

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, NOVEMBER 12, 2009

1. 6:30 P.M. Commencement.

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

2. Open time for matters pertaining to the closed session in agenda item 3.

Andy Price, Ross resident, asked why this topic is being discussed given the state of the economy. Mayor Strauss explained that it is in the best interest of both parties to discuss this at this time and it follows the six month review to provide feedback to the Town Manager.

Council Member Martin desired to know what would be discussed during the closed session and asked if job duties could be discussed. Town Attorney Hadden Roth mentioned that items that are in the contract could be discussed.

Mayor Strauss closed this item and the Town Council went into closed session.

3. Closed Session – Personnel Matter, Government Code Section 54957, Council consideration of a time extension to the Town Manager contract.

4. Open Session. Council will return to open session and announce action taken, if any.

The Council announced that no reportable action was taken during closed session regarding the extension of the Town Manager's contract.

5. Posting of Agenda.

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

6. Minutes – October/November

Mayor Strauss asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to approve the October 8, 2009 Town Council minutes. Motion carried unanimously.

Mayor Strauss moved and Council Member Cahill seconded, to approve the November 3, 2009 Town Council minutes. Motion carried 4 ayes (Strauss abstained).

7. Demands.

The Demands were met.

8. Open Time for Public Expression.

Bill Nelson, Ross resident, mentioned that he is sympathetic to the homelessness, but did not believe the homeless center is placed in the best location.

Andy Price, Ross resident, mentioned that there is an 8 ft. high fence that was built in the right-of-way and it is an eyesore to the neighbors. Mayor Strauss asked Senior Planner Elise

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Semonian about the fence and she commented that a letter was mailed to the property owner informing them it must be removed.

Diane Rudden, Ross resident, announced that she received a flyer about St. Johns Church being a homeless shelter.

9. Report from Mayor Strauss.

Mayor Strauss reported that St. John's Episcopal Church has withdrawn its use permit application to provide shelter for the homeless this winter. However, the RPOA and the Town are striving to raise \$2,500 from the community for the Ritter Center's "Art Houses of Marin" campaign to help end homelessness in Marin. The RPOA and the Council hope every Ross household will contribute to the campaign. The Halloween window painting contest had a successful second year in downtown Ross. He then thanked Bonnie Bibas again for being the organizer. Also, Alain Pinel Realtors will be hosting a reception for all Ross residents and merchants on Thursday, November 19, from 4 p.m. to 7 p.m. Appetizers prepared by local merchants and beverages will be provided with an acoustic guitar soloist. He encouraged everyone to shop downtown and support all their local merchants.

10. Report from Committee Heads.

Transit Authority of Marin (TAM) Update - Council member Skall
Council Member Skall Council announced that TAM has awarded the Town \$255,000 in ARRA funds to repave Sir Francis Drake Boulevard. The project will include the entire .8 mile section of Sir Francis Drake Boulevard within the Ross town limits and is estimated to cost \$600,000. The existing pavement condition is considered poor with a pavement condition index rating of 50 on a 0-100 scale. Marin County has received a total of \$5.73 million in ARRA funding for local roads.

Public Works Update - Council member Martin
Council Member Martin announced that the replacement of Lagunitas Bridge is back on track and construction will occur from June - December 2010. He added that the committee has marked the location of the bike paths in order for vehicles to know where they are. Also, the neighbors near Branson School have requested to change that parking along the roadway.

Marin Energy Authority - Council member Martin
Council Member Martin indicated that MEA would hold public workshops on the Marin Clean Energy initiative on November 23 at San Rafael City Hall and December 1 at the Mill Valley Community Center. Both workshops will be from 6 p.m. to 9 p.m. The workshops will include a panel of speakers to discuss MCE, the draft PPA, nearby municipal utilities providing green energy projects, and potential local renewable and energy efficiency projects for Marin County.

11. Report from Ross Property Owners Association.

Anne Hickey, RPOA representative, announced that they are looking for one more Board member.

12. Flood Control Report.

Mayor Strauss indicated that there is a report on the Internet urging help with the creek

study. Mayor Strauss requested that the owners along the Ross Watershed sign this letter and the resolution would be forwarded to the Council at the December Council meeting. Also, the Army Corp of Engineers is conducting a study along the creek for the Town. He further noted that the Town and the County are working together on this project.

13. **Consent Agenda.**

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

Consent Agenda Item “a” was removed.

a. **18 Redwood, Extension of Time for Variance and Design Review No. 1708**
Lisa and Michael Gorham, 18 Redwood Drive, A.P. No. 73-271-05, R-1:B-10 (Single Family Residence, 10,000 sq. ft. min. lot size) Medium Low Density (3 - 6 units per acre). An application for approval of a second one-year time extension to October 11, 2010 for a demolition permit, variance and design review application approved on October 11, 2007, for the following:

Demolition permit to allow demolition of the existing 1,282 sq. ft. residence. Variance and design review to allow construction of: 1.) new 2,510 sq. ft. residence with a maximum ridge height of 28.75 feet and attached 246 sq. ft. one car garage within the north side yard setback (15 feet required, 8.75 feet proposed), south side yard setback (15 feet required, 7 feet proposed) and watercourse setback (50 feet recommended, 8.5 feet proposed); 2.) deck and bridge over watercourse (25 foot setback recommended, 0 feet proposed) and within north side yard setback (15 feet recommended, 0 feet proposed); 3) 17 by 38 foot pool; and 4.) 10-foot tall wood trellis within front yard setback (25 feet required, 21 feet proposed) and side yard setback (15 feet required, 0 feet proposed).

Lot area	13,792 square feet
Existing Floor Area Ratio	9.3%
Proposed Floor Area Ratio	20.0% (20% permitted)
Existing Lot Coverage	17.2%
Proposed Lot Coverage	18.9% (20% permitted)

The existing residence is nonconforming in side yard setbacks and covered parking (one required).

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter indicated that he did not approve the project a couple of years ago when the Council approved it, and he still did not agree with the project proposal.

Council Member Cahill moved and Council Member Skall seconded, to approve Item 13 as outlined by staff. Motion carried 3-1. (Martin abstained)

18 Redwood Drive Conditions of Approval

1. Except as specifically amended here, all conditions of this project’s October 11, 2007 approval shall remain in full force and effect.

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2. Prior to issuance of a building permit, the applicant shall submit evidence, prepared by a licensed land surveyor, establishing the base flood elevation at the site based on the 1979 FIRM or the flood depths at or near the site measured during the 1982 flood event, whichever is greater. The finished floor shall be one foot above the base flood elevation approved by the building official.
3. Failure to secure required building permits and begin construction by October 11, 2010 will cause this approval to lapse without further notice.
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.
 - b. **Town Council consideration of adoption of Resolution No. 1681 to amend Ross Recreation Bylaws related to residency requirements and Town Council consideration of the Ross Recreation Board of Directors**

Mayor Strauss asked for a motion.

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

- c. **Town Council consideration of adoption of Resolution No. 1682 to establish a no parking zone on a portion of Wellington Avenue.**

Mayor Strauss asked for a motion.

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

- d. **Town Council consideration of adoption of Resolution No. 1683 authorizing the filing of an application for Federal American Recovery and Reinvestment Act of 2009 (ARRA) funding and stating the assurance to complete the project.**

Mayor Strauss asked for a motion.

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

- e. Town Council consideration of adoption of Resolution No. 1684 approving an expenditure plan for the utilization of supplemental “Citizen Options for Public Safety” (COPS) law enforcement funds in fiscal year 2009-2010.

Mayor Strauss asked for a motion.

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

- f. Town Council consideration of adoption of Resolution No. 1686 supporting the Central Marin Sanitation Agency (CMSA) food waste to energy pilot program.

Mayor Strauss asked for a motion.

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

14. Presentation by San Rafael Planning Director Bob Brown on Marin Green BERST recommendations for a green building ordinance.

Bob Brown, Community Development Director, provided the Council with a powerpoint presentation on the Marin Green BERST Program. The ordinance seeks to reduce energy use and GHG emissions through a uniform set of green building standards applied to both remodel and new construction of residential and commercial buildings. The green building ordinance was developed over several months by a task force that includes council members from every Marin community. A large committee of experts, including architects, contractors, city building officials, energy consultants, and environmental advocates, provided technical advice. The green ordinance relies on widely accepted industry rating systems: GreenPoint Rated for residential construction and LEED for commercial buildings. The requirements are expected to add 1-6% to the cost of construction but pay for themselves over time in energy cost savings. The task force suggests exempting most remodeling projects under \$50,000 in valuation and then requiring a home performance audit for projects up to \$100,000. The \$500-700 audit rates a homes overall energy efficiency by assessing items such as air leakage from heating and air conditioning ducts, HVAC efficiency, insulation gaps and air leaks, and lighting and appliance energy efficiency.

Director Brown further noted that the model ordinance could be tailored to Ross’ needs, but noted there are advantages to adopting some common provisions, especially for architects and contractors who work throughout Marin.

15. 7 Woodhaven Road, Variance, Design Review, Hillside Lot/Hazard Zone 4 Use Permit No. 1680 and Town Council consideration of adoption of Resolution No. 1685

Steve Bode, 7 Woodhaven Road, A.P. No. 73-021-04, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Town Council consideration of the Town Attorney’s opinion that the September 11, 2008, appeal by Dick and Patty Treadwell, is void because there is no right to appeal a

Town Council decision. If the appeal is void, the applicant Steve Bode requests the original approval be re-instated for the full one-year term. The original approval was for the following:

Demolition permit to allow the demolition of an existing residence and detached accessory structures totaling 1,961 square feet of floor area. Variance, design review, hillside lot/ hazard zone 4 use permit and second unit permit to allow the following: 1.) construction of a 4,861 square foot residence and attached two-car garage with a maximum ridge height of 28 feet; 2.) construction of a 1,140 square foot detached second unit above a two-car garage (700 square feet permitted), with a maximum ridge height of 18.5 to 23 feet (18 feet permitted); 3.) location of the new residence, second unit, driveway and landscape retaining walls within 50 feet of a watercourse contained in a culvert (25 to 50 foot setback recommended); 4.) 469 cubic yards of cut and 340 cubic yards of fill; and 5.) over 100 linear feet of new driveway and landscape retaining walls with a maximum height of 9 feet.

Existing and Proposed Conditions:

Effective lot area	73,216 square feet	
Present Floor Area Ratio	2.7%	
Proposed Floor Area Ratio	8.3%	(15% permitted)*
Present Lot Coverage	2.7%	
Proposed Lot Coverage	6.1%	(15% permitted)

* The hillside lot design standards would recommend a guideline floor area of 5,561 square feet. Total development of 6,055 square feet (not including mechanical area) is proposed.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council determine the time to allow the applicant to apply for a building permit and begin construction, or request an extension of the approval.

Mayor Strauss 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 asked the Town Attorney to explain the time extension Town Manager Broad responded that the Council does not have to approve a one-year time extension, and that it could be less. He further noted that 60 days would be the minimum timeframe for the permit.

Council Member Cahill mentioned that the applicant should have some consideration in the timeframe because of the length of the process it has taken for this proposal.

Mayor Pro Tempore Hunter noted that he is comfortable with 160 days. Council Member Skall is comfortable with 51 weeks.

Council Member Cahill mentioned that there was a mistake in the process by the Council and when this was discovered the applicant wrote a letter for an extension, so one-year is too long for this extension.

Mayor Strauss believed 180 days is appropriate.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Martin seconded, to approve the Resolution 1685 and grant the applicant 180 days from today's meeting to obtain a building permit and begin construction or request an extension of the approval. Motion carried 4-1 (Council Member Skall opposed).

16. Town Council discussion of new Bay Area Air Quality Management District regulations requiring cleaner burning fireplaces, such as EPA-certified fireplace inserts or natural gas devices, to be installed in new construction or remodels. The Council will discuss potential additional Town regulations of indoor and outdoor fireplaces to implement General Plan 2007-2025 Program 2.C "Adopt Wood smoke or Biomass Smoke Ordinance". Additional regulations could include further restriction on indoor and outdoor wood burning fireplaces including their removal or replacement.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council direct staff on any additional regulation of wood burning. Staff mentioned that certain fireplaces will not need a building permit.

Mayor Strauss opened the public hearing on this item.

William Nicholson, Ross resident, explained that in his neighborhood the smoke from fireplaces lingers and does not move out quickly, so all windows must remain closed in his home.

Charlie McBride, Ross resident, stated that he is against the restrictions that this ordinance would place on homeowners.

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

Council Member Skall explained that the Council will not require the owners of existing fireplaces to change, but the new ones would have to change to the new requirements.

Mayor Pro Tempore Hunter believed this would be a good start for the Town to have this ordinance.

Council Member Cahill stated that last month the Council did not regulate outdoor fireplaces and he mentioned that new permits should follow the guidelines, but not the existing ones. He stated that the Bay Area standards have been studied and the Town should not require new requirements for existing ones.

Senior Planner Semonian noted that only about one dozen nights were called a "*Spare the Air Night*".

The Council agreed to consider an ordinance to extend Bay Area Air Quality Management District fireplace regulations to newly constructed outdoor fireplaces that require building permits. The Air Quality District's regulations require cleaner burning fireplaces, such as EPA-certified fireplace inserts or natural gas devices, to be installed in new construction and remodels. The Air Quality District prohibits wood burning on winter spare the Air Days. Residents may sign up for Spare the Air Days at: www.sparetheaire.org.

17. **Announcement of open positions for the Advisory Design Review Group, members to be appointed in February 2010, and Town Council discussion regarding staggering the terms for the Advisory Design Review Group.**

Senior Planner Elise Semonian summarized the staff report and recommended that the Council consider if they would like to change the terms to varied lengths to avoid a complete turnover of members every two years and retain some members with ADR experience.

Mayor Strauss opened the public hearing on this item.

Beth Minick, Ross resident, commented that the terms should be staggered so there are more experienced members and not a whole new panel. She desired to know the criteria and requirements to serve on this panel. She also mentioned the "*conflict of interest*" issue should be taken into account. The Council noted the criteria are outlined in the resolution.

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

The Council discussed the ADR group member positions that are set to expire in February 2010. At the group's suggestion, the Council agreed to stagger the new terms to avoid a complete turnover of members every two years and retain some members with ADR experience. Community members cautioned the Council to avoid conflict of interest issues when selecting new ADR members. Staff will advertise the open ADR Group positions for appointment at the February meeting.

Senior Planner Semonian agreed to bring back a resolution with staggered terms to the Council in February.

18. **Town Council discussion of its five Town Council goals for 2009-2010. The Council identified the following five potential goals at its August 2009 Town Council workshop.**

- a. **Downtown plan**

Mayor Strauss noted that there would be realignment of the curbs in the downtown area.

- b. **Public facilities**

Council Member Cahill reviewed previous design plans for a new civic center as well as more modest alternatives to remodel existing facilities. He would like the community members to send their thoughts to him or the Town Manager on goals for the Civic Center and Ross Common and specific ideas for improvements. Examples of goals may include:

create more adjacencies for a better working collaboration for administrative employees; move administrative functions closer to public safety; or employ green building practices. Examples of specific ideas for improvements may include rebuilding the entire Civic Center, moving some or all functions to the MA&GC, moving the Council chambers, or remodeling or expanding Town Hall.

c. Flood control

Council Member Martin had nothing further to add.

d. Hillside lot ordinance review

Council Member Skull reported that the October 29 HLO ordinance community workshop was very well attended and generated over 50 comments. Some of the major themes related to slope calculation methodology, the concept of excellence of design in granting FAR exceptions, and the competing goals of providing clarity to property owners while allowing flexibility in Council decisions.

Mayor Strauss suggested establishing a minimum home size for hillside lots and Council Member Cahill recommended reviewing the provision for exempting additions of up to 20% of existing original square-footage. He also requested an inventory of vacant lots to be completed and asked staff to display a map identifying those lots at the January meeting.

e. Unfunded mandates/pensions

Mayor Pro Tempore Hunter is reviewing the reports to see how the Town of Ross can be affected by this topic.

19. **21 Fernhill Avenue, Amendment to Variance, Design Review No. 1753**
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). An application for an amendment to the variance and design review application approved on October 8, 2009, for redevelopment of the site, including applications for design review, variance, demolition permit and second unit permit. The applicant requests approval of the 160 square foot pool house originally proposed, but denied by the Council. Total development of 4,711 square feet is requested.

The approved project includes 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 floor area ratio variance is requested for 541 square feet of a 613 square foot, attached, second unit. A side setback variance is requested to permit 25 square feet of terrace area within the west side yard setback (20 feet required, 16 feet proposed). Setback variances are requested to maintain the play structure within the front yard setback (25 feet required, 16 feet proposed) and east side yard setback (20 feet required, 10 feet proposed).

Lot area	27,802 sq. ft.	
Existing Floor Area	13.5%	
Approved Floor Area	16.4%	
Proposed Floor Area	16.9%	(15% permitted)

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Existing Lot Coverage	11.1%	
Approved Lot Coverage	9.1%	
Proposed Lot Coverage	9.7%	(15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the pool house.

Rachel Wells, owner, mentioned that the reason for moving square-footage from the main home to the pool house is because it would be a great asset for her family. She requested that the Council reconsider the pool house, which would hide the pool equipment and allow for a changing room near the pool for guests.

Mayor Strauss 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 Cahill stated that there is added value for the property with a second unit and he believed that it was reasonable to grant a floor area ratio variance for a proportion of the unit and was comfortable with the Council's decision.

Mayor Pro Tempore Hunter objected to the additional floor area for the pool house request.

Rachel Wells, owner, asked if they could move some square-footage from the home to the pool house. The Council indicated that the applicant could review that with staff.

Mayor Strauss asked for a motion.

Mayor Strauss moved and Mayor Pro Tempore Hunter seconded, to deny the request. Motion carried unanimously.

20. 39 Poplar Avenue, Variance and Design Review No. 1756
This item has been continued by the applicant to the December 10, 2009 Council meeting.

Lambert and Dorothy Meyer, 39 Poplar Avenue, A.P. No. 73-273-05, R-1:B-7.5 (Single Family Residence, 7,500 sq. ft. minimum lot size), Medium Low Density (3 - 6 units per acre). Application for design review and variances to allow replacement of a two-car garage within the side yard setback (15 feet required, 3 feet proposed). The new garage would have a maximum ridge height of 14 feet and would have painted T-1 1/2 plywood siding and a composition shingle roof.

Lot area	8,686 sq. ft.	
Existing Floor Area	35.7%	
Proposed Floor Area	35.7%	(20% permitted)
Existing Lot Coverage	35.7%	
Proposed Lot Coverage	35.7%	(20% permitted)

21. 10 Morrison Road, Variance and Design Review No. 1757

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Margaret E. Hass, 10 Morrison Road, A.P. No. 72-051-02, R-1:B-5A (Single Family Residence, 5 acre minimum lot size), Very Low Density (.1 - 1 units per acre). Application for design review and variances for a 650 square foot, two story, “garden tower” addition to the south side of the existing residence within the side setback (25 feet required, 18 feet proposed) and rear setback (40 feet required, 39 feet proposed). The materials would match the existing residence. The addition includes decks on the second floor and tower roof.

Gross Lot Area	35,126 sq. ft.	
Net Lot area	28,173 sq. ft.	
Existing Floor Area	13.0%	
Proposed Floor Area	15.3%	(15% permitted)
Existing Lot Coverage	11.7%	
Proposed Lot Coverage	13.7%	(15% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council consider the design and continue the item.

Edward Buchanan, representing applicant, mentioned that the owner needs more space because of their family needs. He mentioned that there was a lot of consideration in regard to placement of the tower. He briefed the Council on the materials of the tower, how it would be constructed, and how it will blend into the landscaping. He then stated that the neighbors view towards the home is filtered through landscaping. He further explained how the traffic would flow with the construction vehicles and how it will be addressed.

Mayor Pro Tempore Hunter asked about the pre-manufactured part of the tower. Mr. Buchanan responded that a lot of the work is done off-site and he will work with building staff through the entire process.

Council Member Martin discussed the height limit of the tower and pointed out it reaches the maximum amount of building height.

Mayor Strauss desired an explanation on the bulk and mass of the design. Mr. Buchanan explained that the design of the stairs to the second floor was placed outside so that guests would not disturb anyone on the first floor.

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

Mayor Pro Tempore Hunter had no objection to the design.

Mayor Strauss asked the applicant if the ceiling heights could be lowered. Mr. Buchanan responded in the affirmative. He noted that it could be lowered some.

Council Member Cahill indicated that if this item went back to ADR they could help with the design issues. He further commented regarding the hillside lot ordinance exception for the project. Council Member Martin agreed with Council Member Cahill that the tower is bulky and if it could be lowered that would be an improvement.

Mayor Strauss agreed with all comments and if the project were lowered with the mass of the project to the 15%, then the project would not impact the site as much.

Mayor Strauss asked for a motion.

Mayor Strauss moved and Mayor Pro Tempore Hunter seconded, to continue the project to the December 10, 2009 meeting or after. Motion carried unanimously.

22. **Upper Toyon Lots, Variance and Hillside Lot Hazard Zone Permit No. 1672**
 Harvey W. Glasser, vacant lots between Upper Toyon Road and Canyon Road, A.P. Nos. 72-031-49, 12-121-03, 12-121-33, 12-081-07, R-1:B-5A (Single Family Residence, 5 acre minimum lot size), Very Low Density (.1 - 1 units per acre). A hillside lot hazard zone 3 permit and parcel map to allow the merger and re-subdivision of four vacant lots into two lots. Variance and conditional exceptions to zoning and subdivision regulations are requested to allow access to the resulting lots from a private road (public street frontage is required) and for one of the lots to be less than 5 acres in size. Parcel 1 would have a net lot area of approximately 3.95 acres (4.35 acres gross) and Parcel 2 would have a net lot area of 5.3 acres (5.5 acres gross). The existing lots are nonconforming in size and do not have public street frontage.

The applicant also requests the Council to assign a maximum guideline floor area of 7,500 square feet to the two new sites. No construction development plans have been submitted for any of the lots.

The Hillside Lot Ordinance guideline floor areas for the existing and proposed parcels:

Assessor's Parcel	Net Lot Size	Slope	Hillside Guideline FAR	
72-031-49	148,017	52%	4,267	
12-121-03	85,047	55%	2,987	
12-121-33	68,684	56%	2,496	
12-081-07	101,495	29%	10,000 sq. ft.	
Total			19,750 sq. ft.	
Proposed Lots	Net Lot Size	Slope	Hillside Guideline FAR	Proposed FAR
Lot 1	172,062	44%	6,534	7,500
Lot 2	229,997	44%	6,534	7,500
Totals			13,068 sq. ft.	15,000 sq. ft.

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the new lot lines as proposed.

Mayor Strauss desired to know where the bulk and mass would be located.

Harvey Glasser, owner, stated that great consideration was given in regard to how this lot was designed so that the lots are appropriate for each site. He further believed these numbers are very modest in size and are appropriate.

Mayor Strauss opened the public hearing on this item.

Phil Basin, Ross resident, expressed concern for the design following the hillside guidelines. He also expressed concern for the shape of the lots without any house plan.

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

Mayor Strauss mentioned that not much has changed since 2007 with this project and a suggestion would be to have smaller lots with smaller homes. Council Member Cahill and Hunter agreed with the Mayor's comments.

Mayor Strauss asked for a motion.

Council Member Cahill moved and Council Member Martin seconded, to approve the project as outlined in the report and deny the request to assign guideline floor areas to the new sites above what the Hillside Lot Ordinance would permit. Motion carried unanimously.

Glasser Upper Toyon Conditions of Approval:

The Town Council approved the merger and resubdivision, but not the request to assign a 7,500 square foot guideline floor area maximum to the resulting lots, based on the findings in the staff report and subject to the following conditions:

1. The Town approves the merger and resubdivision proposed by the parcel map except as otherwise provided in these conditions.
2. Final documents shall be submitted to the town engineer for review and approval before they are recorded. The cost of this review shall be paid by the applicant.
3. The applicant shall comply with all requirements of the City of San Rafael associated with construction of the roadway on the easterly portion of the lots currently known as APN 12-121-03 and APN 12-121-21.
4. Development of the lots shall be subject to development regulations in the Town of Ross, including design review and the hillside lot ordinance.
5. The building envelopes and roadways specified on the parcel map may be modified by the Town Council when development projects are approved for the sites if necessary to reduce environmental and aesthetic impacts.
6. All requirements of the utility companies and Town Public Safety, Building and Public Works Departments shall be met prior to recordation of the Final Parcel Map.
7. The applicants shall provide the planning department with a copy of the recorded documents by November 12, 2010. Failure to record the parcel map by that date shall cause the approval to lapse without further notice.
8. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing

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

Council Member Martin recused himself for the next agenda item.

23. **98 Shady Lane, After-the-Fact Variance and Design Review No. 1755**
Paige and Bobby Locke, 98 Shady Lane, A.P. No. 73-052-37, R-1:B-10 (Single Family Residence, 10,000 sq. ft. minimum lot size), Medium Low Density (3 - 6 units per acre). Request to modify conditions of the 2000 variance and design review approval which restricted the improvement of the attic. After-the-fact request to permit 163 square feet of attic area adjacent to the second floor master bedroom to be finished and used as a closet within the north side yard setback (15 feet required, 9 feet proposed). No exterior modifications were made to the residence.

Lot area	7,511 square feet
Existing Floor Area Ratio	30.0%
Proposed Floor Area Ratio	32.6% (20% permitted)
Existing Lot Coverage	31.0%
Proposed Lot Coverage	31.0% (20% permitted)

Senior Planner Elise Semonian summarized the staff report and recommended that the Council approve the project as proposed and as-built.

The owner mentioned that there is no change to the building and the project does not impact any neighbors.

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

Mayor Pro Tempore Hunter and Council Member Skall agreed with the approval of this project.

Mayor Strauss asked for a motion.

Council Member Cahill moved and Council Member Skall seconded, to approve this project as proposed. Motion carried unanimously.

98 Shady Lane Conditions:

The Town Council moved to approve the variances based on the statements in the staff report, the applicant's findings, and subject to the following conditions:

1. All necessary permits shall be obtained from the building department within 60 days. The construction shall comply with the building code and any corrections noted by the building department shall be made prior to project final.
2. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from

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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.

Council Member Martin reconvened his position on the Town Council.

24. Correspondence -

- **Refund to St. John's Episcopal Church**

The Council will refund the St. John's application fee and indicated that they can donate the funds to whatever charity they wish.

- **Letter from Marin Health Care District**

Town Manager Broad mentioned that he received a letter from Marin Health Care District about shifting money from the hospital to the main Sutter Health Office. The Council indicated it will not draft a letter on this matter.

25. Other Business - None

26. Adjournment.

By order of Mayor Strauss, the meeting adjourned at 10:15 p.m.

Richard Strauss, Mayor

ATTEST:

Gary Broad, Town Manager