

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, JUNE 11, 2009

1. 6:00 P.M. Commencement.

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

2. Posting of Agenda.

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

The Ross School Board will join the Town Council for a special joint meeting on the following item:

3. The Ross School District requests Town Council approval of a 2,137 square foot easement over the Ross Common for the “construction, installation, reconstruction, maintenance, repair and use of a stage, ramps, stairs and accessory structures” and for Town Council approval of a 4,137 square-foot non-exclusive pedestrian pathway easement over the Ross Common, including a handicapped accessible stage seating area and a pathway east of the elementary school to Lagunitas Road. The easements/improvements will extend a maximum of 26 feet from the west property line of the Ross Common proximate to the new gymnasium. The importation of 313 cubic yards of fill is proposed for these improvements.

Mayor Cahill thanked the School Board for joining the Town Council in this joint meeting, particularly President Dan Bernhard, who initiated this joint session. Last November the Town approved the school’s request for a lot line adjustment related to the new buildings. The purpose of this meeting is for the Town Council to decide on the school’s application for two easements to allow the school to extend a portion of its theater stage over Town property and to place a path from the stage area to Lagunitas Road. The Council is also interested in the views of community members on this application. This is a joint meeting so the School Board may meet together, confer and respond to any questions and concerns of the Town Council without violating the provisions of the Brown Act. The Town wants to help the school complete its project as quickly as possible. He is happy that they are hearing the application for the easements now in conformance with the school’s time schedule. The order of business will be as follows:

1. The School Board will take care of the housekeeping items on its agenda
2. Town will make its staff report
3. School will make its presentation
4. Public comment
5. Council discussion
6. School Board comments
7. Council decision

The School Board’s agenda calls for public comment before the Town’s staff report and the school’s presentation and anyone in the public may speak on this matter then, but in the interest of time, he would prefer if comments could be held until the public comment period after the school’s presentation.

President Dan Bernhard called the School Board meeting to order and asked the Board for approval of their agenda and time allocation. It was moved and seconded and the motion carried unanimously by the Board.

Town Manager Broad explained that the matter is before the Council to decide and staff had no recommendation.

Mark Quattrocchi, architect, explained that they held several board, committee, community and public works meetings for a total of 65 to 70 meetings where information and input was provided. They are currently under construction, on schedule and should finish this summer. In the spring of 2010, they plan to start construction on the gymnasium. They are submitting to the State Architect's Office and they intend to submit in July, so they hope this matter is approved tonight. He then provided the Council with a powerpoint presentation discussing the easements. He indicated that they have focused on the areas of interface. The work includes the new path to provide access up to Lagunitas Avenue; variety of ramps and stairs on the Common and the stage. A portion of the stage extends beyond the property line and into the Common. A variety of large mature trees will be added as part of the easement. The second element of the easement will be accessibility as required by DSA. He provided an architectural drawing of the gymnasium for the Council's consideration. There has been concern about the size of the stage, so he discussed the history that started back in June of 2007. The proposed stage and lot line adjustment were both 10 feet. At the October 2009 joint meeting it is the same format, but originally they had a 10-foot setback, but in fact they only had 5 feet, so it gives the appearance of being further away from the Common. The lot line has been moved closer to the building. The stage did increase at the thrust; the curve at the front was increased. Attachment 2 is the easement agreement followed by a legal description for the Council's review. 2100 square feet is dedicated to improvements. He provided a section of the stage to the Council to better understand the area of fill. They must raise the school out of the flood plain of a height at no less than 4 feet above existing grade. He provided a cross-section showing the gentle sloping across the Common. Discussions continue on how the rest of the Common will be graded.

He then provided several photographs to the Council depicting the following: the street; gymnasium; high roof over gym; stage; windows; plaza level; path; sets of stairs; trees to screen the building; wood panel doors; middle of campus; covered walkway; entrances into multiuse building; inside gym showing natural daylight, translucent glass and electrical blinds; and gym floor. He further provided a diagram requesting the areas where an easement is desired.

Mayor Cahill opened the public hearing on this item.

Peter Barry, former Mayor/Wellington Avenue resident, believed this is a very bad idea. The Common is very unique and to encroach on the Common is a bad idea. The Common belongs to others, not just the school. Any development should remain on school property. The Common should be kept as the Common and should not encroach, even for a good cause.

Bob Jacobson, Ross resident, noted that a bond measure passed with overwhelming support for the school project.

Carla Small, Duff Lane resident, disagreed with former Mayor Barry. There has been a tremendous amount of notice for this project and it is very important to find a way to move forward. She believed the school and the Town must find some type of compromise. This is a

very minimal impact on the Common. She has lived in Ross for 18 years and what the school has done has been an improvement. The Common has tremendously improved. This is a blending of the school and the community. Whether it is the school or the downtown plan, the goal is to bring the community together. Town events can utilize the stage making for a very interactive downtown. She further noted that they are moving into a very interactive environment and hoped tonight they can find a way to compromise and move forward.

Bill Conrow, Berry Lane resident, stated that the Town of Ross is quite different than any other town in Marin County. The school plays a big part in Ross. When he thinks of Kentfield, he does not think of the school as being such an integral part. He disagreed with the former Mayor because this Town really does evolve around the school more than any other town or city. He further agreed that the stage would provide such wonderful opportunities for the community to come together and he did not want to see the Town prohibit that over a small easement.

Stephanie Robinson, Hill Drive resident, was involved in the bond campaign and talked about these plans with the Ross community. There was unanimous support for this stage. No one objected. The response was tremendous as with the rest of the design. Several voted for the bond measure that passed, which demonstrates the overwhelming support for this project.

David Peterson, Upper Toyon Drive resident, believed the Town has improved dramatically. He was a former School Board member and is very pleased that the bond measure passed. This school is incredible and the school is part of the Town and the Town is part of the school. The idea of opening that stage to both sides removes the property line, so he is very supportive and hopes the Council approves the design tonight.

Samantha Lyman, Lagunitas Road resident, looked forward to bringing the stage and local children sports to the community because that outside support will help the small businesses. She asked for the Council's support for the downtown businesses in order to open up the Common to residents and surrounding communities for a vibrant downtown.

Julie McMillan, Crest Road resident, stated that the gymnasium is a community asset that several in Town will use. It is not just a school project; it involves several other constituents of the Town.

Stephanie Cook, Shady Lane resident, supported the school project. Ross School is the heart of Ross. With a focus on fine art, a stage would benefit the Town and revitalize the downtown. If this continues to be held up on minor details, this project will never occur, especially in this economy. She urged the Council to see this as a community project.

Stephanie Stein, Circle Drive Resident, pointed out that this is a Town function on the school property. The community should collaborate with the school around the lot line adjustment.

Laura Conrow, Berry Lane resident, stated that it is an easement, not an easement where there will be fence. From a practical and realistic standpoint, nothing will change other than being able to access that area.

Don Santa, Woodlands Market owner, echoed the fact that the school is a crown jewel of the Town and all property owners' benefit. One could argue that the Town should be grateful for

this effort on behalf of the school. He further noted that this project would get overwhelming support if put to a vote.

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

Council Member Skall thanked everyone for all their hard work and hours spent on this very important project. The collaboration between the Public Works Committee and Design Committee is excellent and noted his support.

Council Member Hunter loves the idea of the stage, which is a fabulous concept. He noted his strong support. He is very interested to hear the report from the Public Works Committee. His only concern in reading the material is that many items are not spelled out, and if approved, there are legal aspects that must be reviewed such as liability, rights and so forth.

Mayor Pro Tempore Strauss noted that the Town is very supportive of the Ross School. As a representative of the Town, he is uncomfortable allowing structures on Town land without notifying the residents. He along with Council Member Martin worked with the committee. It is a great idea to have this double-sided stage, which has grown into two stages and the community needs to understand. The entire community has not been adequately informed, so he appreciated this meeting tonight. There are several issues around the easement and he asked the Town Attorney to speak to liability. With compromise, he believed they could reach a resolution. The Town needs to understand the project. They never had story poles on the gym itself. The Town must understand the ramifications of bulk and mass, and with landscaping the mass can be mitigated. He then proposed a lot line adjustment with a net zero gain for either party to avoid liability issues.

Town Attorney Hadden Roth suggested a joint use agreement between the Ross School and Town in terms of liability, insurance and so on, which is a very common process. He then asked the Council if they wanted to explore a joint use agreement to cover the issue of liability and maintenance. Mayor Cahill noted that included in their packet is a draft easement agreement and once they have an understanding of what they are trying to accomplish, the Council can direct the Town Attorney and the school's attorney to work out a legal agreement.

Council Member Martin stated that the Common and school have changed. As a child, he never perceived any borders or barriers between the Common, the school and Marin Art & Garden Center. They are not talking about an obstruction in the middle of the Common, but maximizing the limited space between two users. He liked the idea of the stage. They must focus on how to share use and address liability. The school is willing to indemnify the Town in regard to the easement. Time is of the essence, if they are looking at changing the approach to a lot line adjustment from an easement and it delays the processing, the school will run into problems and he would hesitate. In general, the changes have been successful. Dialogue between the Town and school has been productive and overall this is a great improvement.

Mayor Cahill thanked the School Board and various volunteers that have worked on this project. He is very much in favor of the stage. He added that they are only taking away a few feet and this is a huge benefit to the Town and many generations will enjoy, so he is strongly in favor. Town Attorney Hadden Roth asked the Council if an easement is preferred over a lot line adjustment. Mayor Cahill wanted the best method legally to be used so long to not delay the process. Mayor

Pro Tempore Strauss preferred a lot line adjustment that included all built structures defined by code on the school's property and adjust the property line in order to make it very clear. Mayor Cahill stated that if they are approving a lot line adjustment tonight, then it must be re-noticed, but he did not have a preference.

Mark Quattrocchi stated that there is no zero lot line method to do what Mayor Pro Tempore Strauss suggested. The property line would follow a strange course and encroach on the playground area. He further noted that indemnification on the easement has been addressed.

Project Civil Engineer Tom Jones stated that the difficulty would be preserving the no net change in area in regard to a lot line adjustment. Any easement or lot line adjustment can accomplish the same goal, but they preferred to continue with the easement approach. Mayor Pro Tempore Strauss agreed to move forward with an easement. When this came about there was never any structures and he wanted the record to reflect that.

Mayor Cahill indicated they could approve tonight subject to the legal documentation that the school is indemnifying the Town and maintaining the structures built. Council Member Hunter pointed out that the joint use agreement would address all legal issues.

School Board Member Elizabeth Robbins believed the stage is an interesting and exciting idea. The Town discussed many years ago the idea of having some sort of structure in the Common for public events. A gazebo was discussed, and this approach takes up less space, and it is a wonderful plan.

School Board Member Fineman thanked the Council for this meeting and all the public comments. He then announced that three Board seats are vacant, if anyone is interested. He stressed that this is not crying wolf. They are at the 11<sup>th</sup> hour. If delayed, they run the risk of losing an entire school year. Also, this is a great environment to be building a school. The portion being built was estimated at \$18.3 million and the bid came in at \$10 million. If approved, this can be done on time and under budget.

President Dan Bernhard stated that to the extent the Town has issues with the legal documents the lawyers will review and reach an agreement. They are present for an easement, which is on the agenda. He then responded to former Mayor Barry's comment about encroachment on the Common, and as a District, they do not like the idea. It was not a goal, but they have a horrible site as a School District. As utilitarian space, it is not the best. They are constructing a school in an urban setting. They have no space. They have barely adequate blacktop for kids. The idea of adjusting a lot line, even if possible, they just cannot give up any space because they have no where to go.

Mayor Pro Tempore Strauss wanted to discuss in more detail with Council Member Martin the conditions of approval in regard to: protecting existing trees; legal issues; landscaping condition up to three years around the Common; perimeter trees; and sleeves and tree wells placed around perimeter so Town can plant street trees. He further noted that the trees would be planted at the Town's cost.

President Dan Bernhard stated that the school has been a good neighbor and they will continue to be a good neighbor. This is a two-year process. In the course of those two years, they expect the Town will have questions and information and they will cooperate. When approved tonight,

they will go to Sacramento and stay on schedule. Architect Quattrocchi had no objection to the tree wells. He just needed feedback from the Town as to where those should occur. Mayor Pro Tempore Strauss stated that the Public Works Committee would review the landscape plans.

The Council agreed to approve the Ross School District request for an easement to permit the construction and use of a stage partially located on the Ross Common and an easement running along the east side of the school's lot line for a pathway from the school gymnasium to Lagunitas Road. Ramps and stairs leading from the pathway to the school would also encroach on Town land.

Mayor Cahill asked for a motion.

Mayor Cahill moved and Council Member Hunter seconded, to approve the easement subject to the conditions outlined by Mayor Pro Tempore Strauss (School and Town attorneys to draft legal documentation, such as joint use agreement between the Ross School and the Town, in terms of liability, insurance, Town indemnification, maintenance of built structures, etc.; school to protect existing trees; Town has up to three years to require more school plantings around the Common; perimeter trees; and irrigation sleeves under new perimeter sidewalk and tree wells provided so the Town can plant street trees (tree planting at the Town's expense.)) Motion carried unanimously.

The Ross School Board special joint meeting is concluded and the Town Council meeting will continue.

4. 7:00 P.M. Open time for matters pertaining to the closed session in agenda item 4.
5. Closed Session – Personnel Matter, Government Code Section 54957, annual evaluation of the Town Manager.
6. Open Session. Council will return to open session and announce action taken, if any. Mayor Bill Cahill announced that there was no reportable action.
7. Minutes -May  
Mayor Cahill asked for a motion.

Council Member Martin moved and Council Member Skull seconded, to approve the May 14, 2009 Town Council Minutes as amended. Motion carried 4-0-1. Hunter abstained.

8. Demands.  
The demands were met.

9. Open Time for Public Expression.  
Phil Paisley, Baywood resident, asked the Council to change the Hillside Lot Ordinance (HLO). Some former Mayors had asked that this subject be brought before the Council with community involvement. He then submitted a letter for the record dated May 12, 2009 requesting that the Ross Town Council reinstate three provisions related to HLO projects to rectify what was unintended, as follows:

- Decks should be included in calculating the FAR for HLO applications

- A penalty for ceilings higher than 10 feet should be included in calculating FAR for HLO applications; and
- The setback provision, contained in the HLO until last year, should be reinstated.

Stephanie Cook, Shady Lane resident, expressed concern for excessive speeds traveled on Shady Lane and hopes the pathway will help with bicycle and pedestrian traffic, but wanted the issue to be discussed. She strongly encouraged enforcement. Also, more crosswalks and signage is needed. She desired more enforcement on Fridays since that is the busiest day. She suggested placing a motorcycle officer in the area and asked that the Council work with San Anselmo as well. She further noted that it must be addressed before there is a fatality.

Police Chief Jim Reis agreed that there are speeders on Shady Lane, Lagunitas and Laurel Grove. It is a hit and miss proposition. Police vehicles are equipped with moving radars and directed enforcement can occur during peak hours on Shady Lane to address the problem as well as improve signage such as "*slow, narrow bridge.*" He will do his best to move shifts to address the problem to the best of his ability. He further agreed a motorcycle officer along with stricter enforcement would help.

Council Member Martin noted that former Mayor Goodman indicated that his biggest mistake was re-grading Shady Lane, which made that surface a highway. Vehicles exceed the speed limit. It is a blind curve, so there are legitimate concerns for the new pathway, particularly at that bridge. He further agreed that traffic must be slowed down at that intersection of Shady Lane.

Todd Blake, Ames Avenue resident, agreed the area must be addressed and requested serious consideration of a crosswalk at that intersection.

Mayor Cahill believed other traffic calming approaches might be appropriate. Council Member Hunter noted that the Public Safety Committee would discuss the matter.

#### **10. Report from Mayor Cahill.**

Mayor Cahill acknowledged and congratulated the three young men from Ross who are the 2009 appointees to the military academies from Marin County. Alex Sagues, who is the son of Paul and Debbie Sagues, and Tom Busterud, who is the son of John and Gretchen Busterud, are going to West Point. Forest Kersetter, who is the son of Bob and Becky Kersetter, is going to the Air Force Academy. The Council is incredibly proud of the call to serve our country exhibited by these three fine young men.

Mayor Cahill wanted to thank Don Santa and his Woodlands Market for donating a portion of the proceeds from sales at the market this past Monday to a fund for the benefit of Officer Bob Besgrove's grandson to help with his medical expenses. \$5,000 was raised from this donation. The Council is very grateful for Don's generosity.

The Town is once again holding its annual Fourth of July parade and picnic with Officer Bob as the Grand Marshall. The parade will start at 11 am from Woodlands parking lot to Ross Common, where the Fourth of July festivities and picnic will take place.

#### **II. Report from Committee Heads.**

Public Works - Council member Strauss

- Public Works project review

This matter will be discussed later in the agenda.

12. Report from Ross Property Owners Association.

Carla Small, RPOA representative, noted that Diane Rudden is helping out with the extra additional expenses for the Fourth of July flyers and banners.

13. Flood Control Report.

This matter will be discussed later in the agenda.

14. Report from Marin County Commission on Aging representative Loraine Berry and Town Council consideration of reappointment of Loraine Berry to the Marin County Commission on Aging for a two-year term.

Loraine Berry, Marin County Commission on Aging representative, provided a brief background on MCCA that included monthly community educational forums; workshops; newsletters; organized car fit driver safety program; co-sponsor senior information faire; conducted several workshops; disaster preparedness to most vulnerable adults in Marin; completed trip generation; and LEED surveys.

Council Member Martin asked how many residents in Town received in-care. Ms. Berry noted that due to confidentiality, it is not known. One in four residents in Marin County are over 65 years of age.

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

Mayor Cahill asked for a motion.

**Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to reappoint Loraine Berry to Marin County Commission on Aging for a two-year term. Motion carried unanimously.**

15. Town Council consideration and response to the Grand Jury report dated April 13, 2009 entitled "Marin's homeless: The 'invisible' problem that won't disappear."

Town Manager Gary Broad summarized the staff report and recommended that the Council consider and respond to the Grand Jury report dated April 13, 2009 entitled "*Marin homeless: The 'invisible' problem that won't disappear.*" Staff further noted that the County of Marin would be the logical entity to spearhead this endeavor, and if so, Ross would participate in the campaign.

Mayor Cahill opened the public hearing on this item.

Joan Holmes, Ross resident, believed they have gone into another realm of homelessness and asked how the Town would participate. Mayor Cahill stated that if the County agrees, they would take the lead and the recommendation is to pull in all communities and the County. Town Manager Broad noted that it is reasonable to assume, if the County agrees and takes the lead, staff or a Council member would participate.

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 approve a formal response to the Marin Grand Jury's report on homelessness entitled, "*Marin's homeless: the 'invisible' problem that won't disappear.*" The report concluded that hundreds of homeless in the county need shelter. The Grand Jury found that many of the homeless sleep in Marin's open spaces or in their cars, having been turned away by nonprofits because of bed shortages or drug and alcohol restrictions. The Grand Jury also determined that the majority of the homeless population is found in San Rafael, Novato, Sausalito and in the unincorporated areas of Marin. The Grand Jury recommends all Marin jurisdictions to jointly launch a comprehensive campaign to heighten public awareness of homelessness. The Council responded that the County of Marin would be the appropriate entity to take the lead in this endeavor and Ross would be willing to participate.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to approve Town response to the Grand Jury report dated April 13, 2009 entitled "*Marin's homeless: The 'invisible' problem that won't disappear.*" Motion carried unanimously.

16. Consent Agenda.

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

a. Town Council consideration of adoption of Ordinance No. 615 to amend Municipal Code Chapter 2.28.030, Disaster Council Membership, and Chapter 2.28.040 Disaster Council Powers and Duties

Mayor Cahill asked for a motion.

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

b. Town Council consideration of adoption of Ordinance No. 616 to exempt bicycles from left turn restrictions from Bolinas Avenue onto Shady Lane, prohibiting U-turns at 6 Redwood Drive and deleting restrictions prohibiting left turns from Bolinas Avenue onto San Anselmo Avenue.

Mayor Cahill asked for a motion.

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

c. Town Council consideration of adoption of Resolution No. 1671 approving the Ross Valley Paramedic Authority tax levy for the 2009-10 fiscal year.

Mayor Cahill asked for a motion.

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

End of Consent agenda.

*Council Member Martin recused himself from the next agenda item to avoid the appearance of a conflict.*

17. Request to award contract and authorize expenditures for Shady Lane Pathway project.

Public Safety Director Mel Jarjoura summarized the staff report and recommended that the Council award contact and authorize expenditures for Shady Lane pathway project. Staff received comments from 56 Shady Lane property owner desiring concrete rather than asphalt. Staff explained that it is \$6,000 for a concrete driveway vs. \$2,500 for an AC driveway. Staff noted that all other issues have been resolved. Hedges will not be cut, just meander, where possible. In regard to the bid, staff received six bids. The lowest bid was \$129,500, but that contractor did not have the required job experience, so staff recommends that the Council accept the second lowest bid for \$153,529 from Ghilotti Brothers or direct staff to re-bid the project.

Council Member Hunter pointed out that the project engineer’s estimate was \$195,000, and the second lowest bid still saves the Town over \$40,000.

Council Member Skall expressed concern because they have not finished the first part in regard to the crosswalk and accessibility on the intersection of Ames and Shady Lane. They must address that matter with the funds they have now for the second phase. They must make paths ADA compliant. Town Manager Broad noted that a closed session on that subject would occur at the July Town Council meeting.

Mayor Pro Tempore Strauss noted that the contractor is coming back to complete items in regard to the first phase and it has been accepted very well by the community.

Public Safety Director Jarjoura noted that from Southwood to Bolinas there is a possibility that utility services and gardeners will be parking over the path. Maintenance of decomposed granite will occur more since it is less durable. Staff further noted that asphalt requires less maintenance.

Mayor Cahill opened the public hearing on this item.

Loraine Berry, Ames Avenue resident, desired an ADA accessible path.

Vincent Conrad, Madera resident, asked if the Council has the ability to negotiate with the second bidder in terms of price. Town Attorney Hadden Roth indicated that any negotiation would require a new bid.

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

Mayor Pro Tempore Strauss noted that they can encourage asphalt, but if property owners desired concrete, then they must respect their wish.

Public Safety Director Jarjoura recommended that the Council accept the second lowest bid from Ghilotti Brothers subject to staff qualifying their experience, and if Ghilotti Brothers does not qualify, the matter will be brought back to the Council for further discussion and action.

The Council accepted Ghilotti Brothers bid of \$153,529 for construction of the second phase of the Shady Lane pathway. The bid came in 21% under the Town Engineer's estimate of \$195,000.

Mayor Cahill asked for a motion.

**Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to accept the second lowest bid for the Shady Lane pathway project; allow staff the ability to qualify that bid; and along with the \$14,000 allowance for the additional expenditures for concrete driveways, if property owners so elect. Motion carried unanimously.**

*Council Member Martin resumed his position on the Town Council.*

18. Town Council discussion and action regarding surface material and parking along Sir Francis Drake for the Sir Francis Drake Pathway Project.

Public Safety Director Mel Jarjoura summarized the staff report and recommended that the Council accept the revised final Sir Francis Drake Boulevard pathway plans and direct staff to submit the revised set, along with any additional minor changes made by the Town Council, to Caltrans for review and approval as Ready for Construction.

Questa Engineer Jeff Peters noted that during construction the contractor would stake out the exact center alignment to allow an opportunity for adjacent neighbors to review the exact footprint of the path. They have successfully solved the vast majority of issues and problems as well as accommodated fences and concerns of neighbors. He noted that landscaping will include street trees and the planting plan shows the proposed trees and locations. There is a list of approved street trees that the Town Arborist reviewed. Additional trees can be added by adjacent neighbors in the Town's right-of-way, but the Town must rely on neighbors to maintain those trees. In regard to the colored asphalt coating, there are three products. One is a spray-on coating, which is not very durable that cost around \$10,000. The second product is much more durable, it is street print and that is quite common at intersections at around \$34,000. The third product is where a color is mixed into asphalt at the hot mix plant that is very durable, but very expensive costing \$60,000 to \$80,000. He suggested the second option and noted that there are several earth tone color options, but at the construction stage, they can remedy any minor issues with neighbors and make modifications.

Council Member Martin appreciated the issues being addressed with residents. As far as the additional cost that might be incurred with these on the spot adjustments, he asked if that is known in the bid documents. Questa Engineer Jeff stated there is a line item for layout and stake out. They are paid on square-foot. If it is tweaked that is in specification and subject to approval. Council Member Martin discussed the three alternatives and asked if there is another asphalt based cover that has aggregate to appear more natural. Questa Engineer Jeff responded that they could specify asphalt paving mix with larger pebbles, which will still appear as asphalt. Council

Member Martin desired exposed aggregate surface to look more natural. He wanted to delineate the walkable pedestrian pathway from the street with some color that would contrast. He suggested a gray aggregate mixed in with concrete, but asked staff if that is cost effective. Questa Engineer Carl believed that could be accommodated with the color. It could appear as brick. The color itself could be used to give the impression that it is not an asphalt surface with the street print. Quest Engineer Jeff noted that a stamping pattern could be applied to the street print as well, but that adds another layer of cost.

Mayor Pro Tempore Strauss suggested the “*Swiss cheese*” asphalt. Questa Engineer Jeff Peters explained that option is not the best in terms of being in a flood plain and it is not an appropriate location for such material.

Mayor Cahill opened the public hearing on this item.

Stephanie Cook, Shady Lane resident, asked if there is a functionality reason for the additional cost or just aesthetics. Council Member Martin noted that residents expressed concern for a safe walking surface as well as aesthetics, but mostly the safety aspect. He further noted that there would be an AC berm.

Bill Conrow, Berry Lane resident, expressed concern for colored concrete, for example, Novato’s colored concrete. He suggested carefully thinking about coloring the asphalt. He attended meetings with staff and felt the engineering company has done a great job addressing the neighbors concerns and preserving hedges. He added that the pathway was moved more central between property lines and the street. Aesthetics is a concern, but parking was another. By having an AC berm it prevented parking. The primary area of concern was west of Lagunitas. Vehicles never park along the east side to his knowledge and a berm would allow landscaping to mitigate that sidewalk.

Joan Holmes, Ross resident, thanked staff and Questa Engineering for holding the excellent workshops. She desired guest parking. She expressed concern for concrete due to cracks and believed aggregate as suggested by Council Member Martin is a wonderful idea. In terms of color, the path will cut across several driveways and desired consistency throughout the neighborhood.

Questa Engineer Jeff Peters explained that the pathway must be a 2% cross slope and above and below would be at a steeper pitch. There will be a noticeable flattening of the driveway where the path crosses the driveway. He further believed not having color go through the driveway would look best.

Laura Conrow, Berry Lane resident, believed aesthetics is the prime concern. Sir Francis Drake is a heavily traveled road and the pathway should look as natural as possible. In terms of color, it should be one color, an asphalt color. Very important that when the path is constructed that it is placed in such a way to allow homeowners to plant trees, flowers and shrubs on either side of the path.

Mark Fritts, Sir Francis Drake Blvd. resident, asked why decomposed granite was eliminated because he desired a permeable surface. He agreed aesthetics are very important and decomposed granite should be used.

Lorraine Berry, Ames Avenue resident, agreed aesthetics is very important. She desired Options 2 or 3 as discussed by Questa Engineering. She added that everyone is aware of ADA requirements and stamped asphalt with deep indentations might be challenged by ADA.

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

Council Member Hunter wanted to include the decomposed granite as an additive alternate. Questa Engineer Jeff responded that decomposed granite would be much higher than asphalt pathway, which presents a dilemma. Mayor Cahill asked staff if they could receive two bids, one for an AC pathway and one for a decomposed granite pathway. Public Safety Director Jarjoura responded in the affirmative. Questa Engineer Jeff pointed out that the Council has the ability to reject all bids. Council Member Hunter also suggested that the bids call for conduit to be placed in walkways to permit irrigation lines from each residence to water street trees.

Mayor Pro Tempore Strauss agreed decomposed granite should be considered with a binder since it is a more green material. He noted that ongoing maintenance is a problem. He suggested an AC pathway, but he is open to decomposed granite as an additive alternate. He desired a program to maintain the trees, so Public Works must review. Council Members Hunter, Martin, and Skall concurred with Mayor Pro Tempore Strauss's comments.

Mayor Cahill wanted the \$8,000 tree estimate to be included as well. He agreed maintenance of the trees must be discussed. It is a very important area. It is the gateway to the Town, so landscaping and trees are very important. Mayor Pro Tempore Strauss agreed with receiving two independent bids.

The Council agreed to accept the final revised plans for the Sir Francis Drake Boulevard Pathway and agreed to release two separate bids for the project – one for an asphalt pathway and one for a decomposed granite with binder pathway, similar to the Shady Lane pathway. The revised plans incorporate street tree planting and pathway alignment modifications determined during two public meetings held in May. The 4-foot wide pathway will begin on the east side of Sir Francis Drake Boulevard just north of Ross Terrace Drive, cross over to the west side at the Lagunitas Road intersection, and terminate at or just south of Bolinas Avenue. The pathway will be field staked by the contractor at the start of construction, and minor adjustments may be made at that time.

The Town received a \$200,000 federal grant for the project. Estimated construction costs for an asphalt pathway are \$202,000. Decomposed granite would add \$54,000 to \$90,000.

Mayor Cahill asked for a motion.

**Mayor Cahill moved and Mayor Pro Tempore Strauss seconded, to accept the revised final Sir Francis Drake pathway plans and direct staff to submit the revised set to Caltrans for review and approval as Ready for Construction. Motion carried unanimously.**

19. **Presentation of the draft Town of Ross Budget for Fiscal Year 2009-2010 and Town Council consideration of adoption of the budget.**

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adopting the budget for fiscal year 2009-2010.

The Council suggested increasing the budget for Shady Lane pedestrian improvements to \$230,000. Mayor Pro Tempore Strauss clarified that the downtown plan drainage is \$150,000 and the downtown plan is \$150,000.

Council Member Hunter asked staff for a sense of property tax, and if there is any chance the State would cut into the percentage that normally comes back to the Town. Town Manager Broad noted that the State could only borrow, so it is not a permanent loss. An 8% maximum is all the State is allowed to take.

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

The Council agreed to adopt FY 2009-10 general fund budget with expected revenues of \$5,487,613 and operating and capital improvement expenditures of \$5,549,071. The draft budget presented to the Council showed an excess of revenue over expenditures of \$1,745, but the Council voted to allocate additional capital improvement funds for potential improvements along Shady Lane, resulting in a deficit of \$61,458 (to be covered from general fund reserves.) A general fund reserve balance of approximately \$2,300,000 was projected for June 30, 2010.

Additionally, the FY 2009-10 budget includes over \$3,000,000 for the new Lagunitas Road Bridge and for roadway, drainage improvements and work in the community. It also includes almost \$400,000 for new pathways through Ross. The majority of these improvements – close to \$2.5 million – will be paid for with federal, state and local grant money. The budget anticipates general fund revenues will increase 0.8% from last year's estimated revenues. Although property tax revenue, which contributes almost half of the Town's total revenue, is projected to rise by 4%, fees for applications, permits and licenses, are projected to decrease nearly 32% due to economic conditions. The General Service Tax is expected to contribute approximately 12% of total general fund revenues. General government expenditures, which include staff salaries and expenses for the administration, planning, public works and building departments, declined by 5.1%. The public safety budget, which comprises nearly 62% of all general fund expenditures, grew by 9.8% over last year's estimated expenses. The increases primarily resulted from hiring another police officer and additional fire and police pay and benefits.

Mayor Cahill asked for a motion.

**Council Member Martin moved and Council Member Hunter seconded, to adopt the FY 2009-2010 budget as amended. Motion carried unanimously.**

*The Council took a short recess at 10:12 pm. The Council returned to session at 10:23pm.*

20. **Public Hearing: Levy Taxes/Assessment Pursuant to Ordinance No. 582 of the Ross Municipal Code – Fiscal Year 2009-10.**

Town Manager Gary Broad summarized the staff report and recommended that the Council adopt Ordinance No. 582 of the Ross Municipal Code setting the Municipal Services Tax again at \$775 for FY2009-10.

Mayor Cahill opened the public hearing on this item.

Joan Holmes, Ross resident, yelled out “*hallelujah.*”

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

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Council Member Skall seconded, to adopt Ordinance No. 582 of the Ross Municipal Code - FY 2009-2010. Motion carried unanimously.**

21. **Town Council consideration of adoption of Resolution No. 1672 establishing Employer Paid Member Contributions (EPMC) for Fire Department personnel.**

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adoption of Resolution No. 1672 establishing employer paid member contributions (EPMC) for Fire Department personnel.

Council Member Martin pointed out that Ross Valley and San Rafael have a similar setup. Town Manager Broad noted that other County fire departments have it and PERS requires that the Council adopt this resolution to implement our MOU provision, so it is necessary to make the change.

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

Mayor Pro Tempore Strauss believed now they have this unfunded retirement commitment out into the future. This is not industry standards, but noted his support since it was already agreed and he has an obligation to honor that agreement.

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Council Member Skall seconded, to adopt Resolution No. 1672, establishing EPMC for Fire Department personnel. Motion carried unanimously.**

22. Town Council discussion of the future use of the Town residence/property at 6 Redwood Drive.

Mayor Pro Tempore Strauss discussed the following options for 6 Redwood:

- Single unit rented to single party
- Maintain structure that is present
- Multi unit residential complex, number of units to be determined
- Homeless shelter
- Remove structure and incorporate into play fields - Common area since playfield was reduced
- Daycare facility or other Town use

Council Member Martin desired input from the community. It has been a housing unit rented by a Town employee for the past 50 years. He noted that it does need around \$20,000 worth of improvements and it has been vacant for over one year.

Mayor Cahill opened the public hearing on this item.

Riley Hurd, attorney, representing Barbara Call, believed the best use is employee housing. The income level can be restricted and the Town can receive credit toward the ABAG unit number. Currently, the house is a liability in regard to the easement and the school. The fence has fallen and the house is exposed. He preferred Option No. 1.

Loraine Berry, Ames Avenue resident, felt a homeless shelter in such close proximity to the school is inappropriate.

Carla Small, Duff Lane resident, supported keeping it a home for workforce in the community with the first choice for police and fire. In case of emergency, residents would appreciate having a police officer or firefighter living in Town. More housing for the workforce is needed, so she suggested that the Council focus on multi housing along Sir Francis Drake.

Barbara Call, Redwood resident, is constantly tortured by what might occur at 6 Redwood. Three 200-year old redwood trees are at risk when talking about rebuilding or adding units to this small home. The building abuts the three old redwoods and any digging will threaten the life of those trees. She further desired workforce housing.

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.

Council Member Skall liked the idea of providing housing for Town staff, especially since Ms. Cole is more comfortable with that option. He also objected to a homeless shelter in such close proximity to the school. They have daycare facilities already in Town, and expanding the living space is better served at Sir Francis Drake.

Council Member Hunter agreed to first develop Sir Francis Drake site and make improvements to 6 Redwood and rent it out to a Town employee. Focus on multi-family on Sir Francis and fix the single unit for workforce housing for the time being.

Mayor Cahill expressed concern for the fence and directed the Public Works Department to repair that fence. It creates liability issues and asked staff to report back by the next meeting that the fence has been repaired satisfactorily. He suggested incorporating the unit into the Ross Common, but they should take advantage of this housing opportunity site. He agreed that the Town should spend the money to make the necessary improvements in order to have workforce housing.

Council Member Martin indicated that the Town Building Inspector is interested in renting the unit. He also agreed that the Town needs workforce housing, and agreed to spend the money to make that unit livable again.

Mayor Pro Tempore Strauss noted that the public works subcommittee will come back with plans that reflect the Council's comments tonight and provide recommendations on Option No. 1 – workforce housing.

The Council agreed to retain use of the Town's property at 6 Redwood Drive as a single-family home available to Town employees to rent. The property needs an estimated \$20,000 in repairs.

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

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

**Goal A - Staff job description updates and performance reviews**  
Completed at the last Town Council meeting.

**Goal B - On-going emergency preparedness, with a focus on seniors**  
Council Member Skull announced that the next meeting is on June 16<sup>th</sup> to finalize members and appoint neighborhood captains. In October a disaster faire on "Family Day" will occur. They are formalizing methods of disseminating information and formed a disaster council. Also, back-to-school packets for students and families will be provided. Informational flyers are in the works. They will be fully up and running by late fall. He greatly appreciated being included in the budget, which will help facilitate and get the community energized around this important issue, so he thanked the Council.

**Goal C - Town and Ross Valley flood control**  
Council Member Martin reported that the Army Corps and Jack Curly agreed to attend the July 9<sup>th</sup> Council meeting and provide an update on progress or lack of progress. The Army Corps budget was cut back by two-thirds. Representatives from Senator Boxer's office and Congresswoman Woolsey along with Senator Huffman will help place pressure in order to achieve funding that this project deserves. In terms of floodwaters and drainage ordinance, that is being reviewed by the Council and he hopes to have it on the table for discussion at the next Council meeting.

### **Goal D - Downtown plan**

Mayor Pro Tempore Strauss unveiled a revised downtown plan, which incorporates comments and ideas from previous public hearings. The revised plan includes enhanced entrances to the Commons and new creek park access points as well as additional spaces for residents to congregate near downtown shops. There are two versions of the plan to address parking on Ross Common: one narrows the roadway and includes only parallel parking, and the other preserves some diagonal parking next to the Common. The plans are posted in Town Hall and will be available on the Town's website, and all are encouraged to review and provide comments. He further noted that the downtown plan would be discussed in more detail at the July Town Council meeting.

### **Goal E - Police and Fire Department reorganization**

Council Member Hunter reported that the Town succeeded in dividing the Public Safety Department into two separate departments. They have an agreement with RVFD for a 24/7-battalion chief serving the Town through the contract. The next step is looking at facilities. He further noted that both chiefs have established their goals and objectives.

24. **Discussion of Town of Ross draft housing element 2009-2014, to include potential housing strategies and sites to meet the Town's regional housing needs allocation. This meeting is intended to allow staff to receive feedback from the Council and public.**

Project Planner Christine O'Rourke summarized the staff report and recommended that the Council approve the draft housing element 2009-2014 to include potential housing strategies and sites to meet the Town's regional housing needs allocation (RHNA).

Council Member Hunter suggested adding a modular unit for our homeless allotment within the corporate yard. Project Planner O'Rourke responded in the affirmative.

Council Member Martin objected to three-story buildings in the downtown district. He then asked staff if a draft is sent to the State and later the Town revises what was sent, is the Town able to make modifications. Project Planner O'Rourke noted that modifications could occur at that point. Staff explained that they must be serious about facilitating the housing element.

Mayor Cahill opened the public hearing on this item.

Noreen Slivon, Ross resident, asked if there is an effort to contact owners of existing homes that have these units in order to meet these requirements. Town Manager Broad agreed to include information in "*The Morning After*." Ms. Slivon believed this is a significant issue and more conversation is needed than just "*The Morning After*." She stated that education is needed throughout the community.

Riley Herd, attorney, believed an informal rent survey would be helpful to show HCD that low-income second units exist. He appreciated 6 Redwood being taken out of the shelter list. He discussed the multi jurisdictional approach, and suggested teaming up with adjacent communities and adding beds to existing shelters. Project Planner O'Rourke believed that could be possibility.

## June 11, 2009 Minutes

Laura Conrow, Berry Lane resident, desired specific mailings to be sent out to all residents. She has great safety concerns. This Town is unique and that is what makes this Town safe and special. This would put Ross at risk and in jeopardy. She believed serious research must be conducted in terms of guest housing. She agreed that teaming up with San Rafael is a more palatable solution. She reiterated that more research and public information must be provided before any proposal is submitted to the State on this important topic.

Tom Byrnes, former Mayor/Shady Lane resident, stated that it is very unfortunate for the Council to have three meetings on the rezoning of a major site before he received any notice in the mail. He added that there might be a lot of compliance by having development surcharge Ross to fund adjoining cities due to size. He hears good constructive ideas and urged the Council to pursue them all. He further suggested reviewing how notification occurs in regard to zoning and land use issues.

Donna Goldman, Ross resident, pointed out that just because someone is low income does not make him or her a bad person. Project Planner O'Rourke agreed and explained that a family of four the moderate income is \$116,150; low-income level is \$90,500; and very low-income level is \$56,550.

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.

Council Member Skall believed the idea of off loading the homeless shelter requirement made sense.

Council Member Hunter added that the corporate yard having a modular unit for the homeless shelter is a great option, which can be controlled rather than having an ongoing agreement with another entity. He further added that the plan, as written, is acceptable with that one exception.

Mayor Cahill asked staff if they designated the corporate yard as a homeless shelter, could they later decide to partner with another community. Project Planner O'Rourke responded in the affirmative.

Council Member Martin liked Council Member Hunter's suggestion of identifying the corporate yard as a potential site. He further looked forward to community input before finalizing this document.

Mayor Pro Tempore Strauss agreed with Council Member Hunter's comments as well.

The consensus of the Council is to move forward with Council Member Hunter's revision in regard to identifying the corporate yard as a homeless shelter with a modular unit and allow further community input. The Council also agreed to submit to the State.

In terms of three-story buildings, Mayor Pro Tempore Strauss suggested reviewing Boulder Colorado in terms of stepping it back. Council Member Martin expressed concern for blocking views, so that must be reviewed. He understands setbacks and limiting the size. Mayor Cahill pointed out that three-story buildings is not needed for this housing element, so he suggested deferring that matter and discuss it at a later date. The Council agreed.

## June 11, 2009 Minutes

*Mayor Cahill and Council Member Martin recused themselves from the St. Anselm discussion to avoid the appearance of a conflict.*

Council Member Hunter asked staff if numbers from St. Anselm are needed to meet this submittal because if they are not then we should remove St. Anselm from the list. Project Planner O'Rourke responded that it would depend whether HCD accepts the sites proposed. Staff further noted that it was not originally included.

Mayor Pro Tempore Strauss asked staff how church parking would be addressed if it were a site. Town Manager Broad responded that it must be looked at as part of development review. Branson School is not obligated to have that parking. Staff did not believe it is restricted by a use permit, so staff believes it is voluntary.

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

Peter Barry, former Mayor/Wellington Avenue resident, noted that there are so many problems with Branson parking. Losing that area would then make the whole parking problem with Branson manifest again or worsen.

Mark Fritts, Sir Francis Drake Blvd. resident, recommended not adding St. Anselm into the housing element, since the Council feels that it will never be developed.

Carla Small, Duff Lane resident, attended the last design review meeting and St. Anselm is looking at a remodel and creating more space for functions and that parking seems extremely necessary. The idea of taking away their parking seems ludicrous. If it does not need to be included, then do not mention it.

Bill Conrow, Berry Lane resident, desired clarification as to whether one element being considered is homeless housing at Marin Art & Garden Center. Project Planner O'Rourke indicated that Marin Art & Garden Center was already rezoned for additional housing earlier this year. 2100 sq. ft. of housing is allowed and units cannot be any larger than 700 sq. ft.

Tom Byrnes, former Mayor/Shady Lane resident, persuaded the Council not to include references to higher density housing on the St. Anselm site. When he was on the Council, he was a proponent of more housing, particularly for public safety point of view. He is disappointed that they do not have a way to add a duplex to 6 Redwood and at the corporate yard. The State can be relied on to force Town's and cities to do what they want. If this is sent to the State they will argue and force the Town to develop. Parking needs of that lot for operation of St. Anselm led to the number of students at Branson. A large community room means more parking problems. The General Plan of Ross serves the community and several places are violated in that concept. He further recommended sending to the State without the suggested modifications of higher density.

Hugh Cadden, 100 Shady Lane owner is extremely familiar with the parking situation. By the way of background, he sued the Town, school and church relating to that arrangement and use of parking lot. Since that time it has worked out. That parking lot on Saturday and Sunday is extremely packed and is very surprised that the Fire Department is not called. Parking is critical. He cannot realistically believe that plan will have any legs if some aspect of that parking will disappear or be diminished. In terms of the designation of the lot, he submitted a letter last

month expressing his concern. This notice was poorly done. The Council must be more creative and address this realistically. The Town must conduct an inventory and add properties. The listing of that property as a three-story, high-density low-income site impacts property values and will have a negative impact. That is why notices should have been sent out to all residents. When looking at the government code and addressing this housing issue, it must be appropriately zoned, available and a site that has viability. Being genuine and making that evaluation there is no way that site fits. The Council agreed.

Michael DeMartini, former pharmacy owner, agreed parking is a concern. Housing must be accommodated. He suggested the potential for having a parking lot underneath the housing to maintain the same parking spaces and still accommodate the need. He further expressed concern for increased density of housing across the street from high level commercial, and that there might be incompatibility issues that must be considered in final plan. Also, potential for flooding is a concern that could be created, so that must be worked out in the final plan as well.

Laura Conrow, Berry Lane resident, concurred with the previous comments that the Council must be careful as to what is submitted to the State. She suggested not approving any report since there is no penalty. Do not add any information about Marin Art & Garden Center as a potential site, which is not an appropriate place for low-income housing. She recommended deferring submission to the State.

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

Council Member Skall is very upset that the Town does not have the right to say, "no." He did not want to give up any of their rights. Mayor Pro Tempore Strauss suggested submitting the document without St. Anselm.

The Council agreed to remove the St. Anselm parking lot site on Sir Francis Drake Boulevard and Bolinas Avenue from the inventory of affordable housing sites and to remove three-story, mixed-use development from consideration in the downtown.

Mayor Pro Tempore Strauss asked for a motion.

**Council Member Hunter moved and Council Member Skall seconded, to remove the St. Anselm parking lot site from this documents being submitted to the State. Motion carried unanimously, 3-0. (Cahill and Martin had stepped down.)**

*Mayor Cahill and Council Member Martin resumed their positions on the Town Council.*

The Council agreed to authorize submittal of the Town's draft housing element for 2009-2014 to the State Department of Housing and Community Development. The housing element includes programs to provide the zoning, development standards and housing policies that will facilitate development of the state-mandated regional housing need allocation of 27 housing units over the next five years.

Eight new single family homes are projected to be built, satisfying the Town's requirement for housing affordable to above-moderate income households. State affordability requirements for the remaining 19 units are as follows: 8 units must be affordable to very low income households

(maximum household income of \$56,550 for a family of four); 6 units for low-income households (maximum income of \$90,500); and 5 units for moderate income households (maximum income of \$116,150). Market rents in Ross are generally affordable to low and moderate income households. A two-person low-income household, for example, could afford to pay up to \$1,810 in rent, while a four-person moderate income family could afford to pay up to \$2,850. The draft housing element relies on a mixture of new second units and small units built on “opportunity sites” at 37 Sir Francis Drake Boulevard, the Branson School and the Marin Art & Garden Center. In addition to satisfying State requirements for low and moderate income households, these units could provide housing for people who provide services in Ross, including teachers, public safety personnel, and those who work in downtown shops. The very low-income units are more challenging to provide, as they typically require some sort of subsidy or deed restriction to ensure affordability. The draft housing element contains a new program to offer a living area bonus of up to 500 square feet to property owners who voluntarily deed-restrict their second units to be affordable to very low-income households.

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Council Member Martin seconded, to submit documentation to the State with St. Anselm parking lot site being pulled and the homeless shelter being added to the corporate yard parking lot. Motion carried unanimously.**

**25. Planning Consent Agenda.**

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

**a. 3 Ross Common, Commercial Use Permit No. 1745**

Marcella Arana, Joseph and Deborah Montero, Owners, Marcella Arana, Applicant, 30 Ross Common, A.P. No. 73-272-11, Local Service Commercial District (C-L). A Local Service Commercial District use permit application for a skin care aesthetician to operate out of her residence, using approximately 150 square feet of the existing second floor unit. The applicant, a property owner, estimates maximum customer traffic of 2-3 clients per day, 5 days per week.

Mayor Cahill asked for a motion.

**Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to approve Planning Consent Calendar Item “a” as submitted by staff. Motion carried unanimously.**

**30 Ross Common, Commercial Use Permit No. 1745**

1. The use permitted under this use permit shall be established and conducted in conformity with the description in the use permit application and subject to the following conditions of approval.
2. The sole employee of the business shall be a resident of the unit.
3. Any expansion or modification of the approved skin care use shall be through a subsequent public hearing.
4. This use permit shall expire within one year from the date of approval if not exercised.
5. The applicant is responsible for ensuring that the business use will comply with any applicable disabled access regulations, regardless of whether a building permit is required for the work.

6. Proposed signage shall be reviewed by the planning department prior to installation. Any exterior modifications, including repainting, shall require approval by the Planning Department staff.
7. Any encroachment into the public right of way, such as for installation or replacement of awnings, signage, or seating, requires prior approval of a revocable encroachment permit from the Director of Public Works.
8. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) A local alarm system is required.
9. NO CHANGES FROM THE APPROVED PLANS AND USE SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.
10. 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.
11. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**b. 58 Shady Lane, Variance No. 1744**

Bradford and Michelle Shaffer, 58 Shady Lane, A.P. No. 73-161-05, R-1: B-20 (Single Family Residence, 20,000 Sq. Ft. Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Variance to allow the installation of an air conditioning unit at the rear of the residence, within the required side yard setbacks (25 foot side yard setbacks required, lot is approximately 40 feet wide).

*The existing residence is nonconforming in setbacks.*

Mayor Cahill asked for a motion.

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

**58 Shady Lane, Variance No. 1744**

1. The air conditioner may be installed within the north side yard setback, or behind the residence and further from the property lines, as shown on the site plan. The air conditioner shall be elevated to minimize damage from flooding.
2. Operation of the air conditioner shall comply with the Town noise ordinance (Ross Municipal Code Chapter 19.20).
3. 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.

4. 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 any changes.
5. Failure to secure required building permits and/or begin construction by June 11, 2010, will cause the approval to lapse without further notice.
6. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**c. 39 Fernhill Avenue, Amendment to Variance, Design Review No. 1661**

The Branson School, 39 Fernhill Avenue, A.P. Nos. 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. Amendment to plans approved by the Town Council on September 11, 2007, for new buildings and related site improvements at the private high school campus. The applicant requests approval of plans to replace the existing entry structure at the intersection of Fernhill Avenue and Circle Drive. The applicant's engineer has determined that the existing structure may not withstand an earthquake.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to approve Planning Consent Calendar Item "c" as submitted by staff. Motion carried unanimously.

**39 Fernhill Avenue, Amendment to Variance, Design Review No. 1661**

1. This approval allows for demolition of the existing entry structure and for construction of new entry structures at the entrance to the school.
2. The unimproved areas in front of the entry, within the right-of-way, shall be landscaped to preclude parking. Staff shall review and approve the landscape plan prior to installation.
3. A recorded revocable encroachment permit shall be required from the public works department for all improvements within the Town right-of-way.
4. The project shall be subject to all conditions of the September 11, 2009, Town Council approval.
5. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. No extension of the construction time is granted by this approval and the proposed modifications shall fall under the existing building permit for the project. 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 detailed 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.

6. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
7. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE.
8. 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 Planning consent agenda.

*The Council took a short recess at 11:56 pm. The Council returned to session at 12:05am.*

26. **54 Baywood Avenue, Variance, Design Review, Hillside Lot/Hazard Zone 3 Use Permit No. 1669**  
 Ross and Ligia Parmenter, 54 Baywood Avenue, A.P. Nos. 72-072-29 and 72-072-30, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre). Design review, hillside lot/hazard zone 3 use permit and variances to allow the construction of a new residence with a total of 839 square feet of floor area on an undeveloped lot. 49 cubic yards of cut and 51 cubic yards of fill are proposed. A variance is requested to locate a parallel parking area and car and pedestrian bridge within the front yard setback (25 feet required, 0 feet proposed). Two parking spaces would be available on the car bridge and deck. One parking space would be created within the right-of-way and front yard setback. A variance is requested to allow all parking spaces to be uncovered. A tree removal permit is requested to allow the removal of one 14" diameter oak tree and one 15" diameter oak tree. The project also involves removal of 3 bay trees ranging from 8" to 10" in diameter.

Lot area	20,967 square feet	
Present Floor Area Ratio	0%	
Proposed Floor Area Ratio	839 sq. ft.	4.0%*
Present Lot Coverage	0%	
Proposed Lot Coverage	11.0%	(15% permitted)

(\*The slope of the lot is 53%. The Town Hillside Lot Ordinance guidelines recommend a maximum floor area of 839 square feet.)

Senior Planner Elise Semonian summarized the staff report and explained that the application is for a new house on a vacant lot on Baywood Avenue, which was continued from May. The lot was created by a legal subdivision approved by the Town Council in 1961 and it is zoned for residential use. The lot is included in the current housing element as a potential housing site. Since the May Council meeting, the applicant eliminated a proposed car lift and storage area from the plan. The project is now 839 square feet of floor area and in compliance with the Hillside Lot Ordinance guideline floor area. Three parking spaces are required and three parking spaces are proposed. One parking space is screened from public view by a garage door and landscaped railing, but it is not covered. Therefore, a variance is now required from the requirement that one parking space be covered. The geotechnical reports indicate the project is feasible and the site can be safely developed. No sides or other unusual soils conditions have been identified at the site. The drainage plan proposed is a level spreader system that will result in no net increase in site runoff. The system would distribute water on site as if the building was not there. Conditions of approval require a redundant facility to be designed into the system; although the project engineer and Town hydrologist both indicate that it is unlikely the drainage system would fail. In the unlikely event the drainage system were to fail, the engineers indicate that the amount and rate of peak discharge would not be enough to cause a gully and concentrated flow to another residence and the natural landscape would spread the runoff. Much concern has been raised regarding the amount of deck areas. Since 2003, decks are not counted as floor area. There is more deck area proposed than the small floor area. Staff recommend that the decks be reduced a little to address this concern. Staff also presented the Council an illustration of the deck reduction recommended. As indicated in the staff report and draft findings and conditions, staff believes that the project is now in substantial compliance with the Town design review and HLO design criteria. Staff believes findings may be made in support of the variances requested and recommend approval of the project by the Town Council with the findings and conditions in the staff report.

Richard Hannum, architect, thanked staff for years of involvement as well as Council and members of the public trying to see this process concluded. This is a continuance from the last meeting and the recommendation was to bring back at HLO/FAR requirement plus garage. The design brought forth in the last session met that criteria and all other technical responsibilities. That design has been before ADR. They reduced the decks from prior submittal that was responsible and allowed appropriate outdoor living space. They are prepared to stipulate that the house, as designed now, complies with HLO. A variance is requested for the parking garage, and they believed the design met the intent of this requirement by hiding the garage. On Baywood, all houses on the downhill slope have the same structure in the front yard setback. The new plan satisfied the goals and intent of the Town through the HLO. All parking requirements are met as well as outside roadway is widened. All issues of drainage and soils have been addressed. The area of deck is within and well below the lot coverage ratio. The overall impact is minimal. The roof area in the center section is no longer a living roof. They propose a standing seam metal roof. They made minor alterations to accommodate removing the lift and noise issue. They removed the questionable storage space. They maintained all wildland urban interface requirements. The façade remains landscaped. The story poles erected reflect the house and how it drops back into the hillside. A section shows it falls within all the height limits. Impacts on lower neighbors are minimized. They removed the lift, garage space, extra storage and made a crawlspace. They support and ask the Council to approve the staff report. They do not accept the recommended reduced deck size, which has no impact on mass or neighbors. They further appreciated and thanked the Council and reserved time for comment.

Mayor Cahill opened the public hearing on this item.

Phil Cecchettini, Wellington Avenue resident, presented to the Council the names of 196 residents who oppose the 54 Baywood project. Since the May Council meeting, 40 citizens have added their names to the opposition list. Of the 196 residents, 90 are from Ross neighborhoods other than Winship Park. He explained that they are a diverse group. Each signatory has a unique set of objections to this project. One hope they share is that the May 2007 Marin County Superior Court decision against the applicant still resonates with the Council. That decision empowers the Council to place weight on neighbors' opinions and objections. At the time of the court decision, 60 neighbors opposed the project; today the number is 196. They also have in common the faith that the Council will rigorously follow the HLO and its intent and reject this application. This is what this tenth Council meeting on the property since 2003 comes down to:

1. The Council must recognize that the 1, 881 sq. ft. of decks on this project circumvents the HLO intent. Excessive decks are unprecedented in Ross. On this project, the decks do nothing to create harmony with the natural setting; they do battle with it by increasing bulk and mass. Moreover, at the next Council meeting, the Council must begin the process of reinstating decks as part of the FAR. The Council decision in 2003 to remove decks from FAR was a bad decision.
2. The Council must acknowledge that the parking bridge in the front setback is not allowed in the HLO. Please recall the May 2007 Superior Court decision – a variance within the front setback posed an insurmountable hurdle for approving the project. In addition, on May 12, 2005, Council Member Hunter, speaking to the issue of new construction and variances stated, “*when they approve a new project it is without any variances.*” There have been no parking bridges granted since the HLO was enacted, nor has a project been approved under the HLO without covered parking. This bridge and the project should go nowhere.
3. The Council should know that safety and drainage reports on this project are in conflict and must be mediated. The Council has not done the job of reconciling opposing expert opinions on these life and death issues.

Furthermore, the Council can no longer channel Bill Clinton who said, “*it depends on what the meaning of the word ‘is’ is*”. Because the word meanings are crystal clear:

- Placement of the driveway shall conform to the natural contours of the site; this is a mandatory requirement.
- Covered parking is required and the recommendation of a variance shows Town staff hubris and special treatment for the applicant. Like the excessive decks in this project, there is no precedent in Ross granting a variance on a new project.

Finally, please consider your legacy. If approved, this project will create precedent for over development that will threaten Town aesthetics and public safety. As he said at an earlier meeting, the Council should not hand real estate speculators their next conquest. If approved, this project will be the poster child for infilling their hillside neighborhoods. Each Council member has given devoted service to the Town of Ross. Leave your stamp on the Town, not a smudge.

Jon D'Alessio, Crest Road resident, stated they are asking to build 839 sq. ft. without covered parking. 49 projects have been approved since the HLO was approved. Zero had no covered parking. Baywood has all areas without covered parking. The Council should not allow special

precedent or special privilege that the Town has not allowed in over 20 years. In terms of the green wall, it is designed to provide privacy. Two of the three cars will be parked in front of the wall. It is not green if not maintained. Garage doors are massive. At 13 feet above deck level it blocks views and is not in substantial compliance with HLO. They have been dealing with this property since 1985. Details and approaches have varied over time, but none have complied with the zoning laws. All have been too big and bulky. He urged the Council to not approve the project since it would grant the applicant a special privilege.

Phil Paisley, Baywood resident, noted that his house was built in 1918 before any zoning ordinances or HLO came about. He did not have a choice. Several houses are built around the same time in the area. Most would like to have a garage, but it is not possible. He took a few cars off the street and purchased the lot next door to have parking and ran an open space easement. Many did not have an option. He objected to a variance being granted on brand new construction. Variances are for hardships that ran with the property, not individuals.

Julie McMillan, Crest Road resident, stated steeper the slope, the smaller the project. The applicant should come in below what the HLO will allow. One exception was at Woodhaven where the slope is 34.5 % and they were allowed 17% over. There were no drainage issues. Neighbors were concerned about the watercourse and the site was shifted to avoid watercourse issues. In terms of other properties built on new raw land, the steepest was 41% and the applicant was required to come in below HLO recommendation. Precedent of granting this application is big and asked the Council to think if this is the kind of constructed desired in Ross such as parking on parking decks and living roofs, cars parked within the front setback, right-of-way, and on the street. The applicant submitted a letter cautioning the Town that if his application is denied that the Town would be sued for "*a taking*." She deferred to a letter dated May of 2006 indicating that as long as there is some value maintained for the property there is "no taking," even if the value is 5% remaining there is "no taking." They never said this is not a buildable lot, but the applicant must follow the rules. The applicant was on notice that HLO applies and that is the Town's defense if the applicant chooses to sue the Town for "*a taking*."

Wendy Coon, Madera Avenue resident, noted that clearly all the way around the property there are drainage issues. There have been slides for the last 10 years, if not longer. She is extremely concerned about drainage and the fact that they are proposing a system that the Town has never seen before. Staff's recommendation with regard to having some kind of maintenance program places the Town in a very precarious position. She cautioned the Council to really consider what this project could open up.

Peter Barry, former Mayor/Wellington Avenue resident, stated that the decision in 2003 to not include decks in FAR was a gutting of the HLO and it should be changed back. The application is not in conformance with design review guidelines, HLO or the Ross General Plan. A steep slope is not a hardship. It is basically not a buildable lot. In terms of architecture, the green wall is objectionable. It blocks views. The green wall is the most serious and it could be threatening. These roads are private roads, and if this is approved, the roads must be restored to current condition after the project is concluded.

Katie Hogan, realtor, noted several properties on Baywood, Wellington and Crest that were granted variances.

Jacqueline Ryan, Baywood Avenue resident, pointed out that the variances Ms. Hogan referred to were not brand new homes built on a steep lot. If this project is approved, as the owner of the buildable lot next door, she along with the rest would like the following: 1,188 sq. ft. of decking; parking in the right-of-way; a parking bridge; a living wall; parking on the roof of the house; 20-foot side yard setback; and a variance for no covered parking. She further asked the Council why they are not following the ordinance.

Shepard Heery, Baywood Avenue resident, is an advocate for this project. They should embrace this project rather than oppose. This project should be judged on its own merits. The applicant complied fully with HLO and this is a very handsome project that once approved and constructed all will be proud of.

Tom Byrnes, former Mayor/Shady Lane resident, reviewed this application more times than he can remember. He needed to vote on it and respond to it, so he read the entire legislative history of the HLO that went back 15 years at the time and then understood the evolution and sensitivity. The project failed over design issues, not over these qualifications of the square-footage number in the HLO. The previous iteration in the ordinance had larger numbers aside from all the slope categories. Those numbers were prescriptive. There was not the element of judgment or variation based on individual circumstance. This was changed because of the perceived inflexibility and difficulty of imposing it on disparate lots. Then it was changed to smaller numbers with the added element of it possibly being adjusted depending on the individual circumstance. At the time, the Council thought if there was a limit to what could be defined as a single-family home, which was around 1,000 sq. ft. for a dwelling unit, but the design had to be acceptable. He is not sure if this current design is responsive. If it is responsive to what he was told, the judgment should be based on the number in the ordinance, which is in the realm of subjective. Whether this meets design standards of Ross is the question, not whether it is 800 or 1100 sq. ft.

Ellen Mayor, Baywood resident, pointed out the significance of the 53% slope. Bulk and mass of this structure cannot be mitigated with landscaping. If approved, she asked the Council to add to the many conditions a deed restriction on the residence to restrict to 840 sq. ft. of livable space and define "*livable space*" as defined today. The deed restriction should be in place before permits are pulled.

Ross Parmenter, owner/applicant, desired actual signatures on a document to verify that 196 residents oppose this project rather than typed names.

Architect Hannum explained that the drive links the owner's property and residence. It can be structured in many ways and they called it, "*a bridge*." It is simply a structure no different than the one next door. In terms of view, they are only touching a small piece of the property. Down the hill the garages are in the front yard setback. In this particular case, they are no longer in the front yard setback. The variance they are asking for is the linkage between the two, which is a common variance granted elsewhere on properties. The guideline is to seek HLO and FAR plus garage and this proposal complies with that direction. They removed the garage. This is a small house that has been designed on one of the designated housing sites. It fits with what they are doing. They tried to make it interesting. They feel they have accomplished a great deal in using all knowledge in sustainable material. In terms of parking, this is no different than other decks that people have cars parked on. This Council has addressed drainage many times. There are no slide issues on this hillside. Drainage issues have been met and mitigated. The product being

proposed is the current best of class that is being applied across the State to reduce flow of water in a stormwater condition. He further noted that soils and peer reviews have been conducted.

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 Martin stated that as the newest member of this Council, 54 Baywood has been the most heated issue that he experienced during his first year. As all of his colleagues have, he made several visits to the site. He read the staff reports, reviewed the physical conditions and the story poles. He met with the applicant and the architect several times. It is very steep terrain. Though he was a mountain climber in his youth, he had difficulty climbing that slope. The property's slope in excess of 50% cannot be altered or modified. He inspected neighboring properties downhill from 54 Baywood. He listened to the residents about the impact that the project may have on their property. Like his fellow council members, he has listened to extensive public testimony and read numerous letters from immediate neighbors as well as other Town residents. The opposition to this project is overwhelming. By his unofficial tally its nearly 196 against the project to three for the project. The concerns about the project, including its size and non-compliance with the HLO, drainage issues, and the precedent it sets are legitimate issues that the Council must squarely consider before making a decision. He is moved by the testimony of 13 past council members who are arguing this Council not to approve the project. Mayor Barry and Mayor Goodman were on the Council when the HLO was established and are familiar with the intent and purpose of the legislation. He then took a moment to read the purposes of the hillside lot ordinance. They are very worthy and sound principles that they must not push aside. Again, it is unfortunate that this project has retained so much time and consternation. The intent and purpose of the HLO is very clear, and this project does not meet its standard, a standard that is intended to preserve the natural resources of the community and ensure public safety. This Council has a responsibility to uphold the existing codes and zoning standards, as well as the General Plan. It is important to applicants, Town staff, and the residents that have elected the Council, and the Council must be consistent with their actions. It is his opinion that the proposed project is inconsistent with the mandatory findings established by the State of California to approve a variance. The topography of the property can allow the construction of a garage beyond the setback though it may mean that the living space of the house will have to be reduced. The granting of a variance to permit a parking bridge in the front setback would be detrimental to the community character of the surrounding area by establishing a precedent, which could lead to increased front yard encroachments and eventually the purpose and legitimacy of the front yard setback standard. The grant of a variance would constitute a grant of special privilege inconsistent with limitations on other properties. For these and other reasons, he cannot vote in favor of the variance and must reject the proposed project. In his opinion, this Council has a responsibility to uphold the existing codes and zoning standards, as well as the General Plan. Tonight's decision will send a message as to how this Council will make future decisions relative to the application of the HLO and the General Plan. It will be an indication if they are committed to the intent and purpose of the policies and traditions that have guided and preserved the Town in the past, or if they have decided to deviate down another path. Tonight's decision sets a moral precedent. He urged the rest of the Council to join him in voting no.

Mayor Pro Tempore Strauss has been consistent in working on this project and suggested that 839 sq. ft. was appropriate, but now heard that 840 is the maximum size and the community opposed the car decks. He is very confused. He is trying to balance both sides. This home has

been torn apart and coming to the point where it is hardly livable. They must go back and review HLO and address issues of deck sizes, minimum and maximum lot size. The applicant is in substantial compliance with HLO. There are plenty of examples where people park on car decks and the applicant developed a creative design. Now the question, how can they come to a compromise and make this work to avoid “a taking”

Council Member Skull concurred with Council Member Martin’s comments, which were expressed very clearly.

Council Member Hunter always tries to balance the needs of the community with the needs and rights of the individual. In this case, the landowner has finally come to the Council with a project that is in substantial compliance with both HLO and design review standards. Conditions are included that address most every public and neighbor concern discussed tonight, in many letters, phone calls and emails. It is a unique design. It is the first LEED Gold home in Town. The findings for the variances are valid, so he will vote in favor. He then addressed earlier testimony from Mr. Cecchettini wherein he was quoted, and explained that whenever they get a clean slate, when building from scratch, the objective is to go in without variances. In this case, given the special circumstances and topography, a good case is to be made that the driveway does conform to the road. It is a far better way to gain access to this home than digging up the hillside. It treads lightly on the land. In this case, he believed the applicant made the case and he will vote in favor.

Mayor Cahill agreed with Council Member Hunter’s comments on this application. When it came before in previous iterations the Council provided direction to the applicant to come back with a house with living space of 839 sq. ft. plus garage. At the last meeting, a number of reports came in late questioning drainage and slope stability that required additional conditions. It was too difficult to absorb this material at that time. The applicant chose to eliminate the garage in order to accommodate a number of the comments made by the public and neighbors. The applicant has done an excellent job in reducing this design into something that is very attractive and meets the provisions of HLO as the staff report indicated. He explained that the HLO design standards were quoted a lot tonight out of context. A statement was made that driveways shall conform to the natural contours of the site, but it is part of a larger section of this ordinance and its design standards. First of all, these are design standards that are subject to Council’s discretion under design review. The starting paragraph of that section states, “*hillside lot projects shall be in substantial compliance with the following standards.*” One of those standards happens to be building design and placement of driveways. The HLO states that these projects shall be in substantial compliance, not exact compliance. The alternative to the bridge is to have a lot of cut and fill and create a driveway that is far less attractive. From design review, it fully justifies having this bridge. The findings are accurate to be made for the variance, so he would be in favor of the project.

Mayor Pro Tempore Strauss supported the decks as designed without reduction. Council Member Hunter believed it is a nice design. ADR evaluated and suggested that the decks be reduced, so he would be inclined to make a motion approving the application according to the staff report findings and conditions.

The majority of the Town Council agreed to approve an application by Ross and Ligia Parmenter to construct an 839 sq. ft. residence on a 20,971 sq. ft. undeveloped lot at 54 Baywood Avenue. The project complied with the guideline floor area in the Town Hillside Lot Ordinance. The

majority of the Council agreed to approve a setback variance to allow the entrance walkway and driveway to be constructed within the front setback of the hillside lot. The majority of the Council also agreed to approve a variance from the covered parking requirement to allow one of the three required parking spaces to be screened by a landscaped wall and garage door, but no roof. The initial 2003 application sought approval of 2,081 square feet of floor area.

Also, the Council indicated that based on concerns raised about the HLO during these hearings, it will solicit public input and explore making changes to the ordinance.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to approve the application at 54 Baywood as recommended by staff including the findings and conditions outlined in the staff report. Motion carried 3-2. Martin/Skall opposed.

54 Baywood Avenue, Variance, Design Review, Hillside Lot/Hazard Zone 3 Use Permit No. 1669

FINDINGS FOR APPROVAL OF NEW RESIDENCE AND ASSOCIATED STRUCTURES

That the Town Council for the Town of Ross, after carefully reviewing the facts and the arguments presented after four Council meetings (November 13, 2008, December 11, 2008, May 14, 2009 and June 11, 2009), site visits, review of story poles, staff reports, correspondence, engineering and hydrology reports, and other information contained in the project files, makes the following findings to approve the project at 54 Baywood Avenue for a new, 839 square foot, single-family residence, pedestrian walkway and parking areas:

**A. CEQA**

This project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15303, construction of a new single-family residence in a residential zone. (*14 Cal. Code Regs. §15303*). No exception set forth in Section 15300.2 of the CEQA Guidelines (including but not limited to Subsection (b), which relates to cumulative impacts and Subsection (c) which relates to unusual circumstances) applies to the project.

**B. Tree Removal Permit**

Approve the removal of one 14" diameter oak tree and one 15" diameter oak tree that are located within the proposed building envelop as necessary to allow the economic enjoyment of the property. The alteration or removal will not adversely impact the subject property or neighboring properties or result in significant erosion or the diversion of increased flows of surface water. The applicant proposes suitable replacement trees.

**C. Front Setback Variance to allow structures and parking partially within the right-of-way and front setback area:**

1. There are special circumstances or conditions applicable to the land, building or use referred to in the application. The location of development on the property is limited by both the irregular shape of the lot and its extreme slope. An extensive portion of this property is approximately 65 feet in depth, allowing no buildable area after applying the 25-foot front yard and 40-foot rear yard setbacks. The steep slope and unusually small lot depth, which takes away all ability to develop significant portions of the property, is a special circumstance supporting approval of variances. The topography of the lot

would preclude construction of a garage, parking deck, carport, driveway or any other parking structure unless a variance from the front yard setback is granted. It is not possible to construct access to the site with a slope safe for operation of a vehicle without some type of structure in the setback.

2. Granting of the application is necessary for the preservation and enjoyment of substantial property rights to allow off-street parking to be provided for the structure. Other similarly situated properties on the downhill side of Baywood and Wellington Avenues have parking structures, carports or driveways near the street and the variance will bring the applicant in parity with other owners in the zoning district.
3. Granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. The primary structure will be setback 25 feet from the roadway. The driveway, parking and walkway structures are limited in size to provide necessary access to the site and required parking. The potential number of occupants for the 839 square foot, two-bedroom, house is limited. The small, two-bedroom, residence will not generate a large parking demand and the proposed parking will be adequate to serve the residence. The proposed parking arrangement includes widening the existing roadway area and does not impede any use of the right-of-way.

#### D. Covered Parking Variance

1. There are special circumstances or conditions applicable to the land, building or use referred to in the application. Under standard zoning regulations, a property owner in the Town would be permitted up to 3,145 square feet of floor area for a lot of this size. However, based on the topography and steep slope of the site, the more restrictive hillside lot guidelines recommend a floor area of 839 square feet for this site. It is difficult to provide a residence and parking within this restrictive floor area limit, which is due to the slope of the site. The topography of the site makes it difficult to provide covered parking within the 30-foot height limit and setbacks.
2. Granting of the application is necessary for the preservation and enjoyment of substantial property rights to allow a two-bedroom residence to be constructed at the site. Requiring the applicant to provide covered parking would either increase the floor area above the hillside lot guideline floor area, or would reduce the size of the residence to a size that is too small to provide a reasonably-sized residence for a small single-family, a substantial property right.
3. Granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. One parking space will be screened from public views by an automobile door, landscaped wall, and landscaped railing.

#### E. Hillside Lot

The project is in substantial compliance with the hillside standards

1. Relationship to the Site.
  - a. The recommended allowable building square footage for this site under the slope/intensity guidelines is 4%, or 839 square feet.

- b. Grading, cutting and filling and retaining walls shall be minimized for hillside development by using building techniques, which reflect the natural topography of the site. Graded slopes shall not exceed 2:1. Individual retaining walls shall not exceed a height of eight feet. The aggregate height of retaining walls shall not exceed eighteen feet for any particular slope. Upslope walls up to four feet in height may be constructed of pressure-treated timber.
- c. Building design and the placement of driveways shall conform to the natural contours of the site.

The proposed structure is a total of 839 square feet and consistent with the Hillside Lot Ordinance guideline floor area. Grading, cutting and filling and retaining walls have been minimized to what is necessary to support the required off street parking and residence. The small house size minimizes the cut in the hillside. No grading is proposed outside of the building envelope. No individual retaining walls are proposed. Retaining walls associated with the street parking area are up to a maximum height of 8 feet. The walls will be constructed of concrete and not wood or concrete block.

Due to limits on the acceptable slopes for parking areas, the topography of the lot would preclude construction of a garage, parking deck, carport, driveway or any other parking structure that follows the natural contours of the site. The building design and the placement of the driveway conforms to the natural contours of the site in that the proposed parking placement does not necessitate a driveway that would require grading and upslope and downslope retaining walls, loss of native trees and significant additional cut and fill. The impact on the site and the hillside environment would be significant. The driveway is directly in front of the proposed house structure. A driveway at the acceptable 20% slope would require hundreds of yards of cut and fill, large retaining walls, removal of significant site vegetation and would disturb hydrology at the site.

The small footprint of the structure and minimal landscaping minimize the building's impact on the natural environment. Only two cubic yards of fill is required for the project. The project has a small footprint and there is limited site disturbance outside of the building area.

The driveway, walkway and parking surfaces are permeable and stormwater runoff shall be limited to existing (pre development) conditions.

## 2. Architecture.

- a. Architectural style shall complement the form of the natural landscape.
- b. Designs shall be well-articulated to minimize the appearance of bulk.
- c. Materials and colors shall be of subdued tones to blend with the natural landscape.

The architectural style will complement the form of the natural landscape. The small residence sits below the level of the roadway. The proposed materials will be compatible with the natural setting by use of dark colors and landscaped walls.

The project plans and project model depict a design that is well articulated. The structure is not a large single form. As shown on the material board and as conditioned, the materials and colors shall be of subdued tones to blend with the natural landscape.

## 3. Landscape Architecture.

- a. Native shrubs and trees shall be retained on hillside terrain wherever possible to help reduce erosion and preserve the character of the hillside environment. Newly introduced landscaping shall be of the character and quality identified on the town hillside plantings list.
- b. Drought and fire-resistant plantings are recommended.
- c. Native vegetation and trees shall be protected from damage during construction.
- d. A drip irrigation system is required for hillside landscaping.
- e. Landscaping shall preserve the penetration of sunlight to neighboring properties.

A tree removal permit is requested to allow the removal of one 14" diameter oak tree and one 15" diameter oak tree. The project also involves removal of 3 bay trees ranging from 8" to 10" in diameter. The applicant is proposing to remove trees only within the building envelope of the residence. The remainder of the site will be left in its natural state.

- f. Small patios, terraces and pathways are allowed. They shall be porous in nature wherever possible.

The project does not include any landscape patios, terraces or pathways. The project includes new deck areas that are attached to the structure. Water that collects on any decks will be dissipated on site.

- g. Fences and walls enclosing a parcel are not recommended. All fences and walls are subject to review as part of the landscaping plan or design review as mandated.

No fencing, other than temporary construction fencing, is proposed.

#### 4. Views.

- a. Hillside designs shall protect views to the site and those viewsheds of neighboring property owners.

The parking screening door and new green wall will create a partial obstruction of views of the valley from certain angles from the street. However, the majority of the site will remain open to permit public views. Based on the story poles, views would still be available of Mt. Tamalpais from the street, over the landscaped wall.

- b. No building shall be located on a ridge. Dedication of ridgetop land may be required as a condition of approval of a development plan.

The structure is not on a ridge.

#### 5. Public Safety.

The project would include green roofing. The Town of Ross Building Ordinance requires Class "A" roofing. (RMC §15.04.030).

The director of public safety shall ensure the adequacy of the water supply for fire fighting purposes by requiring water mains and the upgrade of fire hydrants as necessary. Sprinkler systems shall be provided as required by the director of public safety. Conditions of approval require clearance of brush or vegetative growth from structures and driveways and defensible spaces as required by the fire official and state law.

6. Geology.

- a. All newly created slopes shall be planted or otherwise protected from the effects of storm runoff and erosion within thirty days after completion of grading.

A condition of approval has been included to require best management practices to prevent erosion at the site.

- b. Development shall avoid unstable areas on the site, such as slides, severe creep areas and debris flows. Locating improvements in such areas shall be grounds for project denial. All unstable areas on the site, such as slides, severe creep areas and debris flows, both in the immediate area of the proposed development and elsewhere on the site including any roadways traversing undeveloped areas, shall be repaired to the satisfaction of the town.

The engineering reports did not identify the project area as unstable.

- c. Prior to any approval of a final subdivision map, all slides to be repaired shall be bonded to guarantee the repair during the normal construction of subdivision improvements. In the case of parcel maps, bonding shall be provided prior to the recordation of the parcel map.

- d. All slide repair work shall be accomplished under the direction of a registered civil engineer specializing in soils engineering or a certified engineering geologist. At the conclusion of work and prior to the issuance of a building permit, the engineer or geologist shall submit written confirmation to the town that all work accomplished under his jurisdiction is acceptable.

No subdivision map is proposed.

7. Hydrology.

- a. Residences and accessory structures shall not traverse, encroach or impede a natural watercourse or drainage swale.

Based upon the project plans and hydrological information, the project will not traverse, encroach or impede a natural watercourse or drainage swale.

- b. All new development shall provide drainage improvements necessary to mitigate the runoff created by disturbance to the watershed.

The project includes a stormwater system that controls storm water flow to the flow of the undeveloped site for all storm frequencies between the 5-year and 100-year storm events.

- c. Site drainage shall be designed by a licensed engineer and shall conform to current stormwater discharge practices in Marin County.

The drainage plan includes a garden roof and permeable pavement to attenuate peak water flows on site.

1. Circulation.

- a. The design of the circulation system shall provide for an adequate transition and maximum compatibility with adjoining patterns of development and open space.
- b. The design of the circulation system shall follow the natural contours of the land.

- c. The points of ingress and egress to a street shall have a minimum visual clearance commensurate with adequate safety requirements. In any event, the visual clearance shall not be less than one hundred feet.
- d. All roadway improvements shall meet the specifications determined by the director of public works and town engineer.

No new circulation system is proposed. The project would include widening an existing roadway and providing required off street parking for the residence, as well as one additional public parking space.

#### B. Design Review

1. The project is consistent with the purpose of the Design Review Chapter as outlined in RMC Section 18.41.010.
2. The project has an excellent design and harmonizes style, intensity, and type of construction with the natural environment and respects the unique needs and features of the site and area. The design enhances the community, is consistent with the scale and quality of existing development and is harmoniously integrated with the natural environment.
  - a. The project scale, design and materials preserve and enhance the historical “small town,” low-density character and identity that is unique to the Town of Ross, and maintain the serene, quiet character of the town’s neighborhoods through its small scale, where the structure is primarily below the level of the roadway, preserving natural features by keeping the majority of the site in its natural state, minimizing overbuilding of existing lots and retaining densities consistent with existing development in Ross and in the surrounding area;
  - b. The project preserve lands which are unique environmental resources including scenic resources (ridgelines, hillsides and trees), vegetation and wildlife habitat, creeks, threatened and endangered species habitat, open space and areas necessary to protect community health and safety. The project ensures that site design and intensity recognize site constraints and resources, preserve natural landforms and existing vegetation, and prevent excessive and unsightly hillside grading. The project site preserves a majority of the site in its natural condition. Tree removal is limited to what is necessary to construct the residence. Public views will be blocked partially where the building is located, but the majority of the large street frontage will continue to allow public views.
  - c. The project enhances important community entryways, local travel corridors and the area in which the project is located. The green wall will be the primary structure visible from the street. The screening parking door is a single car size to minimize its impact. It is not uncommon to have parking structures visible from the roadway on Baywood Avenue.
  - d. The project promotes and implements the design goals, policies and criteria of the Ross general plan. (See discussion below).
  - e. The project discourages the development of individual buildings, which dominate the townscape or attract attention through color, mass or inappropriate architectural expression. As conditioned, the design of the residence will not dominate the hillside area. The majority of the structure sits

below the level of the roadway. The residence will be smaller than others in the vicinity.

f. The project preserves buildings and areas with historic or aesthetic value and maintain the historic character and scale. The project ensures that new construction respects and is compatible with historic character and architecture both within the site and neighborhood. The project site is a vacant lot. The new construction is compatible with the scale of development on adjacent sites and the neighborhood.

g. The project upgrades the appearance, quality and condition of existing improvements in conjunction with new development or remodeling of a site. The project includes widening the public roadway. No sidewalks or other existing improvements existing along the street frontage. An existing fire hydrant will be upgraded.

3. The project is in substantial compliance with the design criteria of Section 18.41.100.

a. Preservation of Existing Site Conditions.

The existing landscape should be preserved in its natural state by keeping the removal of trees, vegetation, rocks and soil to a minimum. Development should minimize grading, cutting and filling and maximize the retention and preservation of natural elevations, ridgelines and natural features, including lands too steep for development, geologically unstable areas, wooded canyons, areas containing significant native flora and fauna, rock outcroppings, view sites, watersheds and watercourses.

Sites should be kept in harmony with the general appearance of neighboring landscape. All disturbed areas should be finished to a natural-appearing configuration and planted or seeded to prevent erosion.

With the exception of the new structure and parking, the site is proposed to be left in its natural state. The project size and design minimizes the amount of grading, cutting and filling necessary.

b. Relationship Between Structure and Site. There should be a balanced and harmonious relationship among structures on the site, between structures and the site itself, and between structures on the site and on neighboring properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural landforms and step with the slope in order to minimize building mass, bulk and height and to integrate the structure with the site.

The project relates to the land with its green roof and by siting the residence below the level of the roadway.

c. Minimizing Bulk and Mass.

New structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood. Buildings should be compatible with others in the neighborhood and not attract attention to themselves.

The structure is at the 30-foot maximum height limit. Based on the project plans, story poles and considering the character of other residences in the neighborhood, the new residence is not out of character with its setting.

To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single-plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety and to break up building plans. The development of dwellings or dwelling groups should not create excessive mass, bulk or repetition of design features.

Changes in materials, windows, recesses and projections in the design, and decks break up the elevations.

d. Materials and Colors.

Buildings should use materials and colors that minimize visual impacts, blend with the existing land forms and vegetative cover, are compatible with structures in the neighborhood and do not attract attention to the structures. Colors and materials should be compatible with those in the surrounding area. High-quality building materials should be used.

Natural materials such as wood and stone are preferred, and manufactured materials such as concrete, stucco or metal should be used in moderation to avoid visual conflicts with the natural setting of the structure. (3) Soft and muted colors in the earthtone and wood tone range are preferred and generally should predominate.

The exterior siding is a cementitious product and not wood, but resembles wood. The proposed colors would be earth tones to blend better with the surroundings.

e. Drives, Parking and Circulation.

Good access, circulation and off-street parking should be provided consistent with the natural features of the site. Walkways, driveways, curb cuts and off-street parking should allow smooth traffic flow and provide for safe ingress and egress to a site.

Access ways and parking areas should be in scale with the design of buildings and structures on the site. They should be sited to minimize physical impacts on adjacent properties related to noise, light and emissions and be visually compatible with development on the site and on neighboring properties. Off-street parking should be screened from view. The area devoted to driveways, parking pads and parking facilities should be minimized through careful site planning.

The project will provide three new parking spaces. With approval of the variance from the covered parking requirement, the project complies with the parking space requirements of the Ross Municipal Code for this zoning district.

f. Exterior Lighting. Exterior lighting should not create glare, hazard or annoyance to adjacent property owners or passersby. Lighting should be shielded and directed downward, with the location of lights coordinated with the approved landscape plan. Lamps should be low wattage and should be incandescent.

No exterior lighting is proposed. Conditions of approval require exterior lighting to meet certain cut off angles.

g. Fences and Screening. Fences and walls should be designed and located to be architecturally compatible with the design of the building. They should be

aesthetically attractive and not create a “walled-in” feeling or a harsh, solid expanse when viewed from adjacent vantage points. Front yard fences and walls should be set back sufficient distance from the property line to allow for installation of a landscape buffer to soften the visual appearance.

No fences or additional landscaping is proposed except temporary construction fencing.

h. Views. Views of the hills and ridgelines from public streets and parks should be preserved where possible through appropriate siting of improvements and through selection of an appropriate building design including height, architectural style, roof pitch and number of stories.

Views of the valley and mountains will be available along the street for much of the project frontage. Views may only be impaired where the green wall is proposed along approximately 40 feet of frontage.

i. Natural Environment.

The high-quality and fragile natural environment should be preserved and maintained through protecting scenic resources (ridgelines, hillsides, trees and tree groves), vegetation and wildlife habitat, creeks, drainageways threatened and endangered species habitat, open space and areas necessary to protect community health and safety.

Tree removal has been limited and areas outside of the building site will be preserved in their natural state.

Development in upland areas shall maintain a setback from creeks or drainageways. The setback shall be maximized to protect the natural resource value of riparian areas and to protect residents from geologic and other hazards.

The building area is set back from natural drainageways.

Development in low-lying areas shall maintain a setback from creeks or drainageways consistent with the existing development pattern and intensity in the area and on the site, the riparian value along the site, geologic stability, and the development alternatives available on the site. The setback should be maximized to protect the natural resource value of the riparian area and to protect residents from geologic and flood hazards.

There are no creeks or watercourses near the building area.

The filling and development of land areas within the one-hundred-year flood plain is discouraged. Modification of natural channels of creeks is discouraged. Any modification shall retain and protect creekside vegetation in its natural state as much as possible. Reseeding or replanting with native plants of the habitat and removal of broom and other aggressive exotic plants should occur as soon as possible if vegetation removal or soil disturbance occurs.

Safe and adequate drainage capacity should be provided for all watercourses.

The site is not within a 100-year flood plain.

j. Landscaping.

Attractive, fire-resistant, native species are preferred. Landscaping should be integrated into the architectural scheme to accent and enhance the appearance of

the development. Trees on the site, along public or private streets and within twenty feet of common property lines, should be protected and preserved in site planning. Replacement trees should be provided for trees removed or affected by development. Native trees should be replaced with the same or similar species. Landscaping should include planting of additional street trees as necessary.

Only trees within the building footprint are proposed for removal.

Landscaping should include appropriate plantings to soften or screen the appearance of structures as seen from off-site locations and to screen architectural and mechanical elements such as foundations, retaining walls, condensers and transformers.

There is sufficient existing mature landscaping to screen structures from views. A condition of approval requires additional landscaping to be installed between the project site and 5 Madera and a condition permits the Town to require additional screening landscaping if it is found to be necessary.

Landscape plans should include appropriate plantings to repair, reseed and/or replant disturbed areas to prevent erosion.

The conditions of approval require an erosion control plan.

k. Health and Safety. Project design should minimize the potential for loss of life, injury or damage to property due to natural and other hazards. New construction must, at a minimum, adhere to the fire safety standards in the Building and Fire Code and use measures such as fire-preventive site design, landscaping and building materials, and fire-suppression techniques and resources. New development in areas of geologic hazard must not be endangered by nor contribute to hazardous conditions on the site or on adjoining properties.

The cementitious siding proposed is fire resistant. Sprinklers will be required for the residence. The roof will also be fire resistant.

l. Visual Focus.

Where visibility exists from roadways and public vantage points, the primary residence should be the most prominent structure on a site. Accessory structures, including but not limited to garages, pool cabanas, accessory dwellings, parking pads, pools and tennis courts, should be sited to minimize their observed presence on the site. Front yards and street side yards on corner lots should remain free of structures unless they can be sited where they will not visually detract from the public view of the residence.

The residence is the primary structure on the site.

Accessory structures should generally be single-story units unless a clearly superior design results from a multilevel structure. Accessory structures should generally be small in floor area. The number of accessory structures should be minimized to avoid a feeling of overbuilding a site. Both the number and size of accessory structures may be regulated in order to minimize the overbuilding of existing lots and attain compliance with these criteria.

No accessory structures are proposed.

m. Privacy. Building placement and window size and placement should be selected with consideration given to protecting the privacy of surrounding properties. Decks, balconies and other outdoor areas should be sited to minimize noise to protect the privacy and quietude of surrounding properties. Landscaping should be provided to protect privacy between properties.

The residence is sited in an area where it is far from development on surrounding properties. It is common for hillside residences to have decks and balconies to enjoy available views, and because of the limited flat yard space.

n. Consideration of Existing Nonconforming Situations. Proposed work should be evaluated in relationship to existing nonconforming situations, and where determined to be feasible and reasonable, consideration should be given to eliminating nonconforming situations as a condition of project approval.

The site is currently vacant.

o. Relationship of Project to Entire Site.

Development review should be a broad, overall site review, rather than with a narrow focus oriented only at the portion of the project specifically triggering design review. All information on site development submitted in support of an application constitutes the approved design review project and, once approved, may not be changed by current or future property owners without town approval.

Proposed work should be viewed in relationship to existing on-site conditions. Pre-existing site conditions should be brought into further compliance with the purpose and design criteria of this chapter as a condition of project approval whenever reasonable and feasible.

A condition of approval specifies that future modifications require Town Council review.

p. Relationship to Development Standards in Zoning District. The town council may impose more restrictive development standards than the standards contained in the zoning district in which the project is located in order to meet these criteria.

The approval limits the floor area to what is proposed, which is more restrictive than what the development standards allow for the zoning district.

q. Project Reducing Housing Stock. Projects reducing the number of housing units in the town, whether involving the demolition of a single unit with no replacement unit or the demolition of multiple units with fewer replacement units, are discouraged; nonetheless, such projects may be approved if the council makes findings that the project is consistent with the neighborhood and town character and that the project is consistent with the Ross general plan.

The project will create a new housing unit.

r. Maximum Floor Area. Regardless of a residentially zoned parcel's lot area, a guideline maximum of ten thousand square feet of total floor area is recommended. Development above guideline floor area levels may be permitted if the town council finds that such development intensity is appropriate and consistent with this section, the Ross municipal Code and the Ross general plan. Factors which would support such a finding include, but are not limited to:

excellence of design, site planning which minimizes environmental impacts and compatibility with the character of the surrounding area.

The residence is less than 10,000 square feet.

s. Setbacks. All development shall maintain a setback from creeks, waterways and drainageways. The setback shall be maximized to protect the natural resource value of riparian areas and to protect residents from geologic and other hazards. A minimum fifty-foot setback from the top of bank is recommended for all new buildings. At least twenty-five feet from the top of bank should be provided for all improvements, when feasible. The area along the top of bank of a creek or waterway should be maintained in a natural state or restored to a natural condition, when feasible.

There are no creeks or watercourses near the building area.

4. As conditioned, the project is consistent with the Ross general plan and zoning ordinance, including the following Ross General Plan policies for Excellence in Design:

3.1 Building and Site Design. Design all structures and improvements to respect existing natural topographic contours. Open areas and buildings shall be located to protect landforms and natural site features wherever possible.

The new structure has been sited on the flattest area of the sloping site. The project involves preserving natural areas outside of the building envelope.

3.2 Landscape Design. Where appropriate, encourage landscape designs that incorporate existing native vegetation, enhance the cohesiveness of the Town's lush, organic landscape and integrate new planting with existing site features. Plans shall recognize the importance of open space on a lot and shall address the look and feel of the space between structures so as to avoid overbuilding.

No new landscaping is proposed.

3.3 Buildings on Sloping Land. New buildings and additions to existing residential buildings constructed on sloping land should be designed to relate to the current landforms with the goal of integrating the building with the site (e.g., step with the slope). Low retaining walls are encouraged where their use would minimize uphill cutting, and large single-plane retaining walls should be avoided. Cut and fill areas and on/off-hauling should be minimized, especially in locations of limited or difficult access. Special care should be taken to final grade all disturbed areas to a natural appearing configuration and to direct stormwater runoff to areas where water can naturally infiltrate the soil.

See discussion under design review criteria, above.

3.4 Bulk, Mass and Scale. Minimize the perception of building bulk and mass so that homes are not out of scale, visually or structurally, with neighboring residences and their setting. Consider building bulk and mass during the design review process, and when applying requirements and guidelines addressing Floor Area Ratio (FAR), maximum home floor area and other development standards. Building heights should stay in scale with surrounding vegetation and buildings.

See discussion under design review criteria, above.

3.5 View Protection. Preserve views and access to views of hillsides, ridgelines, Mt. Tamalpais and Bald Hill from the public right-of-way and public property. Ensure that the design look and feel along major thoroughfares maintains the “greenness” of the Town.

Only a small area of the public views from Baywood will be obstructed by the green wall structure. The green wall has been reduced in height to allow views over the wall. The majority of the site frontage will remain open to public views.

3.6 Windows, Roofs, and Skylights. Window and skylight size, placement and design should be selected to maximize the privacy between adjacent properties. To the extent consistent with other design considerations, the placement and size of windows and skylights should minimize light pollution and/or glare.

The structure will be located far from adjacent residential development. Conditions of approval limit the lighting to prevent light pollution.

3.7 Materials and Colors. Buildings should be designed using high-quality materials and colors appropriate to their neighborhood and natural setting.

The proposed siding product is a “green” material because it has a long life and is not wood. The horizontal siding will resemble wood. The green roof will blend with the surroundings.

3.8 Driveways and Parking Areas. Driveways and parking areas should be designed to minimize visibility from the street and to provide safe access, minimal grading and/or retaining walls, and to protect water quality. Permeable materials should be used to increase soil infiltration. Driveways and parking areas should be graded to minimize stormwater runoff.

Due to the slope of the site, driveway and parking areas are visible from the street. The driveway has a permeable surface. The door to the second tandem space is a single car width to reduce its mass at the street.

#### CONDITIONS OF PROJECT APPROVAL - 54 BAYWOOD AVENUE

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

1. Except as otherwise provided in these conditions, the project shall comply with the approved plans. Plans submitted for the building permit shall reflect any modifications required by the Town Council and these conditions.
2. The deck area shall be reduced. The decks on the southwest elevation of the residence shall extend no further than 4 feet from the southwest walls of the bedrooms, living room and dining room.
3. The project, including all projections and eaves, shall comply with setback requirements.
4. The mechanical areas shall be used only for mechanical use and not living space. No electrical outlets or plumbing is permitted in the area except a single light fixture and outlets and plumbing dedicated to the mechanical equipment. The ceiling height shall be 6.5 feet or less, measured from the ordinary floor joist of the floor above to the ordinary floor of the area (ceiling may not be lowered and floor may not be raised). The area shall not be accessible from the living space.
5. Since the volume beneath the car deck is not included as floor area, the area under the car deck shall not be fully enclosed or shall not have a floor. The building permit plans shall

detail how the area will comply with this condition. All enclosed volumes under deck areas, including the area under the car parking, shall have no electrical, plumbing, mechanical, or other improvements and shall not be accessible from the interior spaces. Walls and floors shall be unfinished (wall and ceiling surfaces may be finished with an unpainted surface to comply with any requirements of the Fire and Building Codes, with review and approval by the planning department, but the surface shall not be sheetrock).

6. No trees shall be removed until a building permit is issued for the project.
7. Based on the location of the residence on a narrow, privately maintained, road, on a hillside with fire and safety concerns, a second unit shall not be permitted at this site without Town Council review and approval of an amendment to the Hillside Lot application, even if a proposed second unit otherwise complies with the zoning regulations for the site.
8. All costs for town consultant, such as the town hydrologist, review of the project shall be paid prior to building permit issuance. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
9. The applicant shall submit evidence of the U.S. Green Building Council LEED Home project registration prior to permit issuance. Plans submitted for the building permit shall reflect the LEED credit requirements. The LEED provider shall complete any necessary rating, document the credit requirements, and shall submit for certification of the project. The project shall be certified as a LEED Gold project prior to project final.
10. Plans submitted for the building permit shall provide full dimensions and elevations for the roof ridges and floor levels. A licensed land surveyor shall string the location of the foundations. The applicant 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. The applicant shall provide written evidence to the town planner, prepared by a licensed land surveyor, that the green wall and ridge elevations comply with the approved plans after roof framing. No portion of the residence shall exceed 30 feet in height from the pre-development grade. The height of the green wall shall be limited to an elevation of 170 (based on elevations on the 2004 Partial Topographic Survey and project plans).
11. Landscaping shall be installed in substantial conformance with the approved landscape plan prior to project final. Twenty-four inch box trees are required. At least eight 15 gallon size evergreen trees or shrubs shall be installed between the structure and 5 Madera prior to project final in order to provide understory screening of the structure from that site and shall be irrigated until established.
12. The Town Council reserves the right to require additional landscape screening for up to five (5) years from project final.
13. A copy of the building permit shall be posted and emergency contact information shall be up to date at all times.
14. Working Hours shall adhere to Ross Municipal Code sections 9.20.035 and 9.20.060.
15. The applicant shall submit building permit plans for the project to the Town for review and approval, including peer review as necessary, to verify that the plans conform to the most recent adopted Uniform Building Code.

16. This project must comply with all engineering reports prepared by the applicants engineering professionals and all peer review recommendations, including the final requirements of the September 2008 LTD Engineering drainage review, Geoengineering geotechnical report, Gilpin Geosciences, Inc. report dated February 13, 2004, and review by the town hydrologist. Any conflict in the recommendations shall be resolved by staff, the town engineer or the town hydrologist.
17. A debris catchment fence shall be installed during construction.
18. 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.
19. Preparation of a single geotechnical engineering report, containing all recommended geotechnical design criteria for the project, shall be submitted with the building permit plans. This report shall be submitted to the Town for peer review and acceptance by the Town Engineer. All geotechnical aspects of the proposed project, and preliminary development of plans shall continue to be evaluated by the project geotechnical consultant. A letter from the project geotechnical consultant shall be prepared that approves all geotechnical aspects of the proposed site development layout, verifies project geotechnical feasibility, and verifies conformance with the geotechnical consultant's design recommendations.
20. A detailed construction and traffic management plan shall be submitted for the review and approval of the Director of Public Works and town planner prior to the issuance of a building permit. The submitted plan shall include, but shall not be limited to, provisions ensuring that flag persons shall be present above the project site, at the intersection of Baywood Avenue and Crest Road, and below the project site at either the intersection of Baywood and Wellington Avenues or at the start of the private portion of Baywood (points where vehicles may turn around), whenever road closures or delays occur for any period of time to advise traffic of the road closure or delay. The plan shall include the work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans.
21. Road closures will only be permitted with prior authorization of the Town. The applicant shall provide written notification to affected property owners and neighbors prior to road closures or delays. Signs containing details of the proposed closure or delay must be posted at least 48 hours in advance.
22. A pre-construction 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.
23. The applicant shall document the condition of Baywood and Wellington Avenue by video on CD and shall submit the information to the Public Works department prior to issuance of a building permit. The applicant shall work with the Public Works Department to repair any damage caused by the construction.

24. A qualified engineer shall prepare a report on the condition of Baywood and Wellington Avenue for construction vehicles that shall be submitted prior to issuance of the building permit for the Town Engineer's review. The Town Engineer may limit the size and/or weight of construction vehicles and may require the applicant to make any repairs necessary to ensure road stability for construction vehicles or to post a bond, in an amount to be fixed by the Town Engineer, guaranteeing that the applicant will repair damage to the roadway. The Town may also require as a condition to the granting of a permit that the applicant submit a certificate of a responsible insurance company showing that the applicant is insured in an amount to be fixed by the Town against any loss or damage to persons or property arising directly or indirectly from the construction project.
25. A final stormwater drainage plan shall be submitted for review and approval by the Town Hydrologist with the building permit plans. The design shall conform to the conceptual stormwater drainage plan prepared by LTD Engineering, April 2009.
26. 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.
27. The project shall incorporate a back up method to distribute run off in the unlikely event that the level spreader fails. A "failure analysis" shall be completed both to (1) predict the specific modes of failure and the resulting locations of potential concentrated runoff if the drainage system performance is reduced due to failed maintenance, and, by extension, (2) promote revisions to the drainage system design to reduce the potential negative consequences of failure, through specific inspection and maintenance requirements and/or revising the design to include more system redundancy.
28. The surface and subsurface drainage facilities and catchment areas shall be inspected frequently and maintained throughout the project life. The applicant shall enter into a maintenance agreement for the facilities with terms substantially similar to the City of San Rafael's Stormwater Management Facilities Agreement and the Marin County Department of Public Works Stormwater Treatment Measures Maintenance Agreement, copies of which are in the project file. The Town Attorney shall review the agreement, at the applicant's expense. This agreement shall be recorded prior to issuance of the building permit for the project. The Town may request the applicant to provide a performance bond, security or other appropriate financial assurance providing for the maintenance of the drainage system.
29. Interior and exterior lighting fixtures shall be selected to enable maximum "cut-off" appropriate for the light source so as to strictly control the direction and pattern of light and eliminate spill light to neighboring properties or a glowing nighttime character.
30. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.
31. Applicants shall comply with all requirements of the Marin Municipal Water District. Water shall be available at the site prior to the start of any construction.
32. Project development shall comply with the requirements of the Ross Valley Sanitary District.
33. The project arborist shall review final construction-level drawings, including grading, drainage and utility plans and written evidence of the project arborist review and

approval shall be provided to the Town. All tree protection conditions recommended by the project arborist shall be included on those plans to ensure compliance with the conditions. A certified arborist shall be on site during all trenching and excavation work near protected trees.

34. The applicant shall comply with the following tree protection measures:
- a. Four trees no. 1, 3, 4, and 5 on the Arborlogic Consulting Arborist report dated April 28, 2009, shall be removed for the proposed house construction.
  - b. One preserved subject trees (no. 2 on the arborlogic Consulting Arborist report) shall be deep root fertilized with 10 gallons per inch of trunk diameter with a water soluble, slow release, high nitrogen fertilizer prior to construction.
  - c. Tree protection fencing should be installed prior to permit issuance to minimize damage to root systems of preserved trees. Tree Protection fencing will designate the Tree Protection Zones and will be constructed of 4-foot high plastic (not a bright color or orange) and attached to metal stakes no less than 12 inches into ground and at 6-foot centers. The Project Arborist shall determine fence locations prior to construction.
  - d. All structures will be constructed on piers. All roots encountered over two inches should be cut cleanly and treated to retain moisture. Moisture will be retained by either application of a latex water based paint, or plastic, or other material approved by the Project Arborist.
  - e. Certain construction activities should be limited within the Tree Protection Zone as follows:
    - i. No equipment, storage, dumping, grading or excavation should be permitted within the designated tree protection zones without the prior written approval of the consulting arborist.
    - ii. If excavation must occur within the tree protection zone the consulting arborist should determine where tunneling, hand work, and root pruning is required (root pruning should be completed prior to grading activity).
  - f. The Project Arborist shall inspect the site, prior to issuance of a building permit, to determine if tree protection fencing has been properly installed.
  - g. The Project Arborist shall inspect any piers within the Tree Protection Zones of Preserved trees prior to backfilling and any recommendations implemented.
  - h. The subject trees should be inspected one year following the construction of the proposed structure's foundation by a Project Arborist and any recommendation followed.
  - i. The Arborist Practitioner shall be an International Society of Arboriculture (ISA) Certified Arborist, must have a State of California Contractors License for Tree Service (C61-D49) and provide proof of workman's compensation and general liability insurance.
  - j. The Project Arborist shall be an ISA Certified Arborist or American Society of Consulting Arborists (ASCA) Registered Member with adequate professional liability insurance.

- k. Any pruning of trees should be in accordance with the Tree Pruning Guidelines as established by the International Society of Arboriculture and adhere to the most recent edition of the American National Standards Institute for Tree, Shrub and Other Woody Plant Maintenance (ANSI A300).
- l. All fertilization of trees shall be in accordance with the Tree Pruning Guidelines as established by the International Society of Arboriculture and adhere to the most recent edition of the American National Standards Institute for Tree, Shrub and Other Woody Plant Maintenance Standard Practices (Fertilization) (ANSI A300 Part 2).
- m. Tree Protection Zone Guidelines
  - i. Existing individual trees or groups of trees have been provided with tree protection zones. General requirements for tree protection zones are described as follows:
  - ii. Special foundations, footing, and pavement designs should be employed to minimize root interference when structures must be placed within the tree protection zone.
  - iii. Utilities such as electric, gas, cable TV, telephone, water drains and sewer should be routed outside the tree protection zone.
  - iv. Landscapes should be designed to exclude trenching for irrigation lines within the tree protection zone and no irrigation should be applied within 5 feet of the trunks of protected trees.
  - v. Any new plantings within the tree protection zone should be designed to be compatible with the cultural requirements of the retained tree(s), especially with regard to irrigation and nitrogen application. In protection zones where native drought tolerant trees are located no summer irrigation should be installed and no vegetation installed requiring excessive irrigation such as turf and flowerbeds.
  - vi. Surface drainage should not be altered so as to direct water into or out of the tree protection zone unless specified by the consulting arborist as necessary to improve conditions for the tree.
  - vii. Site drainage improvements should be designed to maintain the natural water table levels within tree retention areas. If water must be diverted, permanent irrigation systems should be provided to replace natural water sources for the trees.
  - viii. The consulting arborist should review any plan or revisions affecting trees. This includes (but not limited to) plans for demolition, erosion control, improvement, utility and drainage, grading plans, landscape and irrigation.
- 35. 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. Development should adhere to the wildland urban interface building standards in Chapter 7A of the California Building Code.

36. 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) the access roadway must be improved and increased as proposed and as approved by the Public Safety Department to provide adequate fire or rescue operations; h.) the hydrant fronting 60 Baywood must be upgraded to a steamer type (one 4 ½ inch and two 2 ½ inch outlets); and i) no parking shall be permitted in or on the improved roadway portion.
37. 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.
38. 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.
39. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, INCLUDING CHANGES TO THE MATERIALS AND MATERIAL COLORS, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE. THE APPLICANT IS ADVISED THAT CHANGES MADE TO THE DESIGN DURING CONSTRUCTION MAY DELAY THE COMPLETION OF THE PROJECT AND WILL NOT EXTEND THE PERMITTED CONSTRUCTION PERIOD.
40. Failure to secure required building permits and/or begin construction by June 11, 2010 will cause the approval to lapse without further notice.
41. 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.
42. 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.

43. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

*Town Attorney Hadden Roth excused himself from the Town Council meeting at 1:12am.*

27. **108 Laurel Grove, Design Review No. 1742**  
Richard Fullerton, 108 Laurel Grove Avenue, A.P. No. 72-211-32, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Design review of landscape improvements associated with construction of a new terraced swimming pool and lawn area southwest of the residence. The project involves construction of 404 linear feet of new retaining walls up to 6.5 feet tall and 185 cubic yards of cut and 152 cubic yards of fill. A tree removal permit is also requested to remove 30 Eucalyptus trees along the southwestern property line.

Lot area	132,858 square feet
Existing Lot Coverage	4.1%
Proposed Lot Coverage	4.3% (15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommend that the Council approve the application with the findings and conditions in the staff report.

John Dorr, architect, canvassed the neighbors and all are in support of the proposal to eliminate the Eucalyptus trees and have the swimming pool and retaining walls. Senior Planner Semonian noted that they are required to put in additional landscaping to provide screening along the street. There are a number of conditions in regard to road protection along with flagmen and the conditions outlined in the staff report will cover all the issues discussed in the email submitted to the Council from a neighbor.

Mayor Cahill desired sections to review the existing grade to the proposed grade. Architect Dorr provided the cross-sections for the Council's consideration. They propose two, 5-foot retaining walls to accommodate the swimming pool. They will add deck space behind the swimming pool and extend the building terrace to have easy access to the swimming pool.

Council Member Martin asked the number of Eucalyptus trees that will be removed. Architect Dorr noted 30 Eucalyptus trees would be removed and replaced with a natural hedge type screen. Council Member Martin felt having a mixture of hedges and trees might be an attractive approach in order to be more natural. In terms of the oak trees around the pool, he clarified that the intent is to preserve. Architect Dorr responded in the affirmative. He further agreed to work with the arborist to protect the oak trees during construction.

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

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Council Member Skall seconded, to approve the design review application for 108 Laurel Grove Avenue as outlined in the staff report including the findings and conditions. Motion carried unanimously.**

**108 Laurel Grove, Design Review No. 1742**

The project shall comply with the following conditions of approval:

1. Except as otherwise provided in these conditions, the project construction shall comply with the approved plans.
2. Prior to issuance of a building permit, the Town Engineer shall confirm that the plans submitted for the building permit will result in cut and fill insubstantial conformance with the approved project.
3. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
4. Prior to any tree removal, the applicant shall provide written evidence to the Town that the applicant has permission to use Toussin Road for the tree removal work and consent to remove the trees, which straddle the property line.
5. The applicant shall submit a detailed traffic management plan for the review and approval of the Director of Public Works and town planner. The submitted plan shall include, but shall not be limited to, provisions ensuring that access and egress is maintained at all times on Toussin Road. Flag persons may be required whenever road closures or delays occur for any period of time to advise traffic of the road closure or delay.
6. The applicant shall provide written notification to affected property owners and neighbors prior to road closures or delays. Signs containing details of the proposed closure or delay must be posted at least 48 hours in advance. No road blockage shall be permitted on Toussin Road on Mondays during garbage pick up hours.
7. The applicant shall document the condition of the private driveway from Laurel Grove to 106 Laurel Grove and the length of Toussin Road by video on CD and shall submit the information to the planning department prior to any tree removal or construction work. The applicant shall repair any damage caused by the tree removal or construction work.
8. The Eucalyptus stumps shall be flush cut to the ground and treated to prevent regrowth, or removed, and replacement screening is required to be planted along Toussin Road. A final landscape plan shall be submitted for review and approval of the planning department prior to installation.
9. The applicant shall submit a detailed arborist report that details the health of all trees proposed for retention near the proposed improvements as well as any other tree protected by Ross regulations (such as trees on adjacent sites that may be impacted by construction). The report shall identify measures that must be taken before, during and after construction to protect and preserve the trees, which shall be incorporated into the project plans. The applicant shall provide staff with a letter or report from the arborist that confirms that the arborist review the construction level drawings (including

- foundation plans, any proposed trenching for utilities, landscape plan, etc.) to prepare the tree protection plan.
10. No brightly colored temporary fencing is permitted where it may be seen by neighbors or the public.
  11. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
  12. Grading is prohibited between October 15 and April 15.
  13. All drainage shall be dispersed on site.
  14. Prior to project final, the applicant shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
  15. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited. No tree up lighting is permitted.
  16. 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.
  17. Failure to secure required building permits and/or begin construction by June 11, 2010 will cause the approval to lapse without further notice.
  18. 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.
  19. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
  20. The applicant 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 applicant and/or owners of any such claim, action, or proceeding, tendering the defense to the applicant 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.
28. **33 Spring Road, Demolition Permit No. 1726**  
Geoffrey Franklin, 33 Spring Road, A.P. No. 73-281-11, 74-161-25, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Request to

demolish a residence originally designed by William Wilson Wurster in 1953. The Town Council will determine if the residence is a historical resource and, if so, if further review is warranted under the California Environmental Quality Act.

Senior Planner Elise Semonian summarized the staff report and asked the Council to determine if the residence is a historic resource, and if the Council concluded based on a site visit, the materials presented, and any public testimony that the structure is not historic, the Council may approve the project subject to the findings and conditions in the staff report.

Council Member Martin believed the Lawrence Halprin landscape is very attractive. He added that a lot of the layout is the same and quite incredible. If the Council moves forward to demolish the house, he asked staff what happens to the existing landscape. Senior Planner Semonian explained that the landscape plan has not been found eligible to be historic. Staff further noted that the applicant must come in with a project to redevelop the entire site and the plan will likely include removal of the landscaping.

John McGeogh, realtor, explained that the purpose is to demolish the house. The effect on the value of the property is huge if it cannot be demolished. The ADR Group reviewed and unanimously agreed that it had no merit in terms of being a historic resource, which he would not argue.

Senior Planner Semonian indicated that staff received no opposition from the neighbors on this application.

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

Council Member Hunter requested that the Council discuss at a future meeting how to handle identification of historic houses. He further agreed that the house is not historic. Council Member Skall agreed. Council Member Martin suggested that the Council look into the budget to see where they can draw funds to identify historic structures because it is a priority. Mayor Pro Tempore Strauss concurred.

Mayor Cahill asked staff if there is a condition included in regard to the building being documented. Senior Planner Semonian responded in the affirmative.

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to determine that the structure at 33 Spring Road is not a historic structure. Motion carried unanimously.**

The Council did not approve or deny the demolition permit.

29. **51 Wellington Avenue, Extension of time for Variance, Design Review and Demolition Permit No. 1685**  
Craig and Melissa Slayen, 51 Wellington Avenue, A.P. No. 72-071-15, R-1:B-10 (Single Family Residence, 10,000 Sq. Ft. Minimum Lot Size), Medium Low Density (3-6

Units/Acre). *Alternative #1:* The applicants are requesting an application for approval of a one-year time extension to July 10, 2010, for a demolition permit, variance and design review application approved on June 10, 2008 which permitted: A demolition permit for a significant remodel of the existing residence, including modifications to each elevation and replacement of the existing horizontal siding and windows with new painted wood shingles and windows. Variance and design review to allow a remodel and addition to the existing residence and landscape improvements that include: 1.) removal of the 2-car carport and its roof deck within the front yard setback; 2.) enclosure of the existing entry porch area, partially within the front yard setback (25 feet required, 20 feet proposed); 3.) addition of an attached, two-car, garage partially within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 32 feet proposed); 4.) reconstruction of the northwest corner of the residence, increasing the roof ridge over the area, within the rear yard setback (40 feet required, 0 feet proposed); 5.) landscape grading involving 85 cubic yards of cut and 135 cubic yards of fill; 6.) construction of fenced trash enclosure; 7.) 180 linear feet of new retaining walls up to 5 feet in height; and 8.) new terrace within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 10 feet proposed).

*Alternative #2:*

The applicants request approval of a demolition permit, variances and design review to allow the total demolition of the existing 3,333 square foot residence and carport and for construction of a new residence and attached, two-car, garage within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 12.5 feet proposed). A total of 3,595 square feet of floor area is proposed. The project involves landscape improvements including 1.) grading involving 85 cubic yards of cut and 135 cubic yards of fill, 2.) construction of a fenced trash enclosure, 3.) 180 linear feet of new retaining walls up to 5 feet in height; and 4.) new terrace within the front yard setback (25 feet required, 20 feet proposed) and rear yard setback (40 feet required, 10 feet proposed).

The design of the new residence would be identical to the project approved by the Town Council in 2008.

*Existing and proposed conditions for both alternatives:*

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

*The existing residence is nonconforming in setbacks.*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the proposal to demolish the existing residence and to construct a new home that matches the design approved in 2008 with the findings and conditions outlined in the staff report.

Council Member Martin asked staff if there is any objection from neighbors. Senior Planner Semonian indicated that the one neighbor that wrote in stated that he is relying on the Council's good judgment. Staff indicated that additional conditions presented to the Council at the hearing require a surveyor to confirm height of roof ridges and make sure it is built at the same height. Staff further noted that there is a tree protection condition for the oak tree as well. The Council allowed Craig Slayen, the applicant, an opportunity to review the conditions.

Council Member Hunter discussed why the Council had allowed a remodeled house to be larger than the original house that was already non-conforming and well over the FAR. As he recalled, it was originally proposed with a single car garage and in exchange for a double car garage (and one less car on the street), the Council had granted the extra FAR.

*Mayor Pro Tempore Strauss excused himself from the Town Council meeting due to the late hour.*

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

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Council Member Skall seconded, to approve Alternative No. 2 as outlined by staff in the staff report, including the findings and conditions. Motion carried unanimously. Strauss absent.**

**51 Wellington Avenue, Extension of time for Variance, Design Review and Demolition Permit No. 1685**

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

1. The project shall substantially comply with the plans approved by the Town Council, dated June 27, 2008, except as otherwise provided below.
2. The building permit plans shall reflect the construction of a new residence. Plans for the mechanical and crawl space areas shall be reviewed and approved by the planning department to ensure that no new floor area is created. Only a single light fixture and outlets and plumbing dedicated to mechanical equipment are permitted in crawl space areas.
3. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN PLANNER APPROVAL.** Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to the issuance of any building permits or prior to any modification.
4. The new fireplaces shall be gas or EPA certified woodstoves that are Phase II certified or equivalent.
5. A Revocable Encroachment Permit is required from the Public Works Department for all work within the right-of-way.
6. The landscaping shown on the approved plans shall be installed prior to project final.
7. The tree house within the west side setback shall be removed.
8. Automatic garage door openers shall be installed. The garage shall be available for automobile storage at all times. No more than two electrical outlets shall be permitted in the garage and the area shall not be heated or air-conditioned.
9. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) A 24 hour monitored alarm system is required; 3.) Sprinklers are

- required; and 4.) Remove and clear all dead or dying flammable materials per RMC Chapter 12.12.
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. 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.
  12. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY JUNE 11, 2010, WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**
  13. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
  14. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
  15. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
  16. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.
  17. Construction vehicles shall not park on the street overnight or on weekends.
  18. The applicants shall maintain the circular driveway for parking for construction vehicles as long as feasible.
  19. All equipment and materials shall be stored on site.
  20. Staff shall document with photos the condition of the road, landscaping and improvements on the south side of Wellington between Fallen Leaf and Baywood Avenue prior to issuance of the building permit and the applicants shall be required to repair any damage associated with their construction project prior to project final.
  21. Prior to issuance of the building permit, the applicants shall submit survey evidence documenting the elevation of the ridge of the existing house based on control points

- outside of the construction area. The applicant shall submit survey evidence that the elevation of the ridge of the new house complies with the approved plans after framing.
22. The applicants shall submit a detailed arborist report that details the health of all trees proposed for retention, as well as any other tree protected by Ross regulations (such as trees on adjacent sites that may be impacted by construction). The report shall identify measures that must be taken before, during and after construction to protect and preserve the trees, which shall be incorporated into the project plans. The applicant shall provide staff with a letter or report from the arborist that confirms that the arborist review the construction level drawings (including foundation plans, any proposed trenching for utilities, landscape plan, etc.) to prepare the tree protection plan.
  23. No brightly colored temporary fencing is permitted.

30. Correspondence – Moe Engineering letter dated June 1, 2009

Subject: Clarification of Statement at December 2008 Council Meeting  
Re: 54 Baywood Avenue, Variance, Design Review, Hillside Lot/Hazard Zone 3  
Use Permit and Tree Removal No. 1669

*Dear Mayor Cahill and Town Council:*

*The purpose of this letter is to correct a misunderstanding resulting from a comment I made at the December 11, 2008 Council meeting. I understand that this issue has resurfaced and continues to raise questions regarding exactly when Moe Engineering was contacted to review the slope calculation for the subject project.*

*At the December 11, 2008 Council meeting I was asked by one of the Council members to explain why the slope calculation changed. I stated that this was the first time that I personally had provided the slope calculation. What I didn't mention was the fact that our office, for which I am personally responsible, had reviewed several slope alternatives prior to the November 2008 Council meeting. The omission of these vital facts allowed for the inference that Moe Engineering was not contacted by the Town for review of the slope calculation prior to the November 2008 Council meeting. This is clearly not the case. There were several telephone conversations and email communications between the Town Manager and Moe Engineering in November 2008 regarding the Parmenter slope calculation. In addition, I also recall that I ran into Town Manager Gary Broad at the Town Hall prior to the November 2008 meeting and we briefly discussed the slope calculation at that time.*

*I trust this letter clarifies my statement to the Council and I hope that it also resolves the issue regarding the time frame during which we provided consulting services to the Town of Ross.*

Sincerely,  
John Moe, PE  
Moe Engineering, Inc.

31. Other Business - None

32. Adjournment

By order of Mayor Cahill, the meeting adjourned at 1:46 am.

---

Richard Strauss, Mayor

ATTEST:

---

Gary Broad, Town Manager