 units per acre). Design review of a new catchment wall, up to 4 feet tall, with a stone finish to match the existing columns and walls, on the uphill side of the roadway below the residence and for a 6-foot tall, front yard, fence and gate. The applicants propose modified exterior materials for the project including grey black slate roof shingles with a royal purple slate accent, black painted wood trim, and cut stone. The applicant will also present a construction management plan for the project. The approved project allows demolition of the existing 5,746 square foot residence and construction of a new residence consisting of 3,978 square feet of living area on two stories over a 1,800 square foot basement/storage level and an attached, 593 square foot, two-car garage. Total development of 6,371 square feet of floor area is approved.

Gross lot area	52,609 sq. ft.	
Effective lot area	44,721 sq. ft.	
Existing Floor Area	12.9%	
Approved Floor Area	14.3%	(15% permitted)
Existing Lot Coverage	7.5%	
Approved Lot Coverage	7.2%	(15% permitted)

\* The slope of the site is 38%, the hillside lot design standards would recommend a guideline floor area of 3,592 square feet.

Senior Planner Elise Semonian summarized the staff report and believed the revisions to the materials and the fence and the wall project are, on a whole, in substantial compliance with

the design review guidelines, hillside design standards, and complies with the policies and programs in the Ross General Plan. Staff further recommended that the Council approve the project subject to the findings and conditions outlined in the staff report.

Jeff Kroot, architect, provided the Council with a drawing depicting parking for seven vehicles off the Maxwell property. Neighbors are concerned with parking, but there will be no parking whatsoever on the driveway. As far as a solid fence, the present house already has a solid fence. When individuals drive up the driveway, lights shine directly on the fence. The bulk of the fence is 4 ft. with an existing 2-foot stonewall. In terms of the catch basin, there was concern about sliding rocks, but the soils engineer noted that they are not supporting the hillside, it is actually rock. They can go as low as 2 ft., but agreed to go 4 ft. high to catch whatever may fall. He further provided the Council with some samples of the stone that will be applied to the base of the house as well as the rock wall for their consideration.

Mayor Martin 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 Small attended the ADR meeting on this project and believed the changes proposed along with the gate and lowering the catchment wall are excellent and had no objection to the project.

Council Member Hunter had no objection to the design changes, but noted concern for approving the construction management plan. He would approve the project subject to any review by neighbors in terms of the construction management plan.

Council Member Strauss noted for the record that he previously voted against this project, but felt the proposed improvements seemed appropriate.

Mayor Martin and Council Member Russell had no objection and noted support for the project as well.

Mayor Martin asked for a motion.

**Council Member Hunter moved and Mayor Pro Tempore Small seconded, to approve the project at 57 Laurel Grove with the caveat that the Construction Management Plan will have a public review period of one week in order to allow neighbors the ability to review the plan. Motion carried unanimously.**

**57 Laurel Grove Conditions:**

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

1. The project shall be built in substantial conformance to the plans approved by the Town Council on February 11, 2010, as amended on July 15, 2010.
2. The front gate shall be located in the area of the existing gate.
3. The Town shall retain an engineer to peer review the reports and plans for the construction of the house and wall, at the applicant's expense, prior to issuance of a building permit.

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4. A native ground cover shall be planted on the slope above the proposed catchment wall to provide additional soil stability to the hillside and improve the natural appearance of the hillside above the wall.
5. Below-ground basement areas, which are included in the floor area, shall not be traded off in the future for above-ground living space without prior Town Council approval.
6. All costs for town consultant, such as the town hydrologist and engineer, review of the project shall be paid prior to building permit issuance. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
7. At least three 24" box native trees shall be planted on site to replace the oak tree removed.
8. A preconstruction meeting with the property owner, project contractor, project architect, representatives of the Town Planning, Building, Public Works and Fire Departments and the Town building inspector shall be required prior to issuance of the building permit to review conditions of approval for the project and the construction management plan.
9. The applicant shall review the project with PG&E prior to submitting for a building permit. The project shall include specifics on the electric meter and the applicant shall coordinate with PG&E to secure a connection prior to project final.
10. The construction and traffic management plan and schedule, construction routes, and rules shall be attached to the project plans and submitted to the building department for review and approval prior to the issuance of a building permit. The plan shall include the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. All construction materials, debris and equipment shall be stored off street or on site. Road closures and delays are not permitted. The applicants shall provide sufficient area off street for all construction related vehicles and shall keep the circle drive area (which provides access to the adjacent residence and is located around a protected oak tree) clear of vehicles and construction materials. Staff shall provide neighbors with at least one week to review and comment on the construction management plan and construction routes prior to issuance of the building permit.
11. The applicant shall repair any damage to the Town streets or the private roadway prior to project final. A videotape log, DVD format, clearly showing the existing condition of Laurel Grove from Sir Francis Drake to the project site 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.
12. Grading is prohibited between October 15 and April 15. No winter grading is authorized for this site and a construction management plan shall be submitted that outlines the scheduling of the site development. This should clearly show completion of all site grading activities prior to the winter storm season and include implementation of an erosion control plan.
13. Prior to any demolition or issuance of a building permit for the new structure, which was constructed prior to 1985, an asbestos and lead-based paint survey shall be provided to the Town building department. If asbestos-containing materials are determined to be present, the materials should be abated by a certified asbestos

- abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. If lead-based paint is identified, then federal and state construction worker health and safety regulations should be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified, it should be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations.
14. A drainage plan shall be submitted with the building permit application for review and approval by staff and the Town Hydrologist. The plan shall be designed, at a minimum, to produce no net increase in peak runoff from the site compared to pre-project conditions (no net increase standard). As far as practically feasible, the plan shall be designed to produce a net decrease in peak runoff from the site compared to pre-project conditions. Applicants are encouraged to submit a drainage plan designed to produce peak runoff from the site that is the same or less than estimated natural, predevelopment conditions which existed at the site prior to installation of impermeable surfaces and other landscape changes (natural predevelopment rate standard). Specific drainage plan requirements are available from the building department.
  15. A copy of the building permit shall be posted and emergency contact information shall be up to date at all times.
  16. Working Hours shall adhere to Ross Municipal Code sections 9.20.035 and 9.20.060.
  17. This project must comply with all engineering reports prepared by the applicants' engineering professionals.
  18. Project development shall comply with the requirements of the Ross Valley Sanitary District, Marin Municipal Water District and PG&E.
  19. An arborist shall review the health of all trees that have the potential to fall and block roadways on the site. The owner shall be required to apply for a tree removal permit and remove any trees the arborist recommends for removal (and the Town arborist approves for removal) prior to project final.
  20. The applicants shall submit written evidence that the project arborist has reviewed the final construction-level drawings, including grading, drainage and utility plans (they should note the dates of the plans reviewed). All tree protection conditions recommended by the project arborist shall be included on those plans to ensure compliance with the conditions.
  21. A certified arborist shall be on site during all trenching and excavation work near protected trees.
  22. Tree protection fencing should be installed prior to permit issuance to minimize damage to root systems of preserved trees.
  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. A licensed land surveyor shall string the location of the foundations. Evidence confirming that the improvement comply with the plan shall be provided to the Planning Department.
  25. Construction of the drainage system shall be supervised, inspected and accepted by a professional engineer and certified as-built drawings of the constructed facilities and a letter of certification shall be provided to the Town prior to project final.
  26. The applicants shall provide written evidence to the town planner, prepared by a licensed land surveyor, confirming the floor elevations of the structures comply with

- approved plans and that the roof ridge elevations comply with the approved plans. No portion of the residence shall exceed 30 feet in height from natural grade.
27. No changes from the approved plans, before or after project final, including changes to the materials and material colors, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change. The applicants are advised that changes made to the design during construction may delay the completion of the project and will not extend the permitted construction period.
  28. Certified as-built drawings of the constructed drainage facilities and a letter of certification shall be provided to the Town prior to project final.
  29. Landscaping shall be installed in substantial conformance with the approved landscape plan prior to project final.
  30. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following:
    - a. sprinklers are required (a 13R system is required);
    - b. a 24-hour monitored alarm system is required with smoke/water flow;
    - c. all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property;
    - d. the street number must be posted (minimum 4 inches on contrasting background);
    - e. the roadway must have a vertical clearance of 14 feet;
    - f. all brush impinging on the access roadway must be cleared as determined necessary by Public Safety.
    - g. a reliable fire flow water supply shall be established as determined by the Fire Marshal.
    - h. Clearance of brush or vegetative growth from structures and driveways shall be in accordance with the California Fire Code and approved by the fire official. Defensible spaces around each building and structure shall be created in accordance with the vegetation clearance requirements prescribed in California Public Resource Code 4291 and California Government Code 51182.
    - i. Development shall adhere to the wildland urban interface building standards in Chapter 7A of the California Building Code. The applicants shall provide a vegetative management plan to be complied with annually.
  31. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.
  32. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
  33. Failure to comply in any respect with the conditions or approved plans constitutes grounds for the town to immediately stop work related to the noncompliance until the matter is resolved. (RMC §18.39.100). The violations may be subject to additional penalties as provided in the Ross Municipal Code and State law.

- 34. 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.
- 35. 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.

**29. 662 Goodhill Road, Amendment to Design Review and Hillside Lot Hazard Zone Use Permit No. 1784**

Donald Santa Family Trust, 662 Goodhill Road, A.P. No. 73-211-45, R-1:B-5A (Single Family Residential, 5-acre min. lot size), Very Low Density (1-1 Unit/Acre) and Limited Specialized Recreational/Cultural. Applications for design review and hillside lot approval and request to amend conditions of the 2001 Town Council design review, hillside lot hazard zone 3 & 4 use permit approval (Resolution 1462), which permitted construction of the two story residence, detached garage/ guest bedroom, and accessory structures. The applicant requests the Council to: 1.) rescind a condition of approval that precludes construction at the site for five years following the date of project final; 2.) allow floor area over 9,142 square feet; 3.) permit the 395 square foot basement under the residence to be finished; and 4.) permit 400 square feet of attic area over the garage to be finished. The basement and attic project would increase the floor area at the site, but would result in no exterior modifications to the structures. Total development of 9,507 square feet is proposed.

Lot Area	776,675 sq. ft. (17.83 acres)
Existing Floor Area Ratio	1.1%
Proposed Floor Area Ratio	1.2% (15% permitted*)
Existing Lot Coverage	0.9%
Proposed Lot Coverage	0.9% (15% permitted)

(\*The slope of this lot is 41%. The current Hillside Lot Ordinance would recommend a maximum floor area of 6,534 square feet, or 0.8% floor area ratio, for the site.)

*Mayor Pro Tempore Small recused herself from the next agenda item in order to avoid the appearance of a conflict.*

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

Don Santa, owner/applicant, noted that he is present to answer any questions and asked the Council to approve his project.

Mayor Martin opened the public hearing on this item.

Riley Hurd, attorney, representing adjacent neighbor, submitted a letter for the Council's review. He explained that the matter before the Council this evening has been heard and carefully considered by the Council. He then discussed four of the findings from the 2006 resolution denying this exact request to legalize an illegally built and concealed unpermitted floor that would still apply to the proposed project:

1. Approval for an after-the-fact finished basement/media room is inconsistent with the prior actions of Council to respect the HLO guidelines. The original project was scaled back after several Council hearings. The addition of 395 sq. ft. of the original project approval is inconsistent with the Town's effort to reduce the original projects size to an intensity appropriate for the site.
2. After-the-fact approvals for a finished basement would reward the applicant's deliberate efforts to violate the rules of the Town and the will of the Town Council. Approval of after-the-fact floor area is inconsistent with the Town's efforts to implement its General Plan and to enforce its Zoning Ordinance.
3. The Town of Ross cannot issue a building permit for this illegally finished basement/media room for at least five years from the final and therefore this application should be denied.
4. The illegally constructed basement room shall be removed, if ordered to be removed, to the satisfaction of the Town's Planning Director and to bring the project into compliance with the original Council approved plans.

Those findings were approved unanimously and that vote included current Council Members Strauss and Hunter. Those findings were carefully thought out and part of a tradeoff to allow other unpermitted items to be approved should be upheld. One should not be able to repackage the same application over and over in an effort to let the mere passage of time dull the effects of these violations. He further encouraged the Council not to take this enforcement condition off the books and not to approve an illegally built space.

Mr. Santa pointed out that it is not an after-the-fact consideration. The improvements were removed removed at great expense and hardship. Also, the vote was a 3:2 vote, not unanimous in regard to the after-the-fact consideration. He further noted that with regard to the five years, the spirit and intent has been fully achieved and then some in his view.

Carla Small, speaking as a resident of Duff Lane and not a Council member, supported the application. She has seen in the last years, especially when an applicant is not changing the imprint of their house, the ability to finish off basements. It has been seen in neighborhoods where homes are possibly exceeding their FAR. She did not feel Mr. Santa would impact anyone with this modification. She agreed that there is history, but staff indicated that Mr. Santa paid a penalty and the five years is a punitive item that has not been done by the Council before. She further noted her support.

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Attorney Riley Hurd reiterated that it was a unanimous vote in regard to the resolution on May 11<sup>th</sup> 2006 with Council Members Strauss, Hunter, Burns, Barr and Durst in support. Also, the five-year restriction has only a small amount of what he is suggesting the Council do. It is the first four 2006 findings he read into the record. This will set a precedent that if one is persistent enough, one can get an after-the-fact approval.

Mr. Santa stated that these are improvements that were never concealed. The square-footage is relatively small and approximately the amount approved in the original footprint. It is almost an even exchange with no added FAR in his view.

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

Council Member Russell asked staff if Mr. Santa sold tomorrow, would that restriction be personal to Mr. Santa or run with the land. Senior Planner Semonian indicated that it would run with the land and basically the Town is restricted from issuing any permits for the site.

Council Member Hunter believed Mayor Pro Tempore Small is correct, in recent months Council has begun this slow practice of approving additional development inside an envelope, which must be discussed in more detail at their workshop. The Council must form a policy. Without the baggage, he would vote approval since the space is deminimis. Resolution Nos. 1462 and 1597 are two contracts and both resolutions indicate that there will be no permits issued five years from the date of project final. He is concerned and believed the five-year penalty was personal. This is the eighth time he has seen this project. It is not fair that the Town affects the resale value of Mr. Santa's property. He would be willing to deny the additional construction. However, change the five year restriction to be personal, to run with the applicant, not with the land. Council Member Strauss concurred with Council Member Hunter's comments, but desired legal review because he has concerns about undoing what a prior Council has done. He agreed that this matter must be addressed at their workshop to better respond. He further believed the matter should be denied.

Council Member Russell felt they should be consistent in terms of permitting basements within a property not impacting neighbors, parking or other issues. There has clearly been a lot of debate about the past history. If permitted, the Council must indicate this is the only exception from five years to project final. They should attach a finding that would require Mr. Santa to make sure that there is no blockage of access. Reality is that neighbors are concerned about the history of construction. The true concern is with blocking access, and if that is addressed, he could support the project.

Mayor Martin felt added conditions to restrict or have some sort of management of access would resolve a lot of neighbor concerns. Given the size of the property, and the fact that the additional square-footage is within the structure of the building, and the fact that the property has the potential for 20 parking spaces, it does not put any more stress on that property. Currently, the Council has a split vote, so Council Member Hunter brought up a good point of eliminating the conditions on development. He then asked staff if the Council is free to withdraw a resolution that a previous Town Council passed. Town Manager Broad believed the Council can amend a prior resolution. In terms of the legality of imposing a condition on a single property owner, staff questions. If the applicant wanted to conduct

research, the applicant to do so rather than the Town taking on the expense since it is not a good use of Town funds.

Town Manager Broad noted that a possibility would be to allow the Town Attorney the ability to review this potential condition, so the matter can be put over another month. Council Member Strauss noted that if no action is taken it is denied. He has trouble making the findings. This must be discussed at their workshop. He has voted against several expansions. He wanted to explore the ramifications with parking, sprinklers and so forth. He further recommended continuing the matter to seek legal advice from Town Attorney Hadden Roth.

Town Manager Broad stated that a 2:2 vote does not approve the project. If the Council came up with a compromise and Mr. Santa is in agreement, then the Town Attorney may not have to review. Attorney Riley Hurd suggested not tying a condition to a single person, but make it the transfer of ownership of the property and use that as the condition. Senior Planner Semonian added that unless the house is sold in the next few months it will be a moot point, since the existing residence exceeds the hillside lot floor area and no further additions will be permitted.

Mr. Santa believed they can work this out rather than hiring an attorney. The idea of coming before the Council in an honorable, reasonable and respectful manner and then to be denied is very disrespectful to what he is trying to accomplish. Also, he already received a permit to make improvements. Some of this has been violated. At the end of the day, the purpose of that condition was met and the Council should reward the better side of this effort.

Council Member Russell asked Mr. Santa if he is willing to pay a penalty. Mr. Santa indicated that he had already paid penalties for the work. The only issue is the five years. Council Member Strauss felt a penalty is not appropriate, and even with a penalty, he would not feel differently.

Council Member Strauss proposed continuing the matter until the Council has an opportunity to discuss basements and attics at their workshop. Council Member Hunter noted that both resolutions were passed prior to their time served on the Council and what he suggested earlier is fair. Mr. Santa indicated that he would accept, if he can improve the property. Council Member Hunter noted that it must be disclosed to the next owner that nothing can be done until 2014. Mr. Santa wished the Council could accept the improvements in order to move forward. Council Member Hunter believed the five-years applies now and the five-years can go away if indeed the property is sold. Mr. Santa believes it is excessive. Town Manager Broad did not believe the condition was intended to be punitive as Mr. Santa's letter proposed to a five year period, which was then included in the conditions of approval.

Mayor Martin wanted to handle this in an expedited manner. Legal counsel is needed to provide guidance and suggestions about restructuring. There is consensus that they are open to rescinding the restriction upon sale of the property. Mayor Martin proposed tabling it until the Council receives legal advice. Council Member Russell asked if they could give Mr. Santa the basement, but not the attic. Council Member Strauss recommended that the Council schedule a special meeting to discuss. Senior Planner Semonian recommending discussing the matter at their regularly scheduled August 12<sup>th</sup> Town Council meeting.

Mayor Martin asked for a motion.

Council Member Strauss moved and Council Member Hunter seconded, to continue the matter to the August 12<sup>th</sup> Town Council meeting in order to allow staff the ability to prepare a Resolution. Motion carried unanimously.

Mayor Pro Tempore Small reconvened her position on the Ross Town Council.

30. **43 Winship Avenue, After-the-fact Variance and Design Review No. 1788**  
Joanne Santa, 43 Winship Avenue, A.P. No. 72-154-01, R-1:B-10 (Single Family Residence, 10,000 Square Foot Min. Lot Size), Medium Low Density (3-6 Units/Acre). Design review and variance application to allow the after-the-fact conversion of the 325 square foot garage into living space within the side yard (15 feet required, 6 feet proposed) and rear yard (40 feet required, 5 feet proposed) setback areas. One uncovered parking space would be available for the residents between the inoperable garage door and the sidewalk (2 uncovered and one covered parking space required). Request to also allow an air conditioner to remain in the side yard setback (15 feet required, 10 feet proposed) to the east of the residence.

Lot area	6,910 square feet	
Existing Floor Area Ratio	29.3%	
Proposed Floor Area Ratio	29.3%	(15% permitted)
Existing Lot Coverage	34.2%	
Proposed Lot Coverage	34.2%	(15% permitted)

*This item was continued to a later date.*

31. **33 Sir Francis Drake Boulevard, Commercial Use Permit No. 1784**  
*This item has been continued to the August 12, 2010 meeting.*  
Town of Ross, Clearwire US, LLC, 33 Sir Francis Drake Boulevard, A.P. No. 73-191-16, C-D (Civic District), Public Service, Zone A (1-percent annual chance floodplain). Use permit to allow modifications to an existing unmanned wireless communication facility consisting of a 40-foot monopole and equipment. Clearwire proposes to utilize the existing monopole to add three panel antennas at 38 feet and two microwave dishes at 34 feet above ground level. Three remote radio units would be located on the pole at 5 and 7 feet above ground level. This project would result in a total of 12 antennas, 3 GPS antennas and 2 microwave dishes on the Town-owned site. The applicants would paint all antennas, dishes and connecting equipment to match the existing pole. The equipment cabinet will be located within an existing structure and screened from public view. The proposed facility would be unmanned and operate 24 hours a day seven days a week. The applicant proposes occasional maintenance of the facility, not to exceed one visit per month.

32. **Correspondence -**

Mayor Pro Tempore Small discussed the following items:

- Jessica Hart expressed concern with the thistle growing on Fernhill and Laurel Grove.

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- Provide a plastic box at the Post Office with extra “*The Morning After*” newsletters
- Residents expressed concern for the increased ticketing of U-turns downtown.

33. Other Business -

- Add SmartMeters to the next agenda.

34. Adjournment.

By order of Mayor Martin, the meeting adjourned at 12:15 a.m.

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Christopher Martin, Mayor

ATTEST:

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Gary Broad, Town Manager