

## REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, NOVEMBER 10, 2011

*A public reception was held at Town Hall prior to the meeting from 5:30 p.m. to 6:30 p.m. honoring outgoing Town Manager Gary Broad.*

1. 6:30 p.m. Commencement.

Present: Mayor Carla Small; Mayor Pro Tempore Rupert Russell; Council Member Scot Hunter; Council Member Chris Martin; 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. Minutes - None

4. Demands.

The demands were met.

5. Open Time for Public Expression - None

6. Town Council consideration/adoption of Resolution No. 1756 commending outgoing Town Manager Gary Broad.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to adopt Resolution No. 1756 commending outgoing Town Manager Gary Broad. Motion carried unanimously.

The Council adopted a resolution commending Town Manager Gary Broad for his twenty years of service to the Town and presented him with some parting gifts as he took his leave to become the St. Helena City Manager. The resolution named a long list of Mr. Broad's accomplishments, including: adoption of the Town of Ross General Plan in 2007; creation of the Town-wide email list and numerous new communication vehicles, including *The Morning After*; outstanding fiscal stewardship, which resulted in an increase in Town reserves from \$1 million to \$5 million from 2001-2011; and, successfully attracting over \$3 million in grant funding to complete a number of public works projects, from the Lagunitas Road Bridge to the Shady Lane pathway.

7. Report from Mayor.

Mayor Small announced that the Council appointed Pat Thompson as the Town's new part time Interim Town Manager. After retiring in 2006 from the City of Napa where she served 17 years as City Manager, Ms. Thompson joined the field of interim city management. In the last five years, she has served as the Interim City Manager for the cities of Ukiah, Novato and Larkspur, as well as the Interim Assistant City Manager for the City of Santa Rosa. With her considerable experience and impeccable references, the Council, staff and residents are fortunate to have her guidance and leadership through this transition. She met with staff and Council on November 9th and will start her first official day on Monday, November 14th. The Ross Town Council will host a meet and greet for residents prior to the December 8th Council meeting.

## November 10, 2011 Minutes

Public Works Director Bob Hemati is hosting a public meeting on the proposed improvements to the Sir Francis Drake Boulevard/Lagunitas Road intersection on Tuesday, November 15th, at 7 p.m. at Ross Town Hall. Now is the time to ask questions and share observations. The Council would appreciate insight and participation from the community.

The Public Works Department and the Public Works Committee are continuing to work with Ross School and their project manager to resolve any outstanding construction issues related to Ross Common.

At the November 4th Special Council meeting, an ad hoc committee, including Mayor Pro Tempore Rupert Russell and Council member Scot Hunter, was formed to work with two Ross School Board members, Bob Dickinson and Elizabeth Robbins. Along with Ross Recreation, they are charged with addressing policy and legal issues that have arisen with the completion of the gym.

### 8. Swearing-in of Interim Town Clerk Linda Lopez.

Mayor Small swore in Interim Town Clerk Linda Lopez.

### 9. Report from Public Works Director.

- **Bolinas Avenue drainage and traffic calming meeting update**

Public Works Director Bob Hemati reported that meetings have occurred with San Anselmo and as a result they developed a general scope of work. The RFP (*request for proposal*) will go out in the next couple of weeks. In mid December interviews will commence with different consulting firms. In the meantime, they are working with Town Hydrologist Matt Smeltzer on intensive hydrology reports to incorporate into the design. The San Anselmo Seminary Project is happening and staff is taking advantage of their planning stages to incorporate overall drainage into their preliminary planning. San Anselmo is being very cooperative as far as incorporating all the potential mitigation items in regard to the Seminary site.

Council Member Martin asked staff if San Anselmo has been responsive in terms of addressing culverts on Oak Avenue. He explained that culverts have been clogged and runoff ends up on Bolinas Avenue. Public Works Director Hemati responded in the affirmative.

- **3 Bear Hut Update**

Public Works Director Bob Hemati indicated that Architect Wendy Posard continues to work on 3 Bear Hut along with Ross resident Tom Gaffney.

### 10. Report from Committee Heads.

Public Works - Council member Strauss

- **Report on November 1<sup>st</sup> Public Works meeting**

Council Member Strauss reported that on November 1st Public works held a meeting. With regard to the Ross Common restoration as it relates to the School, Public Works Director Bob Hemati is writing a letter indicating that the Town is basically not accepting the project. They are trying to work through each item at it relates to drainage, the stage, irrigation and ball field. If they cannot resolve, then the Public Works Committee will get involved.

The Sir Francis Drake intersection is proceeding and the preliminary layouts are available. One item discussed during design review was a meandering path in front of Town Hall, which will

## November 10, 2011 Minutes

take pedestrians away from traffic. Also, they will consider undergrounding from the intersection to the other side of the bridge.

In terms of the Sylvan Lane intersection, Traffic Consultant David Parisi recommended moving forward with Option No. 1, which is moving the painted line 3 to 4 ft. out as one travels into Town on the right side of the bridge and add striping along that to bring all vehicles out to the center of the line. The next step is to possibly implement a light that could flash when a vehicle approaches Sylvan Lane. It would signal a light on the bridge where the second school crossing is located. Public Works Director Hemati also met with URS, so ongoing discussions continue.

Aging of the bridge was another topic discussed and Public Works Director Hemati met with Consultant Nick Panayotou who agreed it is not aging correctly. Consultant Nick Panayotou will provide findings and then they will go back to URS and the contractor to correct and get the bridge back to the darker color desired. The Town Hall improvements have been put on hold until the new Town Manager is on board.

Also, they discussed possibly having an "idle-free" zone at the lake and having a sign that indicates, "do not keep your vehicle running while looking for a parking place."

Finance Committee Report- Council member Russell

- Report on October 19 Finance Committee meeting
- Update on FY 09-10 and 10-11 Audits

Mayor Pro Tempore Russell reported that the audited financial statements for the Town's 2009-2010 fiscal year have been completed and copies are being made available this week. The audit for the 2010- 2011 fiscal year can now start.

Liz Ford, who previously worked on bookkeeping for the Town for about 20 years, has recently rejoined Ross as Town Accountant and bookkeeper following the resignation of Paige Rothman. There is currently a transition while Paige gets ready to leave the Town completely as of the end of the year and Liz gets up to speed with new software and gradually takes over various responsibilities. The Town is very lucky to have found Liz (*who came with strong praise from all at the Town who had worked with her previously*) at this critical moment as the Town transitions not only from Paige, but also with Town Manager Gary Broad leaving the Town (*including as Finance Director*) this week.

There will be a financial impact not only directly from Town Manager Broad leaving (*in particular paying off his accrued vacation entitlement*), but also generally from the changes that are occurring following his departure from the Town, such as with the appointment of Pat Thompson as the Town's new Interim Town Manager. The Town has always been run in a fiscally prudent fashion and members of the Finance Committee have tried to ensure that fiscal considerations are carefully considered in the Town's decision-making as the Town implements these changes.

Finally, at the last Finance Committee meeting they discussed whether it made sense to introduce new Town ordinances to determine project valuations and to amend the existing construction completion ordinance. The Finance Committee decided that the Town does not at this point need to create new or additional rules. Instead, staff will be more proactive and provide more information on Town policies on the Town's website so that residents can have proper guidance when dealing with issues regarding how their projects are valued and by when they need to complete their projects.

## November 10, 2011 Minutes

### Report on Marin Energy Authority meeting - Council member Martin

Council Member Martin reported that in January, the Town of Ross will officially be seated on the Marin Energy Authority (MEA). He attended two Board meetings and a retreat to observe activity. The County and every Marin County municipal entity have now enrolled in MEA. This will add 90,000 new customers to the MEA for final roll-out of electrical power to its customers next July. It is estimated that the expansion will boost the peak power demand required by MEA from 75 to 90 MW of power to 200 to 240 MW. MEA is currently exploring a number of opportunities for the purchase of renewable power at affordable rates. He is pleased to report that staff is finding a number of prospects offering very competitive prices. Last week, the MEA Board approved an agreement to purchase 15 MW of solar power-generated electricity over the next 20 years from North American Power Group. This facility is located within 125 miles of Marin County. The contract will span 20 years and the cost of the power is very competitive and lower than the rate MEA purchases power from Shell North America. The MEA Board also approved the purchase of 3 megawatts of very low cost hydroelectric power over the next 10 years from the Western Area Power Administration, an arm of the U. S. Department of Energy whose role it is to market and transmit electricity from water projects. The State of California and the Public Utility Commission (PUC) does not count hydroelectric power a renewable power source, but it will offset some of the power MEA would otherwise need to buy from fossil fuel sources. MEA staff is reviewing better ways to present the opt-out notice, including automated phone messages and letters, rather than glossy mailers addressed to account holders.

*Council Member Hunter announced that a Public Safety meeting would occur on Friday morning, November 18th, 2011.*

### II. Report from Ross Property Owners Association.

Ann Hickey, RPOA representative, announced that new banners will go up on the light poles around Ross Common on Monday and Ross School students provided the artwork. The Ritter House contacted RPOA to participate in their family-to-family gift barrel program. Jane from the Post Office agreed to place the gift barrels inside. The program provides items for families in need. RPOA announced that Holiday decorations will go up the first week of December. RPOA further noted that several residents have questions in regard to the new trees planted near the stage. They appear to be planted on Ross Common. Council Member Strauss explained that trees were removed during construction and replaced in the approximate locations, but agreed to review. His goal is to restore the Common and reestablish the canopy and part of that will be looking at what was planted on Town property.

Mayor Small pointed out that the rendering of the completion of the gym in their annual report was not the actual gym. The trees on the rendering are about five times larger than what was planted, so it would be interesting to notate that photograph.

### 12. Flood Control Report.

Council Member Martin reported that Supervisor Katie Rice, Hal Brown's appointed replacement on the Board of Supervisors, organized a meeting this morning to provide a full briefing on the status of all the various flood control projects within Ross Valley, aka Flood Zone 9. Jack Curley, the County's Flood Control Engineer ran the meeting. He started off outlining all of the various projects within Ross Valley that are linked together as the Ross Valley flood control plan to eliminate the 100 year flood event, which was the level of flooding experienced on January 1, 2005. The projects include dredging the Corte Madera Creek in Larkspur; implementing the Army Corps of Engineers projects for Units 1-4, which spans along the Corte Madera Creek from Kentfield to the Ross/San Anselmo border; replacing seven

### November 10, 2011 Minutes

bridges (*three in Ross, three in San Anselmo, and one in Fairfax*); the Phoenix Lake detention basin project and other detention basin projects in San Anselmo and Fairfax; and a number of other bank stabilization and creek enhancement projects. The sum total of all these projects is estimated to be \$129 million. The flood control parcel tax will generate \$43 million over its 40 year life, so for the County this means for every \$1 the County spends of its limited funds for Ross Valley flood control, it must raise \$3 from outside source. Thus far the County has pledged \$7.7 million to an equivalent \$7.7 million of matching State funds for the soon to be awarded Phoenix Lake floodwater detention project. The County is also pursuing, with the assistance of local towns, \$16 million Federal and State funds paired with \$1.2 million local funding for replacing the seven bridges that impede Ross Valley flood control. Thus to date, the County has potentially leveraged close to \$24 million of State and Federal funds against approximately \$8 million of County flood control funds. This meets the leveraging \$3 of outside funds for every \$1 of local flood control funds.

Within days from now, the State Water Resource Board will announce the funding for Phoenix Lake detention basin. That project is projected to take approximately five years to complete, assuming there are no significant environmental or jurisdictional snags.

Yesterday, the Army Corps of Engineers estimated that the likely preferred plan for the Units 1-4 project will cost approximately \$6.5 million. The Corps does not expect Federal funding will be forthcoming for this project in 2012 or 2013. The County has agreed to aggressively pursue federal monies to complete the Corps project since it is the linchpin to the overall Ross Valley Flood Control project. Jack Curley, also reported that Facundo Funes, the Corps Project Director for Unit 4, has left the Corps. Hopefully, his replacement will be as responsive as Facundo.

The County would like to meet with Public Works Director Bob Hemati to discuss and explore applications for the replacement of three Ross bridges for flood control purposes. These are the Sir Francis Drake Boulevard Bridge, the Locust/Shady Lane Bridge, and the Winship Bridge. Federal and State funding for these bridges may be available to cover the entire cost of the project.

Given that most of these projects will take at least five years to complete, the County has pledged to work with all communities pursuing grant opportunities, creek maintenance, and flood preparedness. All communities were urged to adopt floodwater management practices, including quantifying permeable surface area for each parcel and reducing impermeable surfaces. Representatives from towns also asked the County for assistance with monitoring and educating property owners adjacent to creeks about proper maintenance of creek banks and to prevent illegal dumping.

Lastly, a new preliminary FEMA map of flood zones will be released between February to May next year. This may have a significant impact on many Ross property owners. The County will ask FEMA to hold a public meeting upon the release of the new flood zone map. The County will retain Stetson Engineering to review the new map.

13. **Report from the Ross School** - No report

14. **Consent Agenda.**

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

**November 10, 2011 Minutes**

*Council Member Martin pulled Item Nos. 14d & 14e from the Consent Agenda for further discussion.*

- a. Town Council adoption of Ordinance No. 627 approving the Marin Energy Authority Joint Powers Agreement and authorizing the implementation of a community choice aggregation.

Mayor Small asked for a motion.

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

- b. Town Council adoption Ordinance No. 628 amending Ross Municipal Code Chapter 8.04, “Animal Control Law” to regulate barking dogs and unreasonable animal noise

Mayor Small asked for a motion.

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

- c. Town Council approval of regular Council meeting dates for 2012, including special date for the April Council meeting.

Mayor Small asked for a motion.

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

- f. **1 Upper Road and undeveloped lot known as 206 Lagunitas Road, Lot Line Adjustment No. 1838**  
Alan Grujic and Dorinda Lewis (owners of both lots), 1 Upper Road and undeveloped lot known as 206 Lagunitas Road, A.P. Nos. 73-122-09 and 73-122-10, R-1:B-A (Single Family Residence, 1-Acre Minimum Lot Size), Very Low Density (.1-1 units per acre), Zone A and X (creek is within 100-year floodplain). Lot line adjustment to allow the transfer of 682.6 square feet from 1 Upper Road to 206 Lagunitas Road and 682.6 square feet from 206 Lagunitas Road to 1 Upper Road.

Mayor Small asked for a motion.

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

**Conditions for 1 Upper Road and 206 Lagunitas Road Lot Line Adjustment**

1. The Town approves the transfer of 682.6 square feet from 1 Upper Road to 206 Lagunitas Road as shown on the map approved by the Town Council on November 10, 2011. This lot line adjustment shall not create any new lots or parcels.
2. The property owners are responsible for contacting any lenders to sign appropriate papers and releases for recordation of the lot line adjustment.

**November 10, 2011 Minutes**

3. The applicants shall provide the planning department with a copy of the recorded documents that include a new legal description of the resulting lots by November 10, 2012.
4. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

End of Consent agenda.

**14d. Town Council discussion/action to enter into an Amended Joint Powers Agreement for Hazardous Materials Spills Management with the County of Marin and Marin cities/towns, fire agencies and Marinwood Community Services District.**

Mayor Small attends the Joint Oversight Committee meetings and this JPA (*joint powers agreement*) is a housekeeping issue. This JPA has been in existence. It turned out that San Rafael is the only city that actually had a signed agreement, although Ross has been paying 1.1% around \$700 or \$800 per year. Chair Pat Eklund of the Joint Oversight Committee asked each member to go back to their town/city and fill out the necessary paperwork to adopt.

Fire Chief Tom Vallee agreed it is a housekeeping detail. Ross has been a member since the early 1990s. In 2008, the JPA was amended when some agencies combined and for whatever reason it did not go back to the participating agencies for signatures. Staff further noted that the JPA has not changed.

Mayor Small 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 Small asked for a motion.

**Council Member Martin moved and Council Member Strauss seconded, to formally enter and sign the JPA agreement for Hazardous Materials Spills Management with the County of Marin and Marin cities/towns, fire agencies and Marinwood Community Services District. Motion carried unanimously.**

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

**14e. 21 Fernhill Avenue, Extension of Time for Variance, Design Review, and Demolition Permit No. 1686**

Brian and Rachel Wells, 21 Fernhill Avenue, A.P. No. 73-091-37, R-1:B-20 (Single Family Residence, 20,000 sq. ft. minimum lot size), Low Density (1-3 units per acre). Request for a second one-year time extension to October 8, 2012 for a demolition permit, variance,

**November 10, 2011 Minutes**

design review application and second unit permit approved on October 8, 2009, to allow the demolition of the existing residence and construction of a 4,082 square foot new residence, 469 square foot detached garage, and landscape improvements including a 16-foot by 32-foot pool. The exterior materials for the French country style residence include cement plaster siding, slate roofing and painted wood windows and doors. A side setback variance was approved to permit 25 square feet of terrace area within the west side yard setback (20 feet required, 16 feet proposed).

Lot area	27,802 sq. ft.	
Existing Floor Area	13.5%	
Approved Floor Area	16.3%	(15% permitted)
Existing Lot Coverage	11.1%	
Approved Lot Coverage	9.1%	(15% permitted)

Council Member Martin noted that under the municipal code a second extension of up to one year may be granted upon submittal prior to expiration of the first extension, if the Council determines that the original findings remain valid. His concern is that since the approval of this application, one significant change has occurred and that is that this Council adopted the Stormwater Management Ordinance and this project was not reviewed under the terms of that ordinance. He cannot justify that the original findings remain valid. Senior Planner Elise Semonian indicated that when this project came through they were not looking at impervious surfaces as they do today. The project would be required to comply with the Stormwater Management Ordinance. Staff suggested continuing so the applicant can come back with additional information.

Mayor Small clarified with staff that this project would adhere to the new Stormwater Management Ordinance. Senior Planner Semonian responded in the affirmative.

Brian Wells, applicant, explained that they are shrinking the house in regard to lot coverage. He is more than willing to work with the Town. The fact is that his lot is flat. When the flood occurred in 2001, his home was the only one that did not flood. He is asking for an extension that has been granted in the past.

Senior Planner Semonian noted that one requirement is that the landscape plan come back for review, so staff suggested wording that condition in such a way that it opens up review of any impervious non-house surfaces when the landscape plan returns. Council Member Martin stated that currently there are no calculations on existing impervious surface areas and what the project will gain. That process is very beneficial. It gives staff and the Council the ability to look at a project and address long-term concerns. He is willing to suggest that they continue this matter over to the next meeting in order to review the calculations and analyze.

Mayor Small noted that the lot coverage is decreasing. Mr. Wells explained that his house is a 1960 ranch style home and the size of the house is 40% less. He understands the concerns and is more than willing to work with the Town. Senior Planner Semonian did not believe it would be a huge burden to continue the matter and come back with calculations for the Council to review. Council Member Strauss recommended making it part of the submittal with the landscaping plan. Mr. Wells agreed. Council Member Martin is uncomfortable because the extension is conditional on the original valid findings, which he does not know until calculations are provided.

## November 10, 2011 Minutes

Mayor Small suggested rather than going with the original findings, include the additional conditions as discussed. Mr. Wells is willing to abide by the recommendations or whatever is required.

Mayor Small 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 Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve the one-year extension on the Wells property at 21 Fernhill subject to the findings and conditions in the original staff report; amending Condition No. 5 to read, *“The applicant shall submit a landscape plan for review and approval by staff, in consultation with the Advisory Design Review Group. The revised landscape plan shall seek to reduce impervious surface at the site;”* and the project shall comply with the Stormwater Management Ordinance. Motion carried unanimously. Russell recused.

Mayor Pro Tempore Russell reconvened his position on the Town Council.

15. Town Council consideration/action on the Ross Rec Auxiliary request for a holiday tree lighting on the Ross Common between 4:30 and 5:30 p.m. one evening during the first week of December and allow lighting to remain on from 5:00 p.m. to 8:00 p.m. each night until December 25, 2011.

Public Works Director Bob Hemati summarized the staff report and recommended that the Council approve the tree lighting conditioned upon Ross Rec Auxiliary meeting the conditions outlined in the staff report.

Eileen Sheldon, Ross Rec Auxiliary President, explained that the Ghilotti Family offered to provide a generator for the lighting, which can cause some noise issues to neighbors and the Town and asked the Council if that is a possibility. Also, they looked into solar. They contacted professional electricians and all lighting would be on a timer. A letter was distributed to immediate neighbors in regard to their proposal and she has not heard from any residents. She would love to have the lights on later, if reasonable. The event would begin on Monday afternoon and Ross School choir will sing holiday songs followed by a formal countdown by Mayor Small. The Ross Fire Department agreed to usher in Santa Claus on a lighted fire truck and then Santa Claus could mingle with children and pass out candy cans. The Ross School asked if they could tie in the multipurpose room with this event. The entire ceremony would be around 45 minutes. Additionally, they approached businesses in Town to come up with some sort of holiday promotion. The goal is to have a real community-building event welcoming to all generations. She hopes this becomes an annual event. The bids for the tree range from \$2,500 to \$8,000 and Ross Rec Auxiliary has the budget for this event. She further noted that the event would be free of charge.

Council Member Hunter believed it is a great idea and felt it would be a shame to turn the lights off at 8 p.m. and recommended 9 or 10 p.m.

Mayor Pro Tempore Russell suggested going on through the New Year. Ross Rec Auxiliary President Sheldon believed it would make great sense to have lights on through New Year's Day. Mayor Pro Tempore Russell noted his support.

## November 10, 2011 Minutes

Mayor Small 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 Martin suggested cabling the power from Ross School itself. Public Works Superintendent Robert Maccario believed they could tie into the light post. For a long period of time it is worth doing, but for a single event it is not worth it. He could review real power in terms of cost. Council Member Martin asked staff if there is sufficient load. Public Works Superintendent Maccario responded in the affirmative.

Mayor Small suggested using the generator in terms of lighting for the first year and see how it works out and make adjustments accordingly. She further added that solar would be ideal.

Council Member Hunter and Council Member Strauss agreed to allow lighting to remain on until 10 p.m. Council Member Martin had concerns with noise pollution from the generator and suggested allowing the lights to remain on possibly until 10 p.m. depending on the light and power source disrupting neighbors.

The Council agreed to approve Ross Rec Auxiliary's request to place holiday lights on one of the evergreen trees on Ross Common from December 5th through New Year's Day. The holiday lights, which may be solar or LED lights, will be on between 5 and 8 p.m. each night, and possibly until 10 p.m. if the lights and any potential generator noise do not bother the neighbors. The Auxiliary has raised funds for lighting the tree.

The Council also approved the Auxiliary's request to hold a tree lighting ceremony on December 5th between 4:30 and 5:30 p.m. The Auxiliary is planning a short ceremony with holiday songs sung by the Ross School choir, a countdown to light up the tree, and a visit from Santa Claus. The Auxiliary is also working with Ross downtown merchants to offer holiday promotions for that evening.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to approve the tree lighting proposed by Ross Rec Auxiliary with the hours to be flexible up to 10 p.m. in the evening, but subject to noise of the generator and Public Works will advise, and continue the event until January 1st, 2012. Motion carried unanimously.

16. Town Council consideration/action on Circle Drive residents request that the Council acknowledge Park and Circle Drive are publically maintained roadways.

*Continued to the December Town Council meeting.*

17. Update and discussion on fire merger activity, including response from Kentfield Fire Protection District to Town RFP.

Fire Chief Tom Vallee presented the Council with a letter from Kentfield Fire Protection District Chief Paul Smith that indicated the District was not interested in changing its form of governance to a joint powers agency, and that Ross would need to join the District in order to pursue fire consolidation with Kentfield. Tonight the Council must determine if there is still Town Council support for exploring discussion with Ross Valley Fire.

## November 10, 2011 Minutes

Mayor Small opened the public hearing on this item.

Ralph McLeran, Kentfield Fire Protection District Board Member, told the Council that the District Board had not taken action on Ross' proposal and remained interested in working with Ross to see if consolidation is an option. They wanted to schedule meetings in order to receive public input. The citizens of Ross and Kentfield should have knowledge of what is occurring. They do not feel this is being approached as it should if the Town is serious about a joint venture or arrangement with Kentfield.

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 Hunter noted that the Town's interpretation from Chief Smith's letter indicated that the stand of the committee was that for Ross to participate with Kentfield, Ross would have to join the District. The Council agreed that there would be no shifting of taxes. Further what Kentfield Chief's letter seemed to indicate is that there was no way to overcome the number that was close to \$100,000 per year plus benefits. Ross is interested in a JPA (*joint powers agreement*). Basically Kentfield as a District wants Ross' tax dollars and Ross is not willing to give them, so that closes the door. This is very consistent with what the Council expressed. The fact that Ross is not willing to shift their tax dollars and want to explore a JPA where they have the option to pull out if it does not work. Council Member Strauss agreed with Council Member Hunter's interpretation of the letter from Chief Smith.

Mayor Small indicated that the letter from Chief Smith states, "*At this time the Board does not believe a departure from the current Fire District model to that of a JPA as being beneficial to the constituency.*" This has been an interesting process. A few public meetings were held, and she was disappointed that only one resident attended their meeting. She along with Fire Captain Jake Peterson stood outside the Post Office to explain the situation to residents. She would never give over any tax base and would never choose to close the firehouse. Without a JPA and being folded into a District much larger than Ross with no elected officials, the Town may lose control and end up with their firehouse closing. She further stated that there are key issues that she will never change on.

Council Member Martin asked if there is an opportunity for a JPA or some other situation where the Town would not have to sign over their tax base. Kentfield Fire Protection District Board Member McLeran stated absolutely. Possibly a JPA for one year and then see how the relationship works out. They respect Ross and do not want to jeopardize the mutual aid agreement.

Mayor Pro Tempore Russell desired a complete level playing field between both alternatives. The Town understood from the correspondence received that Kentfield put itself out of the running. From his point of view, they have not fully examined the Kentfield alternative. If there is the opportunity to have a JPA with Kentfield then there has to be continued discussion. They have to make a decision sooner than later and they have to have a system in place for when Fire Chief Vallee retires. He would be open to continuing further discussion on a short timeframe. Council Member Martin agreed. Council Member Hunter disagreed. The reason the last meeting was cancelled was because the letter from Chief Smith was slipped into their mailbox the Thursday before the meeting. He understands they must explore every possibility. Their experience to explore with the Kentfield Fire District has been very frustrating. He then asked if

**November 10, 2011 Minutes**

the Kentfield Fire District would consider an arrangement with the Town of Ross that their fire station would remain open with no permanent transfer of tax dollars. He further believed Kentfield runs a great department, but it has been really frustrating. He reiterated that the Town of Ross will not transfer tax dollars to the Kentfield Fire District.

Mayor Small emphasized that Ross would not agree to a transfer of its tax base. She also indicated that it is vitally important to keep the Ross Fire Station open. Mayor Pro Tempore Russell wants to be assured that Ross has representation. Mayor Small must have a guarantee that Ross would be on the Board.

Kentfield Fire Protection District Board Member McLaren indicated that his Board would discuss a consolidation proposal at their next meeting on Wednesday, November 16th at 6:30 p.m. Council Member Hunter agreed to attend.

**18. No Action Items:**

a. Council correspondence received - None

**b. Future Council items:**

- Marin Sanitary update on food waste program
- Ross Rec update
- Circle Drive application
- Town Attorney Stepanicich discussion on Ross School easement/liability
- Investigate MTA funding for video services
- Podium/microphone discussion

**19. Discussion of the five Town Council goals for FY 2011-2012 developed at the Town Council retreat and the implementation of these goals.**

**a. Development of right-of-way regulations**

Mayor Small reported that one meeting occurred but no follow-up and agreed to work with Public Works Director Bob Hemati.

**b. Development of Council procedures**

Council Member Martin announced that a meeting would occur on Thursday, December 1st at 8 a.m. At that meeting, some of the drafts from other towns as far as Council procedures will be presented.

**c. Development of overlay landscape plan**

Council Member Strauss met with Landscape Architect Michael Yandle to develop a proposal for an overlay plan for the Common area. He desired design development drawings to know the type of trees and location. He along with Public Works Superintendent Robert Maccario will walk the area and define the scope. The next action would be to prepare a list of proposed trees and preliminary plan for the overlay to review with the Town, ADR Group and Street Tree Committee. Then review the plan with the Town Arborist and Public Works Department. After that they will prepare a final design development drawing with specific street tree locations and species and present the final plan to Town Council. There will be several opportunities for the public and Street Tree Committee to provide input. The scope of work would be the entry to the Town, to look at the pathway in conjunction with the Lagunitas area. He spoke to W-Trans who is working on the traffic study and currently there is no landscape person on that team. They will keep two separate items, but prepare the design work now and move in parallel tracks. He proposed not to exceed \$5,000 to work on an hourly basis. They have \$25,000 for Ross Common trees and new arbor and he wanted to stay within that budget. This is not a

**November 10, 2011 Minutes**

major landscaping plan just identifying the trees to create street trees desired downtown. They have \$10,000 in street tree/median improvements and the south parking lot. The idea is to leave the curb as is and provide tree wells on the inside of the parking lot. They will identify specifically where those trees would be placed. He further desired input from the Council.

Council Member Martin noted that Landscape Architect Yandle has been very generous in donating his time. He personally believed it is money well spent. Council Member Strauss agreed to formalize and bring back to the Council at the December Town Council meeting to authorize an expenditure of not to exceed \$5,000. Council Member Martin wanted to review the recommendations and then make a determination on the cost estimate. The Council unanimously agreed to spend \$5,000 out of the Ross Common Tree Improvements - 9060-66 to engage Landscape Architect Yandle.

Senior Planner Elise Semonian questioned if it would violate the recently-adopted conflict of interest policy to retain landscape architect Michael Yandle, since he has many private projects in Town. Town Attorney Greg Stepanicich believed it is acceptable because it is a Town project, but he agreed to review.

Council Member Strauss announced that the initial meetings will begin after the first of the year and planting will start in February/March.

**d. Fire consolidation**

Council Member Hunter had nothing further to add.

**e. Post-emergency permitting and nonconforming structure regulation review**

Mayor Pro Tempore Russell met with Senior Planner Elise Semonian and they want to create a streamline process. They hope to start drafting soon. Essentially, when a home is burned down, it would not be able to be rebuilt as it was. That issue will be addressed to grandfather in those that are nonconforming to rebuild the home as it was.

*The Council took a short recess at 8:45 p.m. and then reconvened at 8:58 p.m. with the next agenda item.*

**20. 101 Winding Way, Use Permit No. 1851**

Craig and Jacqueline Thomas, 101 Winding Way, A.P. No. 72-111-05, R-1:B-A (Single Family Residence, 1 Acre Min. Lot Size), Very Low Density (.1-1 Unit/Acre). Use permit to allow the carriage house/barn structure to be used as a guesthouse, including the addition of a shower to the existing half bathroom and kitchen area.

Lot area	69,696 square feet
Existing/Proposed Floor Area Ratio	9.7% (15% permitted)
Existing/Proposed Lot Coverage	7.1% (15% permitted)
Existing/Proposed Impervious Areas	no change proposed

*The existing carriage house structure is nonconforming in setbacks.*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the use permit to allow the barn/cottage to be used as a guest house and for the installation of a shower and kitchen in the structure subject to the findings and conditions as outlined in the staff report.

### November 10, 2011 Minutes

Mayor Pro Tempore Russell desired an explanation from staff in regard to the rationale for limiting its use in the past. Senior Planner Semonian noted that in 1997 it was a time when second units were discouraged and it was not being used as a living unit. Craig Thomas, applicant, noted it was used for storage and miscellaneous junk. With adult children coming back to visit it would be a great facility.

Mayor Pro Tempore Russell asked staff if the Town would receive any benefit in terms of coming within the second unit ordinance. Senior Planner Semonian pointed out that it would still be counted a new housing unit, except it would cost the applicant additional money for a second unit since separate utility meters would be required. The cost would be great with no benefit to the applicant, who does not intend to rent it out.

Mayor Pro Tempore Russell asked staff if there is an increase in FAR. Senior Planner Semonian explained that it remains the same. There are no changes.

Council Member Martin disclosed that he knew that barn as the "*haunted house*."

Mayor Small opened the public hearing on this item.

Doug Abrams, Canyon Road resident, asked staff if a legal second unit must have a second water meter. Senior Planner Semonian responded that Marin Municipal Water District requires detached units to have a separate water meter.

Council Member Martin believed they all have the water district to thank since their meter requirements and moratorium limited development in the 1970s in the San Francisco Bay Area, which kept growth down. Otherwise Ross would have resembled San Mateo and a lot of communities with fast food outlets with housing on every hill. Requiring those water permits shaped this county.

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 Small asked for a motion.

Council Member Martin moved and Council Member Hunter seconded, to approve the improvements at 101 Winding Way subject to the conditions and findings outlined in the staff report. Motion carried unanimously.

#### Conditions of Approval, 101 Winding Way:

1. The project shall comply with all requirements of the Building Department.
2. The cottage shall not be used as a second unit without approval of a second unit permit.
3. 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

**November 10, 2011 Minutes**

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

**21. 30 Sir Francis Drake Boulevard, Variance No. 1818**

Wendy Posard & Associates, for Pixie Park, applicant, Marin Art & Garden Center, owner, A.P. Nos. 72-231-01, 72-231-02 and 72-231-23, General Plan R-C (Limited Specialized Recreational/Cultural), C-C (Community Cultural) District. Review of plans to remodel the Pixie Park Club House and to add a restroom to the east of the building that is compliant with the Americans with Disabilities Act (ADA). A variance is necessary to add building area to the site without providing additional parking (2 additional spaces required). The floor area of the Club House would increase from 561 square feet to 633 square feet.

Lot area	439,858	square feet
Existing Floor Area Ratio	6.3%	
Proposed Floor Area Ratio	6.4%	(20% permitted)
Existing Lot Coverage	6.3%	
Approved Lot Coverage	6.4%	(25% permitted)

*The existing site is nonconforming in required parking spaces.*

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

Council Member Strauss did not see any condition regarding the 36-inch door discussed by the ADR Group. Senior Planner Semonian did not want to limit or restrict the door width in case it would conflict with ADA requirements. Council Member Strauss suggested a standard door.

Wendy Posard, architect, noted that the plan had a double door and they decided to down size and requested a 42-inch wide door because so many families have two or three children with a double baby buggy. They have the funding and donations in place to make this a cleaner and safer place. She then explained that they financially cannot afford to get into a fancy situation of piers in regard to the oak tree, but they will respect the oak tree. There is a strong indicator as to the major roots and they will hold passed that and agreed to discuss with Town Arborist Becky Duckles or Arborist Ed Gurka. They do not want to disturb the tree. It is one of the most important trees. They propose a new tar and gravel roof. They took advice from the ADR Group to replace with a new door and maintain the same fenestration with a nice set of French wood doors.

Council Member Martin was surprised at how run down Pixie Park has become and wondered, as part of this, will there be a general clean up of the facility. Architect Posard responded in the affirmative. They received a very generous donation from CDK Builders and Frameworks to step in pro bono. Currently, they are conducting an evaluation of how they can honor those who contributed and make an honor wall on the main window wall.

Pixie Park President Graham Gunst explained that a general clean up is needed for the aesthetic of the park, but also to remain competitive. All Board members want to be proud of the park and for the park to be lasting. Architect Posard feels this will be the first major step to organizing storage and dealing with garbage.

## November 10, 2011 Minutes

Council Member Strauss clarified that they are taking out the kitchen. Architect Posard responded in the affirmative. She explained that they are going to gut the interior space and give it a fresh coat of paint with a checkerboard pattern on the floor.

Mayor Small 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 Small thanked Pixie Park for taking responsibility and fixing up the park.

Mayor Small asked for a motion.

Council Member Strauss moved and Council Member Martin seconded, to approve the remodel of the Pixie Park Clubhouse; adding a ADA-compliant restroom subject to the findings and conditions outlined in the staff report; monitoring the tree with a non-conflicted arborist; and the restroom door shall be up to 42-inches wide. Motion carried unanimously.

### Conditions: Pixie Park Clubhouse, 30 Sir Francis Drake Boulevard

1. Prior to issuance of a building permit the applicant shall submit a certified arborist's plan for monitoring the tree during construction for review and approval by the Town arborist. The tree shall be monitored during construction as specified in the approved plan.
2. The restroom door shall be up to 42" wide.
3. The sliding door design shall be modified to be consistent with the other building fenestration.
4. The bathroom wall shall be moved 18" further from the tree.
5. The applicant shall comply with all requirements of the Ross Valley Sanitary District. The applicant shall investigate the condition of the sewer lateral and replace it if found to be necessary.
6. The building colors shall be light earth tones. Building colors shall be reviewed and approved by staff in consultation with two members of the ADR Group.
7. A drainage plan shall be required. The applicant shall consider incorporating the gutter on one eave and make it deeper and flatter so that it has more capacity.
8. A building permit is required. The applicant and property owner are responsible for ensuring that all improvements comply with disabled access regulations.
9. No tree removal is approved. Prior to issuance of the building permit, the applicants shall provide the Town with a report prepared by a certified arborist that has reviewed all construction level drawings, including plumbing and utility plans, and details tree protection to be followed before, during and after construction to protect trees near the project area.
10. This project shall comply with the following recommendations from the Ross Public Safety Department: a.) all brush impinging on the access roadway shall be cleared; b.) the accessway shall have a minimum vertical clearance of 14 feet; c.) all dead or dying flammable materials shall be cleared and removed per Ross Municipal Code Chapter 12.12; d.) a street number must be posted (minimum 4 inches on contrasting background); e.) sprinklers must be installed and attached to existing system; and f.) a 24 hour monitored alarm system is required.

## November 10, 2011 Minutes

11. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits.
12. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance the owner will be subject to automatic penalties with no further notice.
13. 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.
14. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
15. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense, however, nothing contained in this 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.

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

22. **126 Winding Way, Amendment to Variance, Design Review, Hillside Lot and Demolition Permit and Construction Completion Deadline, No. 1736**  
Douglas and Miranda Abrams, 126 Winding Way, A.P. No. 72-091-14, R-1:B-5A (Single Family Residence, 5-Acre Minimum Lot Size), Very Low Density (.1-1 Units/ Acre). Amendment to approved plans for design review, hillside lot permit, variances, tree removal permit and a demolition permit to allow: 1.) the addition of a spa and spa equipment in the area of the master bedroom patio (40-foot setback proposed); and 2.) basement exception and after-the-fact request to delete a condition of the January 2011 approval that limited grading, improvement and use of the understory areas. The applicants request to retain and further improve: 1.) 127 square foot wine cellar/pantry at the main level; 2.) 456 square foot exercise room, office, bathroom and laundry room in the underfloor area; and 3.) 76 square foot mechanical room under the main level addition. Total floor area of 4,661 square feet was approved in January 2011 and total floor area of 5,244 square feet is proposed.

The Town Council will also consider the applicants' appeal of the staff decision to consider the project start date to be April 2, 2010 (construction completion date October 2, 2011). The applicants request the Town Council to determine the project start date to be October 15, 2010 when the permit was upgraded to include the driveway retaining walls (construction completion date April 15, 2012). Alternatively, the applicants request

November 10, 2011 Minutes

additional time to complete the project without accruing construction completion penalties.

Gross lot area	54,108 square feet	
Net lot area (less road easement)	44,201 square feet	
Existing/Approved/Proposed Floor Area	8.2%/10.6%/11.9%	(15% permitted*)
Existing/Approved/Proposed Lot Coverage	7.0%/9.2%/9.2%	(15% permitted)

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

Senior Planner Elise Semonian summarized the staff report and recommended that the Council determine the construction start date to be April 2, 2010. Staff suggests that the Council offer the applicant an opportunity to be heard before the finance or public works committees to consider any potential excusable delays that have occurred to date, which might relieve the applicant of penalties that have begun to accrue and provide the applicant with additional time to complete the project. The committee could make a recommendation to the Council.

Mayor Pro Tempore Russell asked if the construction completion applied, when would the penalties start to accrue. Senior Planner Semonian responded on November 2, 2011. If the Council wants to consider the date of the first permit and consider delays of staff and other issues in changing of project design, then staff suggested continue for another hearing in order for staff to analyze the construction timeline and present in a forum where there could be discussion in more detail. Staff noted that the Council could approve the project subject to the findings and conditions outlined in the staff report, but the conditions require the applicant to finish this project before improving the basement. Another key condition is for the applicant to post a bond to cover the value of the trees.

Mayor Small asked staff if it is possible to separate the two issues. Senior Planner Semonian explained that the Council could separate the issues. However, as worded, the applicant could not pull a permit for the basement improvements until the project is complete. Staff then recommended continuing the matter to next month to allow that issue to be resolved.

Council Member Strauss discussed the April 11th date for the expanded work and that is when the project took a departure. Senior Planner Semonian explained that the driveway project was a major project started in 2010. They graded and constructed major walls long before April 2011. It was a disruption to the site and neighborhood, so to discount that entire driveway project is not fair to the neighbors.

Charles Theobald, project architect, explained that the original construction was 1906. Maybeck came back in 1926 and then there was a renovation in 1963. Since 1963 the house was left aged until Mr. Abrams purchased the property. This is a special project in that the owner took on an extra challenge. The first part of this project is assessing and cleaning up all the animal intrusions that occurred in the house. The first phase started in April of 2010, and at that point it was basically just getting the house to the point of livable to rent the property out. The economy

### November 10, 2011 Minutes

at that time was upside down. It was by sure luck Mr. Abrams sold his property, which allowed him to do the full approved project. They quickly ran into hurry up mode and provided quality drawings for a great project in a highly accelerated timeline. They thought it was really important for the property, neighborhood and house to get a jump on it because the house could not go into another winter of disrepair. They saw that they were running up against the October 15th deadline, and it was suggested from former Public Works Director Mel Jarjoura to get at least the driveway set up, which allowed them to establish a site for the next phase of the project. Now with the driveway they had a much better staging area for the big project, which is the house. Also, with a historical structure, they must take a deeper look to achieve what was approved. The stumbling point was that they had approved per the Planning Department to have a parking space within the existing 1906 structure. Admittedly, they tried to accommodate the idea of covered parking, which is a Town requirement. Due to the structural implications they had to make a choice, which was to remove the historical chimney or move the parking structure out, which put them back into the mode of putting the carport back. There was a carport in 1963. They quickly went into hurry up mode, got the site work going for the driveway before the rainy season. They went back to the Town Council and submitted drawings. By November the design team finished all permit drawings and they wanted to resubmit to get the big project going, but they were told that the building permit would not be issued until the planning issue was cleared up with the carport. He added that they could not submit for a building permit until the carport was approved, which delayed this project. They were scheduled for the December agenda, but they were bumped and delayed until the January agenda. Then at that time former Public Works Director Jarjoura announced his retirement. They received approval on January 13th from the Planning Department for the revised carport and then submitted on February 13th. The Interim Building Inspector reviewed it and indicated at that time that the project starts when they did the driveway work. They were very optimistic to go 18-months from April. With the process of the Town and other matters it did not line up. Also, there is constant historical review with the preservationist to make sure everything is in compliance, which adds another layer of complication. With a historical project, it is clearly the intent to try and delineate the different efforts of 1906, 1926 and 1963.

Doug Abrams, applicant, did not think the project should be reset but views the first permit pulled for \$28,000 as unrelated from anything the Council approved. The permit was not subject to plan check since it had nothing to do with the project submitted to the Town Council. It was simply to clean up the site and get it ready for his tenants. He had eight weeks to clean it up. When they came back in July, they started working on construction drawings approved by the Council. The permit approved prior was not considered within the scope of work approved by Town Council. Cleaning out a house for a \$28,000 permit is a totally different project than the project approved in December of 2009. They never submitted a 40 or 50 page set of plans to be reviewed by the Planning Department. They submitted one page in regard to replacing shingles and replacing a window. When they submitted in October of 2010, former Public Works Director Jarjoura told them they could not touch the rest of the house, only work on the driveway. Former Public Works Director Jarjoura went on vacation and the permit was not issued until October 15th. All they submitted in October of 2010 was the work related to the driveway, which former Public Works Director Jarjoura signed off on. They started only the site work to get the staging. The idea was to get that 55-foot turnaround in, which would put them in good shape to get the December approval to actually start on the house. They got the approval in January. Their engineer was Paul Pieri, the Town's Structural Engineer, so he could not review the plans. Building & Public Works Secretary Simone Jamotte had to find someone else to peer review Mr. Pieri's work. Then it was sent out to a group from Sausalito to review and this is when they hired Phiroze Wadia and it came back to the Town. Town Engineer John Moe did all the civil. Finally the construction document was signed off for a permit in April of 2011

### November 10, 2011 Minutes

that is when work started on the house. The project began in October when they started on the work related to the scope of work the Town Council approved. Cleaning up a house for \$28,000 in order for tenants to move in is not the start of the project. He has documents signed by the building official stating that he would be done in 18-months dated April 2011. Truth be told the work related to the site work is what the Town Council approved. Also, there is not a single neighbor with objections. They started on the house in April. In terms of the code as written with the nine month cooling off period, the intent is good, but he is not sure of its effectiveness.

Mayor Pro Tempore Russell stated they just spent a long time in regard to construction completion ordinance. The application relates to a number of other issues that have not been addressed. He is confused about the process. Mr. Abrams noted that he submitted documents to the Planning Department. Mayor Pro Tempore Russell recommended continuing the matter because he has not had a proper opportunity to review the material. He is surprised that this is the first time he has heard about this matter. There is a lot of history and this is the first time he has heard about it. Mr. Abrams assumed staff gives the Council everything. Every email sent to the Town should be in the Council's packet. It is not his responsibility to prepare the Council's packet.

Council Member Strauss stated that the Town Building Official and Mr. Abrams agreed on the April 11th date. He then asked staff what is the legal obligation of the Town. Senior Planner Semonian stated that there is no evidence that Contract Building Official Wadia agreed on the April 11<sup>th</sup> date. Staff contacted Mr. Wadia and confirmed this.

Mayor Small knows that the applicant has been talking with the Town and setting up meetings with staff to try and work these issues out, so there has been discussions and effort. She is not able to forward emails from the applicant due to the Brown Act. There is that nine-month cooling off period. There was the desire by the applicant to resolve that issue before tonight. Also, it is important to adhere to their policies. It was a tough time with former Public Works Director Jarjoura being gone for three weeks on vacation and then retiring. They had issues with the one firm and then Contract Building Official Wadia. Ultimately, if the Council kept within their policies and started with April 2010, but give four or five months due to the problems, so start on October 2010 and do 18-months with the grace period they are at the end of the April date. Senior Planner Semonian agreed they could work something out. Staff has not had the time to put down all the dates to make a recommendation and put into a form that the Council may digest easily. Staff can recommend an appropriate delay. Architect Theobald stated the intent behind that nine month quiet period is to minimize the impact on the natural environment of neighbors. In this case, the impact on the neighbors and natural environment from April to late June is so minimal relative to an 18-month full on historical renovation project.

Council Member Hunter noted that April to June was the \$28,000 permit. Mr. Abrams agreed, but he only spent \$15,000 because work stopped. Architect Theobald noted that the lesson is to have everything written down. Mr. Abrams prepared a very specific timeline for Public Works Director Hemati.

Council Member Hunter desired more time to review the dates. He did not want to stop this project, so he suggested continuing the discussion about the start date and deal with the other items, which is the unapproved understory work that has been done, and whether additional understory work can be done or do they wait the nine months. Mayor Pro Tempore Russell wanted to see in writing Mr. Abrams comments and hear from staff and have an opportunity to review. They must divorce out the timeline issue and talk about it at a later date.

### November 10, 2011 Minutes

Council Member Strauss noted that items have happened without building permits, so there are many items to deal with and they must take one at a time. He is not sure what more they will learn by delaying it.

Mayor Small stated the grading work started in October, so the impact on the neighborhood basically started on October 2010. Also, what happens to the impact of when someone is trying to do something to restore a historical site. There is additional time, so they must be realistic.

Mayor Pro Tempore Russell believed whatever is done tonight must be consistent with what has been done in the past. He is not dictating any particular outcome. Architect Theobald stated the reason why the other variances and more FAR was granted, was primarily based on the idea that this is a historical structure. Not only is it a remodel, but a historical remodel.

Council Member Strauss stated it is a cumulative impact and they are already outside the timeline, the Council cannot approve any additional work without waiting nine months. The applicant has gone beyond his date in regard to November 2. Council Member Hunter stated there is new work, which is the 127-foot wine cellar pantry and exercise room/office. There has been some unpermitted work in the understory. They want this completed as soon as possible. They must vote on whether to approve the new work without waiting the nine months. They advise the applicant to finish the approved work and bring back the question of the start date and end date. Council Member Strauss noted it is new work, so how do they approve new work if outside the limit.

Senior Planner Semonian noted that the planning application can be approved. However, she is concerned that it sets bad policy to allow an upgrade for new work when the project is past the construction completion deadline. However, the applicant is taking on their own risk that they would have to pay the construction completion penalties to continue working. The added work to finish the basement is not that much. Everything is in place except the floor. Mr. Abrams noted all structural work is done. The basement is a gravel floor with no electrical or plumbing, it is as rough as it can get. Architect Theobald noted if the basement work is approved based on the construction completion date of April that can easily be achieved since all manpower is available. If they wait another nine months another construction crew will disrupt the neighborhood. There is a minimal amount of added effort because the whole project is being worked on. Mr. Abrams noted plumbing and electrical is down to the floor. He wanted to pour the slab and add radiant heat and insulation to meet Title 24. They have a gray water system. Contract Building Official Wadia asked that all utilities be placed underground, which cost \$20,000. Also, an arborist is onsite and signed all papers. None of the trees were damaged. He further noted that they saved three heritage oak trees approved for removal.

Town Attorney Greg Stepanicich clarified with staff that the planning portion could be approved, but no building permit would be issued for nine months. Senior Planner Semonian stated that they could work under the existing permit. If Condition No. 2 is deleted that work could be approved, but the applicant is exceeding their time limit to complete it.

Council Member Hunter asked if this was continued to December, in the normal flow would the understory been done. Mr. Abrams responded in the affirmative. He noted that they would have been before the Council one month ago. They were waiting for the ordinance to get passed. If they have to wait another month it will not matter. Council Member Hunter recommended continuing the matter to the December Town Council meeting.

**November 10, 2011 Minutes**

Council Member Strauss pointed out that the project took a different direction, so they have the cumulative impacts. Mayor Small indicated that the project started October 2010 from the information she reviewed. Senior Planner Semonian stated construction work was taking place prior to October. Mr. Abrams stated there was demolition, not construction occurring.

Senior Planner Semonian indicated that staff had no time to prepare a detailed timeline for this meeting and staff recommended continuing the item. There are delays that could be reasonable to give the applicant. Mayor Pro Tempore Russell desired more time to review material.

Mayor Small explained that the concern is that they do not want to set a precedent. If the Council has an opportunity to review and start with the April 2010 date and ultimately come up with months that can be granted, and then this stays within the policy of the Town and the rest of the Council can review objectively. Then when they come to a decision in December they are not making a decision that is either inconsistent or in conflict with Town policy. Council Member Hunter agreed to continue the entire application.

Town Attorney Stepanicich pointed out that the key item is to properly interpret the ordinance. He believed it is much better to layout what options the Council has. He agreed to review the start of construction and delays with staff and provide a report to the Council.

Mayor Small believed they must address the construction timeline and what staff's recommendation would be before they move forward. Council Member Hunter desired clarification as to whether the spa and wine cellar is truly a new project.

Mayor Small 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 Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, to continue the project at 126 Winding Way to the December Town Council meeting with the advisory to the applicant to continue their good work. Motion carried unanimously. Martin absent.**

Mr. Abrams clarified that the Council desired a written timeline. Senior Planner Semonian agreed to meet with the applicant.

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

**23. 4 Canyon Road, Amendment to Variance, Design Review, Hillside Lot and Demolition Permit No. 1821**

Christian Lind and Lisa Bernardi, 4 Canyon Road, A.P. No. 72-092-08, R-1:B-A (Single Family Residence, 1-Acre minimum lot size), Very Low Density (.1-1 units per acre). Amendment to plans for a demolition permit, design review, hillside lot, and side setback variance for an addition and remodel to the residence, including associated landscaping. The applicants request a new swimming pool, spa and patio area north of the residence, within the east side yard setback (45 feet required, 0 feet proposed). The area would be approximately 10 feet down slope of the Winding Way roadway. The project also includes new 6-foot tall fencing (the fencing near the pool proposed as solid redwood and the remainder wood and wire) along the Winding Way right-of-way, approximately 10 feet downhill from the paved roadway (4 foot tall fence permitted). The revised

**November 10, 2011 Minutes**

project would include approximately 290 feet of landscape retaining walls up to 6 feet tall, and 467 cubic yards of cut and 179 cubic yards of fill.

Lot area	57,688 sq. ft.
Effective Lot Area	39,247 sq. ft.
Existing Floor Area	6.9%
Approved/Proposed Floor Area	9.6%/10.9% (15% permitted)
Existing Lot Coverage	7.7%
Approved/Proposed Lot Coverage	9.2%/9.2% (15% permitted)
Existing Impervious Areas	19.8%
Approved/Proposed Impervious Areas	19.2%/18.0%

*The existing residence is nonconforming in setbacks. The slope of the lot is 28%. The project falls under the hillside lot regulations because the site is partially within Slope Stability Zone 3.*

*Continued to a later date.*

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

**24. 61 Sir Francis Drake Boulevard, Variance No. 1852**

Andrew Johnson, MJC Ventures I, LLC, 61 Sir Francis Drake Boulevard, A.P. No. 73-101-20. Variances to allow construction of a new 589 square foot deck. A portion of the deck and the stairs to grade would be partially within the required north side yard area (20 feet required, 11.5 feet proposed).

Lot area	11,900 square feet
Existing Floor Area Ratio	18.5%
Proposed Floor Area Ratio	18.5% (15% permitted)
Existing Lot Coverage	21.2%
Proposed Lot Coverage	25.3% (15% permitted)
Existing Impervious Areas	27.3%
Proposed Impervious Areas	18.5%

*The existing structures are nonconforming in setbacks. Existing and proposed conditions in mailed public notice did not include area of garage or roof overhangs.*

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve only the variances requested for the raised rear yard deck subject to the findings and conditions outlined in the staff report.

Andrew Johnson, applicant, agreed to reduce the depth of the deck. They requested from the Council deleting Condition No. 8, which is related to the basement. Senior Planner Semonian agreed that the condition could be deleted. The Town floodplain management regulations would continue to apply to the project.

Mr. Johnson explained that they must show that the cost of their total work is less than 50% of the value of the structure. The value of the house was \$75,000, which they do not agree with and desired the opportunity to do more discovery to come up with what they believed is fair market value for the structure, not the land. They think it is quite possible to show the value of the work is in fact less than 50% of the value of the structure. There are FEMA exclusions that are backed out of what the cost of the work is such as certain site work and landscaping. They

**November 10, 2011 Minutes**

wanted to come back to staff with some sort of acceptable documentation whether that is a new appraisal or whatever it be, they desired a chance to conduct some research to possibly show that the cost of the work is less than 50% of the value of the structure. \$75,000 for that structure is not reasonable. With a two-bedroom addition, if they can still show that they are under 50% of the value of the house, they could perhaps pursue that as well. The likelihood is to get the laundry facility and bathroom.

Public Works Director Bob Hemati stated it must be a flood proof area so they cannot have bedrooms downstairs. Mr. Johnston stated it would not be ideal, but it could work. They will push for the laundry facility, which is important for the house.

Senior Planner Semonian stated if they want to return for the attic and basement she would discourage it since it is in a flood zone. By deleting Condition No. 8, it will allow the laundry room to potentially be improved.

Mayor Small opened the public hearing on this item.

Peter Nelson, Circle Dive resident, discussed attics and basements and asked if there is a way that it could be incorporated. Senior Planner Semonian noted they could ask for a variance, but staff would not allow bedrooms to be in the flood zone. It is against good public policy. Mayor Small pointed out that tonight the Council is being asked to review the deck.

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.

Mr. Johnson desired clarification as to whether they would need to come back for a variance for the laundry facility. Senior Planner Semonian responded that it would not have to return if it complied with the flood regulations since it is existing.

The Council agreed with the staff report including eliminating Condition No. 8, which provides: *"The understory area below the residence and addition is required to be retained as unfinished and shall be modified as required by the Town Floodplain Management Regulations."*

Mayor Small asked for a motion.

**Council Member Hunter moved and Council Member Strauss seconded, to approve the Variance application at 61 Sir Francis Drake Boulevard subject to findings and conditions in the staff report, less Condition No. 8. Motion carried unanimously. Martin absent.**

**Conditions: 61 Sir Francis Drake Boulevard**

1. Except as otherwise provided in these conditions, the project shall be constructed in substantial conformance with the plans dated October 17, 2011, on file with the Planning Department.
2. The approval is limited to the variances for the proposed rear yard deck, which shall be limited to 9' 10" deep, with stairs to grade as proposed.
3. The applicants shall obtain an encroachment permit from the Department of Public Works for any work within the right of way.
4. Impervious surfaces shall be removed as shown on the approved plans before project final.

## November 10, 2011 Minutes

5. This project shall comply with any requirements of the Department of Public Safety including: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) a local alarm system is required; and 3.) sprinklers are required.
6. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY NOVEMBER 10, 2012, WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
7. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
8. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from downslope sites). No up lighting is approved.
9. The applicants shall comply with all requirements of the Marin Municipal Water District and Ross Valley Sanitary District before project final. Landscaping shall comply with the MMWD water-conserving landscape ordinance.
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. Before 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 before project final.
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. The project owners and contractors shall be responsible for maintaining all roadways and right-of-ways free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately.
13. No changes from the approved plans, before or after project final, shall be permitted without before Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval before any change.
14. THE TOWN MAY STOP WORK AT THE PROJECT SITE IF DEMOLITION EXCEEDS WHAT IS PROPOSED. EXCEEDING PROPOSED DEMOLITION MAY RESULT IN A REQUIREMENT FOR A DEMOLITION PERMIT AND SIGNIFICANT DELAYS TO THE PROJECT.
15. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its town attorney's fees and costs and participates in the defense in good faith.

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

25. Adjournment.

Mayor Small moved to adjourn at 10:32 p.m.

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Carla Small, Mayor

ATTEST:

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Linda Lopez, Interim Town Clerk