

SPECIAL MEETING of the ROSS TOWN COUNCIL THURSDAY, MAY 26, 2011

1. **6:30 P.M. Commencement.**

Present: Mayor Chris Martin; Mayor Pro Tempore Carla Small; Council Member Scot Hunter; Council Member Rupert Russell; Council Member Rick Strauss; and Town Attorney Greg Stepanicich

2. **Posting of Agenda.**

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

3. **Discussion of Town's acceptance of the Old Ross Schoolhouse, the status of the \$5,000 donated by the Ross Historical Society to the School House Fund for its preservation and maintenance, and events which led to the building's demolition in 2007.**

Mayor Martin noted that an anonymous email was circulated around Town that had a similar email address to his and noted for the record that he had nothing to do with that email. Tonight the Council is present to examine events that led to the demolition of the historic one-room schoolhouse on Ross Common. It is tragic irony that had a public meeting like this occurred four years ago, the Old Schoolhouse might still be standing today. He realizes that this is an unusual forum for this discussion. Most became aware of the destruction of the Old Schoolhouse this past March after receiving a letter from Richard Hoertkorn, who donated the building to the Town of Ross over 30 years ago. For nearly three years, portable classrooms from the Ross School construction project obscured the Old Schoolhouse location from public view. The Town owes Mr. Hoertkorn an explanation of what decisions and actions led to the destruction of the historic structure. Further, the Board of Trustees of the Moya Library and the Ross Historical Society recently asked for an investigation to determine why and how the Old Schoolhouse was demolished. They have asked for such an investigation to safeguard other buildings or improvements that have historical importance from demolition without a public hearing. The Ross Historical Society has also asked for a full accounting of the \$5,000 their organization provided for the maintenance and preservation of the building.

They need to accomplish a clear understanding of the events that led up to the destruction of the Old Schoolhouse in order to ensure that this regrettable action will never happen again. Hopefully, this can be accomplished tonight. This must not remain a muddled mystery; they must account for past actions. Hopefully, through discussions tonight, they can put this issue behind them. It may be an opportunity to learn from past mistakes and establish better procedures. It seems the final lesson taught from the Old Schoolhouse will be a "*civics lesson*."

Mayor Martin suggested that the Council proceed tonight with three separate discussion topics. First, focusing on the acceptance of the Hoertkorn donation of the schoolhouse in 1990. It is relevant to understand the Town's policy with regards to accepting gifts, as well as ongoing responsibilities and obligations with maintaining and preserving the object.

Second, discussion and public comments relative to \$5,000 donation from the Ross Historical Society and accounting for the disbursement of those funds. Lastly, they will have discussion and public comment about decisions and actions, which led to the demolition of the schoolhouse in October 2007.

As is customary practice, the Council and Town staff will have initial discussion. Then provide for public comment on each discussion item. Please limit testimony before the Council on the topic being discussed. He will enforce a three-minute limit for each speaker. After all interested parties have spoken, the discussion item is closed to public comment, and the Council proceeds with its deliberation and any decision-making, if appropriate, before the Council proceeds with the next discussion item.

Council Member Hunter would rather deal with this as a whole and then have an opportunity to respond since all matters are inter-related. He did not believe separating the items makes for a worthwhile discussion. Mayor Martin believed there is a logical chronological order to this and they must understand from the date the schoolhouse was donated. The Town received \$5,000 from the Ross Historical Society for maintenance and preservation of that building. He further believed it would be clear to have an understanding of those two facts before they go into the events of the demolition.

Council Member Strauss noted that information was submitted from the public and asked Town Manager Gary Broad to provide an overview.

Mayor Martin asked staff to go through the acceptance of Mr. Hoertkorn's donation and whether minutes or resolutions are available. Town Manager Broad reviewed the Town record related to the donation and noted the following:

- January 11 of 1990 under Item No. 19 – Project Update and Approval of Schoolhouse Plans reads, “Mrs. Charles Page, President of the Ross Historical Society, stated that Mr. Hoertkorn is back in Town and they would be getting on with the plans for the schoolhouse.”
- February 8, 1990 under Item No. 29 – Project Update and Approval of Schoolhouse Plans reads, “Public Works Director Elias informed the Council that a building permit had been issued on the schoolhouse plans.”
- May 10, 1990 under Item No. 24 – Project Update and Approval of Schoolhouse Plans reads, “Public Works Director Elias reported that the schoolhouse plans are in progress and Mr. John Scott of Allen Avenue had reviewed the plans.”
- Dec 13, 1990 under Item C stated, “Garril Page for the Ross Historical Society; Town of Ross: Legal owner of property. Ross Common, AP-73-242-04, C-D District. Request is to allow addition of lattice panels to existing redwood fence separating rental property from Old Schoolhouse; final height including trim/finials not to exceed 10 ft.” After some discussion, Councilman Goodman moved approval, seconded by Councilman Reid and passed with three affirmative votes. Mayor Barry abstained.
- May 9, 1991 under Item No. 14 – Report from Committee Heads reads, “Councilman Reid thanked Mrs. Garril Page and the Ross Public Safety for their help in the recent celebration to dedicate the Old Schoolhouse and the relighting of the Glenwood Bridge.”

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- May 14, 1992 under Item No. 9 – Open Time for Public Expression reads, “Mrs. Garril Page, President of Ross Historical Society reported that the bottom step had been ripped off of the schoolhouse and it had to be replaced. She said that Ross Historical Society will pay for this expense.”

Town Manager Broad noted that the rest of the material presented relates to the contribution of funding from the Ross Historical Society. Mayor Martin asked staff if there was a resolution passed. Town Manager Broad viewed a copy in the newspaper of a proclamation, but staff could not find any copy. Mayor Martin asked staff if there is any policy in regard to ongoing maintenance when the Town accepts a gift. Town Manger Broad responded that general policy is not to accept gifts because the Town does not want to be responsible for the maintenance of gifts going forward.

Mayor Pro Tempore Small pointed out that she researched minutes from 1989 and there was a lot of discussion with Garril Page at every Council meeting in regards to accepting this historic building. On May 11, 1989 under Item No. 28a is when the Town of Ross accepted the donation of the historic building to the Town of Ross. Continued discussion occurred at every meeting. In July, the Ross Historical Society contributed \$5,000 to the construction of the foundation. In September of 1989, the lot was stacked and the house was moved. On September 22, 1989, there was continued discussion at every meeting and due to the earthquake, foundation plans were delayed. On December 14, 1989, Mayor Peter Brekhus, according to the minutes, sent a letter to Richard & Kathleen Hoertkorn thanking them for the one-room Ross Schoolhouse. Town Manager Broad agreed to distribute such information to the Council.

Mayor Martin opened the public hearing on the gifting of the building to the Town of Ross in 1989.

Ken Fineman, Walters Road resident, stated if in fact staff is correct that the policy is not to accept gifts, then the Council, at a future Council meeting, should discuss having a policy that if they do accept a gift that the maintenance and ongoing financial obligations must be addressed as part of the decision as to whether or not to accept the gift.

Patricia Fields, Glenwood Avenue resident, desired clarification from the Council as to whether or not the Town accepted this building. Mayor Pro Tempore Small responded in the affirmative according to the minutes of May 11, 1989, the Town accepted the donation of a historic building to the Town of Ross.

Alanna Brady, President of Ross Historical Society, indicated that they have all of the documentation and letters to the Council from Mr. Hoertkorn. They have the Town celebration commemorating the building, and if the Council wished to review such copies, they would be happy provide. Mayor Martin asked if there is a resolution from the Council. RHS President Brady could not find a resolution, but they have a copy of the letter from Mrs. Page.

Barbara Call, Redwood Drive resident, asked if there is a difference between a donation and a gift because she views several plaques and benches throughout Town. She believed the Town accepts a lot of donations. Town Manager Broad explained that the policy of the two past Public Work Directors has been not to accept benches because it then obligates the Town to a level of upkeep and responsibility that they did not feel could be managed.

Diane Rudden, Willow Avenue resident, discussed the light pole at the dog park, and explained that property owners did pay for such light pole, but the money has gone to the Town to defray the cost of those light post. The Town planned on installing anyway and property owners had the money so they provided the funds. She wanted that to be clear that property owners contributed, but it is not a donation, just part of what they do. The property owners defrayed the cost on an item the Town was planning on doing anyway.

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.

Mayor Martin believed it is clear that the Town did accept this schoolhouse as a gift. It may have been exception to the rule because it was a significant building being the original one-room schoolhouse for Ross School. He assumed that when the Town accepts such a gift that there is a responsibility to maintain and preserve the object.

Council Member Hunter believes it seems reasonable. He added that a resolution would have been very helpful. There is no argument that the Town accepted the structure. Mayor Pro Tempore Small agreed it was accepted without a resolution. She clarified that some have stated that it was not the original Ross Schoolhouse, and the feeling on this was that there was a time when students were displaced in the school and put on different properties when displaced from the actual Ross School. When some indicate that it was a playhouse, it really was not. It really was used as a substitute Ross Schoolhouse when displaced in the early 1900. She further wanted to put that story to bed.

Council Member Strauss noted he had a structure very similar on his property. It was purported to be a schoolhouse, playhouse or daycare. It was a single wall structure.

Mayor Martin discussed the 1906 earthquake and the destruction of San Francisco brought an influx of people to Marin County. He then discussed a great book, "*Ross: the people, the places and its history*," which has a section about the original schoolhouse, which he read into the record as follows: "*By 1910, the first Ross School had opened in a tiny one-room building on the Lundstrom property at the corner of Lagunitas Road and Duff lane. It was here that the first Board of Trustees first had their meetings. By 1911, the student population had outgrown the Lundstrom Schoolhouse. The Board chose to build a larger one next to the original firehouse located at Allen Avenue and Lagunitas.*"

Council Member Russell asked staff if there are other buildings within the Town that are maintained by the Town or should be maintained by the Town. He desired a list in regard to a budget item to maintain properties. Town Manager Broad responded that Mayor Pro Tempore Small suggested the same for the Post Office for next year's budget. Staff agreed that could occur for all Town facilities, which would include structures. Council Member Russell wanted to add that item to the next Town Council meeting to create that list in order to maintain such structures. Town Manager Broad responded in the affirmative. Staff also explained that if they are considering accepting any donation, the Council must look at future funding for maintenance as Mr. Fineman suggested.

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Mayor Martin noted that the next item for discussion is relative to the \$5,000 donation from the Ross Historical Society and accounting for the disbursement of those funds. Town Manager Broad discussed the following correspondence:

- December 26, 1993 a letter was provided to the Town as an attachment to Mr. Hoertkorn's March letter to the Town. Staff could not find a record of this letter, so staff provided the attachment from Mr. Hoertkorn's letter. In that letter, the Ross Historical Society letter wished to donate \$5,000 to the Town to create a fund for the maintenance, future repairs, and associated work as needed on the Old Ross Schoolhouse. They requested that the funds not be merged into the Town's General Fund. That letter documents the original \$5,000 donation.
- January 11, 1994 a letter from Mayor Peter Brekhus back to Mrs. Garril Page, President of the Ross Historical Society, on behalf of the Town Council and the citizens of Ross, thanking them for the generous contribution.
- July 10, 1994 there is letter from Mrs. Garril Page to the Town Council indicating that due to erosion of the ground abutting the north side of the Old Schoolhouse there will be a new drainage box installed and the \$5,000 donation that the Ross Historical Society provided would pay for such projects.
- A proposal dated July 17, 1994 from David Magnuson for work that totaled \$2,150.

In looking at the Town's budget, the fiscal year ending June 30 of 1995 shows a School House Fund setup with \$5,127 in funds on June 30, 1994. That reflected the \$5,000 donation plus \$127 of interest. The 1995-96 budget shows in the year ending June 30, 1995, an expenditure of \$2,697. That indicates in the 1996-97 budget with no other expenditures, the School House Fund would then have \$2,561 as a balance after receiving interest income.

Then in 1996-97 budget year ending June 30, 1997, the budget reflects that the \$2,561 was transferred to the Ross Common Fund. The School House Fund fund lasted three years and then at the end of 1997 there was a decision made in adopting the 1997-98 budget to transfer the \$2,561 from the School House Fund into the Ross Common Fund. Page 11 of the document dated August 4, 1997, shows all the money in the Ross Common Fund, the \$16,700 was actually spent to leave that fund with a zero balance. Staff further noted that the budget was done by former Public Works Director Elias and approved by the Council.

Council Member Russell asked staff if there is any discussion in the minutes as to whether that was authorized or not. Town Manager Broad did not review the minutes of those Council meetings. Staff just reviewed the final budget.

Mayor Martin looked at the December 26, 1993 letter from Mrs. Garril Page, and there is one paragraph that talks about keeping the money in a separate account solely designated for uses pertaining to the Old Schoolhouse. Mrs. Page stated, "*We believe that over time there will be others who wish to make similar donations to what we suggest be named the Old School House Fund.*" He then asked staff if there is any evidence to indicate that additional donations came in. Town Manager Broad stated that no other donations were shown during the time period presented because they would have been reflected as revenue. In 1997, the Old School house fund no longer existed. Staff has not tried to track 1997 going forward to find if money was donated in the Town's General Fund to the Town on behalf of the Old Schoolhouse.

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Council Member Russell asked staff if the Council has the authority to transfer monies. Town Attorney Greg Stepanicich responded in the affirmative. Unless there was a specific agreement that bound the Town to spend that money in a certain way. Otherwise the Council would have discretion to decide how the monies are transferred.

Mayor Martin opened the public hearing relative to the \$5,000 donation from the Ross Historical Society and accounting for the disbursement of those funds.

Gary Scales, Trustee, Moya-Ross Historical Society, believed the Ross Historical Society has given \$10,000; \$5,000 initially and then \$5,000 for the maintenance and repairs. He clarified with staff that the Ross Historical Society has invested \$7,500 in the structure. Town Manager Broad explained that the first \$5,000 the Ross Historical Society donated directly to the foundation work, not to the Town. Staff believed the Ross Historical Society could then be out \$10,000—the initial \$5,000 for foundation and then \$5,000 contribution to the Town. \$2,500 was spent and \$2,500 went into the Ross Common Fund.

Sara Singer, Ross resident, desired clarification under what protocol did the donation which came with the money from the Ross Historical Society, did the Town Council have authority to move that money which was a specific request to the Town into the General Fund. Town Attorney Stepanicich responded that documentation that had been done going back to the acceptance of the schoolhouse and maintenance is not the best in terms of spelling out clear cut agreements and obligations with respect to the schoolhouse and the funds. Looking at the letter dated December 26, 1993, one of the challenges is that the letter requests that the funds not be merged into Ross General Fund and hopes to keep the money separate. A clear cut situation would be if there was an actual confirmation of an agreement indicating a condition that the money must be kept in a separate fund, and if not kept in a separate fund, then returned to the Ross Historical Society, but that discussion is not included in the letter. The letter speaks more in terms of a hope and desire rather than an actual conditional gift. Mayor Martin clarified that there is nothing binding the Town to spend the money in a certain way, so it is more of a moral issue. Town Attorney Stepanicich responded in the affirmative.

Ken Fineman, Walters Road resident, stated there is a legal obligation and then the ethical and moral issue. Legally, the Town may not have to give this money to the Ross Historical Society, but ethically and morally that is a different situation. He was one of the co-founders of the Ross survey, and 99% of the residents were satisfied with the history and character of this Town. He asked the Council, regardless of their legal obligations to think kindly of contributing some money back to the Ross Historical Society to preserve artifacts for generations.

Kathy Strauss, Willow Avenue resident, served on the Ross Recreation Board years ago and the issue of the schoolhouse came up and Ross School and Ross Recreation did not know what to do with it. She often talked to staff and from 1997 to 2007 that house was not maintenance free. She heard anecdotal items that windows were continually broken and railings were replaced. She wanted to know how much money, time and effort was spent in 10 years to maintain the Old Schoolhouse. She wondered if the Town did spend money that was not attributed. Town Manager Broad agreed that Public Works Superintendent Robert Maccario repeatedly replaced broken windows. Staff could try to track down invoices from vendors during that period.

Dan Bernhard, Winding Way resident, understands the record on this gift is very incomplete. He is curious if staff feels there is any doubt about the intent of the Ross Historical Society when it donated the money. Town Attorney Stepanicich responded that the intent of the letter is that the money would be set aside in a separate fund for the schoolhouse. Not knowing what conversations took place at that time, the letter speaks in terms of a hope and desire rather than an actual condition.

Tom Gaffney, Laurel Grove resident, stated that the Town did not make any counter offer. There is a request specified by the Ross Historical Society to use the money in a certain way. The acceptance of the house was not conditional. In essence, the contribution by the Ross Historical Society was an extra to the Town. He further believed the intent was fairly clear.

Barbara Call, Redwood Drive resident, stated that staff skimmed over the fact that there was \$16,700 in the Ross Common fund and then the balance was zero, and asked where that money was spent. She pointed out that \$2,500 of the schoolhouse maintenance fund was spent. Town Manager Broad desired additional time to investigate where the \$16,700 was spent. Ms. Call noted that when the Town accepted this historical building, it was done with a handshake. This was an attribute for the Town to have. The little schoolhouse should have been secured with a plaque indicating the value, which they believed would occur. They believed the schoolhouse would be maintained and valued and kept in good condition. Over the years many felt it was worth nothing, which is very sad. She asked staff to figure out what happened to the money. She believed the attitude is what must be reviewed that the Town no longer valued certain items.

Patricia Fields, Glenwood Avenue resident, echoed the previous speakers. The Council could have rejected the historical building, but the Town accepted this building. The Ross Historical Society spent \$5,000 to place a foundation on Town property and then gave a celebration with several in attendance to celebrate the fact that this building had been moved and created for the Town to listen to history and remember what went on in Town. She finds this callousness on the part of those that did not maintain the building and then demolished the building without any knowledge publically is shameful.

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.

Mayor Pro Tempore Small is not in the minds of those that transferred the money into the Ross Common Improvement Fund, but would hope that they transferred the \$2,561 into the Ross Common Improvement Fund with the intent those monies would continue to be spent on the schoolhouse since it sits in Ross Common. It might be possible to investigate how that money was spent. If \$16,700 was spent, she would not be surprised that at least \$2,500 was spent on the schoolhouse.

Council Member Hunter noted that if they take 10 years at \$250 per year, and assumed at least boarding of the windows and replacing broken windows that \$250 per year was spent. Mayor Pro Tempore Small used the schoolhouse when her children attended Ross School, as the fine arts program. In order to use that building, money was spent to fix it up and that was sometime in the early 2001-02. Money was spent, but she is not sure if it was the school or the Town.

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Mayor Martin looked at the 1994 invoices where some \$2,600 was debited from the \$5,000 donated by the Ross Historical Society. That money was spent on beautifying that structure with redwood planter boxes and water hookups to the planter boxes. His concern is that somewhere after that date, they lost sight of the preservation of that structure. The Town may be able to show that money was spent each year replacing windows, but something greater was lost and that is the commitment to maintain this very special building. If they had that sort of appreciation of the building there may have been efforts to raise additional private funds to continue to maintain and embellish the building rather than allow it to deteriorate overtime.

Council Member Hunter believed traditionally the way the Common is maintained is that the cost is split between Ross Rec, Ross School and the Town. For years the Vice Principal of Ross School oversaw that maintenance. At some point they stopped seeing the schoolhouse. The last time he remembers getting up on the porch, he looked in through a broken window and ivy was growing on the inside. It does not go from a pristine 1991 installation to ivy growing on the inside 12 to 15 years later, if it was being maintained. He believed the Town, Ross Rec and the Ross Historical Society all dropped the ball. It was decaying in front of them and no one did anything, which is terrible. Council Member Strauss echoed the previous comments.

Council Member Russell focused on what can be done to improve the situation going forward. It would be helpful if the Town Attorney could sit down with the Town Manager and go through where there are segregated funds and make sure they understand the basis and whether there are obligations in the future to maintain the segregation of those funds. Advice and record must be given to not have a similar issue in the future where there is uncertainty. Town Attorney Stepanicich and Town Manager Broad agreed.

Mayor Martin wanted to see the invoices for ongoing maintenance of the schoolhouse, and if those invoices cannot be provided, then the Council should consider giving the Ross Historical Society a donation. Council Member Strauss recommended giving a donation rather than reviewing past records. The Council agreed.

Council Member Russell wanted to place it on the agenda for the next Town Council meeting and consider whether or not to make a donation to the Ross Historical Society. Town Attorney Stepanicich stated that the Town received this money as a donation, and if not fully expended by the Town, then the Council can simply return funds to the Ross Historical Society. It would be better to place this matter on the next agenda as an action item. The Council agreed.

Mayor Martin discussed decisions and actions that led to the demolition of the schoolhouse in 2007. Town Manager Broad reviewed the minutes and the last reference to the schoolhouse was from 1992, and as discussed, there is a long absence until the schoolhouse is mentioned in the minutes. He read every page of the minutes with no record. The next time it is mentioned is on September 9, 2004, which is a 12-year period. It was mentioned at a meeting of the Council that included Council Members Barr, Poland, Byrnes and Strauss. Council Member Hunter was absent. A discussion occurred under Item No. 19 – Correspondence as follows: “*Mayor Barr stated two quick things. We will take the schoolhouse, Old Schoolhouse down, just get rid of it. The school wants it gone. Anybody wants it, come get it. Council Member*

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Poland stated fine. Mayor Barr stated and I am not sure what more we need than this. Sot it's demolition of structures, and let's all go look at it. Too many houses are coming down. And I would like to review that. I think we need to save some of the charm of Ross, save some of the façade, the shells. Gut the interior, save the shells. We are losing the flavor of Ross. So concerns on demolition of structures."

Mayor Martin asked staff if the Council was responding to a letter they received. Town Manager Broad was not certain. It was not referenced in regard to a letter. Council Member Strauss spoke to former Council Member Barr today and she submitted a letter in that regard.

Town Manager Broad then discussed the Ross Town Council meeting on June 9, 2005, and at this point Council Member Poland resigned from the Council and was replaced by Council Member Durst. Under Item No. 15 – Council Discussion of Renting Vacant Town-Owned Residences at 37 Sir Francis Drake Boulevard and 6 Redwood Drive the following was mentioned: *"Council Member Durst recommended looking at having some of the facilities shared. She also recommended that the Town review the Old Schoolhouse as well. Town Manager Broad stated that both the 6 Redwood house and the Old Schoolhouse are part of the Common parcel, so staff cannot just survey that property, they must go around the entire Common. Mayor Byrnes recommended that the Town conduct the entire survey and proposed that the lot be placed on a parcel itself. Town Manager Broad agreed."*

Town Manager Broad discussed a letter dated August 5, 2005 from Ross Rec Director Pam Riley to Mayor Byrnes and Public Works Director Mel Jarjoura stating, *"I am writing on behalf of Ross Recreation to request that you do not tear down or remove the Old Schoolhouse. We utilize this building throughout the year for storage of all our supplies and this year with Ross School requesting usage of our community room for music classes we will need even more space for storage. Please reconsider this effort and allow us the continued use of this space for as long as possible. Thank you for your consideration."*

Council Member Strauss pointed out page 8 of the June 9, 2005 Town Council minutes, which stated, *"Ross resident Sue Talmage suggested not touching the Old Schoolhouse until if and when the school's measures is passed because the school uses the Old Schoolhouse for music programs, so the existing building is beneficial to the school."* Town Manager Broad explained that was under a Town Council discussion of renting Town properties.

Council Member Russell asked staff if there have been other properties the Town demolished. Town Manager Broad noted that the residence at 37 Sir Francis Drake was torn down after the flood due to the extent of damage. Prior to that, the corporation yard building was demolished and rebuilt in 2000.

Town Manager Broad noted that on December 14, 2006 under Item No. 23 – Correspondence – Letter from Bob Kerstette. The following discussion occurred: *"The Council discussed the letter and Public Works Director Jarjoura explained to the Council that maintenance is split between the Town, Ross School and Ross Rec. It is not the Town who is making that determination in regard to fencing. A landscape contractor handles the maintenance and we have quarterly meetings between the Town, Ross School and Ross Rec. Greg Meyers is the liaison for overseeing the activity and funds."*

Mayor Martin clarified with staff that as far as the schoolhouse is concerned, the Town never shared the responsibility of maintaining that structure with Ross Rec or Ross School.

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Council Member Hunter stated how he reads it, especially since they folded in the \$5,000 from the Ross Historical Society into the Common Fund, his guess would be that it was considered part of the Common and any maintenance required would be the responsibility of the three since there was no separate fund. Mayor Martin asked staff if there is a written agreement in that regard. Town Manager Broad is not aware of a written agreement. The Town paid for expenses such as broken windows, but staff did not know if there were other expenses split as part of the Ross Common upkeep.

Mayor Pro Tempore Small wanted to know when that agreement started between the three parties. In 1997, money was folded in, so it would be interesting to know when that actually started. Council Member Russell wanted to have a formal agreement so that going forward the Common is maintained on that basis in regard to Ross School, the Town and Ross Rec.

Town Manager Broad discussed the next document, which is an invoice for paving from Nerviani Paving, Inc dated October 10, 2007. Labor is listed and the description stated, *“Demolish structure at Ross Common. Haul off debris to San Rafael dumpsite. Remove concrete foundation and haul debris to Richmond recycle site in the amount of \$6,500.”* The next document is the actual check for \$6,500 to Nerviani Paving, Inc. He indicated that two signatures are required on any Town check for over \$500 and this \$6,500 check was signed by both Council member Bill Cahill and himself.

Town Manager Broad recollected that Public Works anticipated the cost to be \$3,000 for time and materials to come out of Ross Common Fund. Due to the massiveness or sturdiness of the foundation and having to take it to two different dumpsites to recycle, it was more than anticipated. Council Member Russell noted that this discussion was purely in relation to which fund the Town should be giving up the cost, not how the decision was made to demolish the structure. Town Manager Broad responded in the affirmative.

Council Member Hunter noted that he was Mayor at the time and even though a decision was made in 2004 to remove the structure it never occurred. He was Mayor in 2007 and it was never on a Town Council agenda. His guess is that the matter was discussed at a Public Works Subcommittee meeting, and a decision was made, and staff was directed to remove the structure. He has worked with this Town staff for over seven years, and he knows that staff would not act on this unilaterally. There were instructions from either the Council or a member of the Council. The fault would lie with the Council. In 2004, and as known to this day, when the Council discusses correspondence, it is an open item on the agenda. The minutes of 2004 reflect the decision to remove the structure. A letter or letters asked about it and a very quick decision was made. Mayor Martin noted that proper procedure was not followed. It should have been agendaized in order to receive public comment. Council Member Hunter agreed, but in 2004 and during his term, the matter was never placed on the agenda.

Council Member Strauss pointed out that on June 9, 2005, Ross School was aware of it because they asked the Council to delay any decision until after the school measures passed. The Council received correspondence from former Council Member Jeanne Barr indicating a request from Ross School to remove the structure in early 2004, so some parties were aware of this.

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Council Member Hunter stated that the fact that it was taken down and no one noticed it for four years, is an indication of the poor condition it was in. They clearly established the schoolhouse was pristine in 1991 and then it reached the point where it had been totally ignored and it faded into the background. Council Member Strauss noted there were complaints of vandalism and kids hanging out drinking and smoking.

Town Manager Broad stated that on October 11, 2007 there was a hearing to consider Ross School staging and once the staging went up, which was the following June, the schoolhouse was not going to be accessible. Staff then provided the Council with two monthly reports the Council received from the Public Works and Building Departments. The first dated November 8, 2007 under Item No. 2 – Around Town stated the following: “We removed Old Schoolhouse with help of Nerviani Paving crew. It was quite a surprise to find out that the schoolhouse was standing on a two-foot wide and two-foot deep foundation. We recycled all materials that we could salvage.” The second report dated December 13, 2007 under Item No. 5 – Around Town, stated the following: “We built a section of cyclone fencing, next to the creek on Ross Common, where the Old Schoolhouse used to be, in order to keep the children away from the creek and away from the back of Allen Avenue homes.” This was from complaints from residents on Allen Avenue. Staff then discussed several correspondences: Letter from Richard & Kathleen Hoertkorn dated March 16, 2011; letter from Ross Historical Society dated May 6, 2011; staff’s letter to Mr. Hoertkorn dated May 11, 2011; and an email from former Council Member Jeanne Barr dated May 14, 2011, which staff read into the record as follows:

“Hello Everyone,

I was surprised to see the three-page spread on the Ross Schoolhouse in the Ross Valley Reporter. As usual, there are quotes taken out of context...and no reporter contacted me. Looking back, I remember from the day the “schoolhouse” was delivered to the Common, there were suggestions it was nothing more than a child’s playhouse and wondering why a “schoolhouse” would ever be in the location off Lagunitas Road. I didn’t investigate. However, when I was on the Council there were many, many requests to take it down. The school was constantly complaining about the disrepair and misuse of the structure. You might want to contact Greg Meyers. School officials complained that the place was full of rats, used for storage only, leaking, and obviously a location for kids to hang out smoking and drinking. There were always empty cans, bottles, cigarette butts and garbage surrounding it. It might have looked nice when it was first delivered to the Common, but over the years it looked, in the words of Bill Cahill, like a little shed.

The school took the lead in trying to contact residents to find a new home for the building. Apparently, no one was interested. If the minutes in 2004 reflect my stating the old school was coming down unless someone wanted to keep it, it was three years before it did come down. And then four years before anyone noticed. I do think the Hoertkorn family should have been contacted. Carla is one of my best friends and I know Rich and the three girls.

People mourn the loss of the real old two-story schoolhouse, the old rail station turned post office, the elms on Shady Lane, the dirt road to Natalie Coffin Green Park, the natural pathway on Shady Lane, the grand old house and quaint cottages.

It would be nice if this sort of interest and involvement would be directed toward issues like helping the homeless for several days during the winter. It’s not just the physical buildings which deteriorate, but also the soul of the Town that matters.”

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Town Manager Broad noted that an anonymous email was circulated, but not sent to the Town and staff provided two comments the Town received related to the anonymous email. The first is from Marcia Ginsburg dated May 26, 2011, which stated the following:

“Hi Rupert – You may already be aware of this nasty and anonymous email circulating to Town residents. Obviously, this person does not understand the irony of insisting on accountability while remaining unaccountable for his/her own words! Please accept and extend to your fellow Council members my appreciation for all the work that you do. I am sure that this situation could have been handled better, but I don’t think it warrants the level of vitriol expressed below.”

Town Manager Broad added that the next email dated May 25, 2011 from Lisa James stated the following:

*“Dear Concerned Citizen,
You seem to be very concerned about this structure, but no one noticed it was missing until 3½ years after it was demolished? It is inappropriate to make accusations while hiding behind an anonymous email address. The most notable thing about this email is the missing name of the author.”*

Council Member Russell noted there has been a lot of focus on the Town’s decision to demolish the schoolhouse and asked staff to elaborate. Town Manager Broad noted that there are factors that he was specifically aware of or heard from others, but did not have personal knowledge. He talked about the lack of maintenance and disrepair of the structure. There was no consistency for a 10-year period to maintain the schoolhouse. Staff heard from other Council members comments about the condition and the feeling that the schoolhouse should be removed. Council Member Russell clarified with staff that the only property removed was from the flood. If demolishing property, would staff expect there would be a resolution of the Town Council or committee for taking that action. He desired best practices in moving forward. Town Manager Broad explained that this structure was regarded by Council members as “a little shed.” Any demolition should go through the Council, but at the time it was not placed on the agenda for a formal hearing. Council Member Russell is trying to understand that the perspective was that it did not rise to a level where a public hearing was needed. Town Manager Broad explained that the building was acting as a shed and it was a deteriorated shed. Staff explained the process and staff was aware this would occur and did not feel it was necessary to step in and indicate it was in violation of any Town regulations.

Council Member Hunter noted that as Mayor at the time it never was placed on the agenda and in knowing staff, and how they work, he believed it was at the direction of the subcommittee. Council Member Strauss believed Ross Rec and Ross School were aware of the situation due to the correspondence received. Mayor Martin asked staff if State law requires public hearings on land use decisions of this nature. Town Attorney Stepanicich responded that it does not regarding city property. In terms of planning permits, there are procedures that must be followed in terms of notice of hearing before permits may be issued. This is a question of local rules, policies and practices. In terms of a historical building, to the extent there could be a CEQA question if there was a discretionary decision made to remove a historical building. The question then becomes how was that decision made and was that a ministerial action or discretionary action. If there had been some formal designation as a historical structure that would give it a special status. If a discretionary decision was made and it came up on the Council’s agenda to discuss whether to remove or not to remove or

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destroy a building, and evidence was received of its historic significance that would trigger a CEQA review. The context of this would end up being what was the actual approval being made and how was that carried out. Again, was that done at a ministerial level or done at a discretionary level.

Mayor Pro Tempore Small pointed out that Town staff would never move forward on any matter without the authorization of the Town Council or a Council member. Council Member Hunter agreed.

Mayor Martin noted that in June of 2007, the Town Council adopted the General Plan, which works as a blue print for any land use decisions made as a Town. Ross's General Plan is a well-written document and congratulated Council Member Hunter in that regard. It took three years that involved community input and set forth essentially a constitution by which to make land use decisions. It considered a number of issues, including historic preservation. Goal No. 4 of the General Plan is protecting historic places and resources. The number one policy of Goal No. 4 is historical heritage that reads, "*Maintain the historic feel of Ross, by preserving and maintaining historic buildings and resources and areas with recognized historic or aesthetic value that serve as significant reminders of the past.*" That General Plan was adopted in June 2007 after an extensive public hearing and comment by the Council. He did not understand less than six months later they demolished that original one-room schoolhouse. It seems incongruent. Was the Town totally unaware at that time that it was a historic building or the fact that it was not being maintained guide that decision to tear it down?

Council Member Hunter noted that by this point the building had deteriorated to a point that it was nothing more than an attractive nuisance. It was not being maintained. Windows were broken and being covered up. It lost its charm and significance at that point and was removed. Mayor Martin asked if the matter was agendaized that Mayor Goodman, Mr. Hoertkorn or members of the Ross Historical Society would come down and testify that it is a historical building and should be preserved. Council Member Hunter stated in this context of course. This is an unfortunate situation. For 15 years no one did anything. The building is demolished and then another four years no one even noticed it. It is unfortunate and there are lessons that the Town can learn from this, but what happened, happened. It is gone. What the Council can do is take the lessons from this so that it does not happen again.

Council Member Russell asked staff how does it work in other towns as to when the Town Manager can implement policies of individual members of the Council. Town Attorney Stepanicich noted that the decisions by staff reflect the decisions of the Council as a body. To the extent the Council chooses to delegate to committees, there is authority to do so. Normally, direction would be taken from the Council as a whole as a typical practice. Council Member Russell wanted to focus on the future to determine what decisions go to the Council or committees to avoid such issues in the future.

Mayor Pro Tempore Small believed excellent suggestions have been made tonight. Also, at the last Council meeting, Mayor Martin presented a policy to prepare a new ordinance on standing committees so it is more clearly defined. Standing committees do not necessarily take action as much as they call information together and make recommendations to the Council. They gather information and bring forth recommendations to make the Council meetings timelier. She hopes to address such policy at the June meeting.

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Council Member Strauss noted that the General Plan was to identify the historical structures. Those significant structures must be identified to understand the resources in the Town. Council Member Russell stated that staff must know what kind of decisions must come before the Council or committee.

Council Member Hunter believed at some point commonsense must step in. History would dictate that this type of situation does not happen often and generally the Council gets it right, but in this case, they did not. He further would be cautious about creating too many rules.

Mayor Martin opened the public hearing on this item.

Dan Winey, architect/preservationist, remembered when the house was put in place. In the early stages it was well-maintained. Over that 10-year timeframe it kept deteriorating and deteriorating. He recalled five years ago, he walked passed the schoolhouse there were beer cans and other drug paraphernalia. This was a dangerous building. No one cared about the building and it was an orphan from the very beginning. The fact is that no one cared and it was in disrepair and dangerous, it should have been torn down. He feels like everyone is looking at the Town Manager. The Town Council had the responsibility of maintaining that building from the very beginning. The key is that he is a preservationist and he did not believe it has anything to do with the General Plan. He came to Ross because of the historic nature of the Town. It is unfortunate that it occurred. He stated it is very unfair to look at a scapegoat. It is all about process and understanding what was important. If it was important it should had been celebrated with a plaque. The Town had something great to begin with and then for whatever reason it lost its value to all, which is unfortunate.

Diane Rudden, Willow Avenue resident, submitted an email to Council in response to the anonymous email that was submitted, which was awful. The schoolhouse was never incorporated into the Fourth of July celebration. Ross Rec was given the option of using it as an office. It had a light bulb and no heating or insulation. It could only be used on a very nice day. It was always locked up. To be used, as just storage is an indication that everyone dropped the ball. It was a nuisance at the very end. It was unloved and it is too bad.

David Peterson, Ross resident, a decision was made, improperly in this case, regardless of what shape the schoolhouse was in, the Town accepted the donation with an obligation to maintain it. His concern is that a decision was made by a subcommittee or whoever, and an action was taken without a public hearing. No reasonable person can minimize the donation of that schoolhouse to the Town that was maintained nicely for some period of time and then deteriorated, cannot be minimized. There have been other instances around Town where procedure has been wrong. The Council and staff cannot bypass proper procedure. Bad procedure was done and it must be changed. Subcommittees and individual Council members cannot make decisions without a public process. Matters must be deliberated, public input must be provided and then a decision can be made.

Ken Fineman, Walters Road resident, started with a reading from the Town's website as follows: "*Ross small-town feel and its open and tree-covered hills, winding creeks, graciously landscaped streets and gardens, and low-density development all contribute to its special charm.*" He indicated that he was afraid that the heart-warming description of Ross left out one important detail, the 800-pound gorilla in Town. The 800-pound gorilla is fear, intimidation, preferential

treatment, inconsistency in decision-making, and unethical or illegal behavior with no consequences. This is the exact type of behavior that led to the demolition of the Old Schoolhouse without public notice or input. It is textbook “old boys club” mentality. He tried to bring up this type of behavior during a discussion of the Brown Act at the October 6, 2010 Town Council meeting, and was told by Council Member Hunter that he was living in “Ken’s World,” and that his view of the past was somehow contrived or made-up. He learned later that Council Member Hunter had the audacity to call the former Chief of Police to complain that he was a public threat and should be watched. A failed attempt at intimidation and just like Jack Nicholson in the Shining, he’s back. The question before the Town is whether or not the demolition of the historic schoolhouse was an isolated event? Clearly, if they are to make progress, they must understand the answer to that question. In January of 2008, he had just been elected President of the Ross School Board and they were planning a kick-off meeting on January 16 to discuss the Ross School bond. On January 15, Ross School received a letter from Town Manager Broad indicating that it would be extremely difficult for the Council to support the bond measure on the same ballot competing with the Town’s general service tax. The matter was never discussed at the Council, so either it was not truthful or a Brown Act violation. He asked how did the entire organizational structure of Ross shift about five years ago from a Town Council-led Town with a Town Administrator, to a Town Manager-led Town without any public discussion or vote on this extremely important governance issue. He added that people are adding family members to the payroll and people are hiding money for their pet projects. He urged the Council to not only investigate the circumstances surrounding the Old Schoolhouse, but also to take whatever steps are necessary to stop the fear tactics, intimidation, preferential treatment, inconsistent decision-making, and unethical or illegal behavior with no consequences.

B.J. Martin, Shady Lane resident, made clear that the fact no one noticed the building was missing was not because people did not care about it, but that multiple portable units have been placed in front of it from the school. She did not understand if it was falling down in such disrepair, then why did it cost twice as much as anticipated to remove and why did it have such a substantial concrete foundation. There has been mentioned that the schoolhouse was a place for kids to drink and smoke and it deteriorated to the point of being a nuisance. She pointed out that the paddleball court was like that for years. Homeless lived there and it was not torn down. In fact, grant money was spent to improve the parks. That money could have been spent on the Old Schoolhouse. State money went unspent for seven years since the Town “*didn’t have a project*” and the Town let the historic structure fall to disrepair. She anticipated being a little old lady tending those flowerbeds. It is a shame that the opportunity has been taken away.

Barbara Call, Redwood Drive resident, stated it was not in that bad of shape it was used in 2004 by Ross School for a music room. Structures are not demolished due to berry bushes and weeds. Windows are not that hard to replace. Kids can congregate anywhere. It is a shame the building is gone. People noticed it was gone immediately. The Town cannot use the condition of the building as an excuse for tearing it down. The love for the historical nature of Ross seems to be gone. She was interested to hear Town Manager Broad’s response as to who gave the directive to tear down the building and under what authority and for what reason. It seems to be important. There are no more historical structures on Ross Common that can be demolished.

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

Council Member Strauss appreciated all the comments. It appears it was done over a number of Council meetings, but never formalized. He agreed the process must be changed. Ross Rec, Ross School and several Council members were aware of it. In moving forward, he recommended agendaing the return of funds to the Ross Historical Society.

Mayor Pro Tempore Small appreciated Mr. Peterson's comments. They are stewards of the community. This should have been agendaed and gone out to the wide array of the community to receive public input. Sometimes they forget when talking to a few people at Ross School or Ross Rec, but the Council represents the whole community and must bring their decision-making to the whole community. The Council must reflect the Town's choice and wishes. She apologized greatly for this occurring. This meeting is not to scapegoat anyone. Matters must be agendaed and discussed. She appreciated this process and believed excellent suggestions were provided on how to move forward. Unfortunately, they had to learn through this painful lesson.

Council Member Hunter stated that the Hoertkorn's deserved an apology sooner than they got one and deserved a right to be involved in the decision-making. Also, if the Town is going to accept a gift that requires maintenance, the Town must be absolutely sure and have a resolution to avoid this situation in the future. Like the "*Bufano Bear*" it will continue to be something that they all can be proud of. The procedure or lack there of that resulted in removal of the Old Schoolhouse was flawed and they must make sure this does not happen again.

Council Member Russell agreed that they must make sure that next time the Bufano Bear is not removed. Staff must understand where authority comes from and that they have proper procedure that involves the public process and do not do things behind closed doors. There have been some unfortunate things that happened and the Council is sorry. At the end of the day, it is not all that helpful to figure out who is at fault. There is a lot of blame to go around and they must make sure they never do it again, and to do that they must have proper procedure. Residents should never have a feeling of intimidation in this Town. They must create confidence within the Town that residents' voices are heard and that everyone is given their fair opportunity to be heard. He further agreed there are a lot of lessons to be learned.

Mayor Martin shared the previous comments. He also congratulated Council Member Hunter for his straightforwardness on this issue. He thanked everyone for attending this meeting and making comments in a very direct and civilized manner. He looks in the mirror and scares himself everyday that he is turning into an old guy. It happens that the draft Brown Act coincides with his age. That document which regulates how they run public meetings was written and executed as law roughly 60 years ago. It is regrettable that this Town is only beginning to abide by that law. Destruction of that schoolhouse is regrettable and should have been avoided. The Council must examine their procedures to ensure that they have as much transparency as possible and give the benefit of the doubt on any given issue to the citizens. They all regret this decision. Going forward the Council will develop policies to ensure it does not happen ever again. The Council will also look at having an

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inventory to really designate both landmarks on private and public property. This is not the last time they will hear this issue. Related matters will be agendaized.

4. Adjournment.

By order of Mayor Martin, the meeting adjourned at 8:43 p.m.

Christopher Martin, Mayor

ATTEST:

Gary Broad, Town Manager