

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, NOVEMBER 13, 2008

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

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

2. **Open time for matters pertaining to the closed session in agenda item 3. - None**

3. **Closed Session – Conference with Legal Counsel – Potential litigation, pursuant to Government Code Section 54956.9, Jose Adan Reyes-Hernandez claim.**

4. **Open Session. Council will return to open session and announce action taken, if any. The Council voted to deny the claim referenced in agenda item 3.**

5. **Posting of Agenda.**

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

6. **Minutes – Special Joint October 6 and Regular October 16, 2008 meetings**

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to approve the Special October 6, 2008 joint Ross School/Town Council minutes as submitted and approve the regular October 16, 2008 Town Council minutes as amended. Motion carried unanimously.

7. **Demands.**

The demands were met.

8. **Open Time for Public Expression.**

Diane Rudden, Willow Ave. resident, expressed concern for individuals not stopping at the Lagunitas/Willow stop sign. She further asked the Council for guidance. Jim Reis, Police Chief, agreed to arrange some directive enforcement and write tickets.

Council Member Skall noted that Fernhill Avenue continues to have excessive speeds traveled as well and agreed that it would be beneficial to start writing tickets. Police Chief Reis agreed to investigate.

Council Member Martin suggested placing police vehicles at intersections having enforcement problems. Police Chief Reis advised against such approach since it would take two officers to place such vehicles at intersections and individuals eventually get the idea that the vehicle is not occupied.

Robert Dickinson, Glenwood Avenue resident, believed Town residents could benefit from greater communication about, stricter enforcement of, and possible modification to the municipal code regarding nuisances. Section 9.20.035 states, *“It is unlawful for any person or construction company within the Town limits to perform any construction operation (with the exception of*

inaudible indoor activity)... at any time on Saturdays, Sundays, or the other holidays listed in Section 9.20.060 (e.g. “New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day and Christmas Day.”) The municipal code goes on to state, “It is unlawful for any person within the town limits to operate any portable gasoline powered machine to blow leaves, dirt, and other debris off sidewalks, driveways, lawns or other surfaces.” “Power mowers only (i.e., no leaf blowers, no chain saws) may be used by gardeners working on Saturdays between the hours of 9:30 am to 4:pm (i.e., not any time on Sundays or other holidays.)” With major construction going on at multiple sites in town, the peace and quiet of weekends and holidays is the only solace residents have from constant noise between 8 am and 5 pm Monday through Friday. This past Tuesday on Veteran’s Day, a holiday explicitly named in the municipal code, there was audible outdoor construction occurring going on at the Branson School, Ross School and other homes around town throughout the day. No one wants the school construction projects to be completed faster than the residents, but audible construction noise on a holiday is a violation of the nuisance ordinance and unacceptable. He personally approached a construction crew on Glenwood Avenue that was cutting slate outdoors for a new patio and asked them to stop. Later that morning, he called the Ross Police Department about the Branson School construction. The dispatcher wondered, “*Maybe they have a permit to work on holidays?*” The officer confirmed that the Branson School did not have such a permit and asked them to stop. As he briefed them, the officer could hear a chain saw and multiple leaf blowers running in other parts of town. The Police Department does a great job and residents already ask too much of them, so this calls for considered actions by the Town Council as follows:

1. The Town of Ross should not issue permits that are more lenient than the municipal code (i.e., allowing construction on holidays). As permits are issued after project approval at a town meeting, no exceptions to the municipal code should be allowed, as the code is minimum expectation of all residents.
2. With communication from the Town Council, residents should be reminded about the prohibition of contractors making outside noise on weekends and holidays, the prohibition of gas-powered blowers anytime, and the limitations for gardeners on Saturdays.
3. The Town Council should consider amending the municipal code to prohibit any construction activity – indoors or outdoors – by contractors on Saturdays, Sundays or holidays.
4. The ADR group should consider developing and publishing a list of contractors who consistently comply with town regulations, for the benefit of those pursuing construction projects and all town residents.

Mr. Dickinson believed some residents and contractors might always attempt to put their own interests over the interest of the community. He did not believe residents should reasonably expect the conga line of construction pickups on town streets, the humming of diesel engines, the pounding of hammers and the buzzing of power equipment on weekends, this coming Thanksgiving or even Christmas. He further noted that how this matter is resolved could help ensure the sanctity of the Town.

Mayor Cahill did not believe there was any action by Council to allow contractors to have more lenient rules than the municipal code and agreed that it is clearly a violation of the code. He then directed staff to remind residents and contractors that gasoline powered

blowers are not permitted at any time without a special permit from the Public Works Department. Lawn mowers and electrical powered leaf blowers and other yard equipment are permitted only on non-holiday weekdays between 9:30am and 4pm. He also asked staff to outline holidays, which include Veteran's Day, President's Day and Martin Luther King Jr. Day. Town Manager Broad agreed to include information in "*The Morning After.*"

Ken Fineman, School Board President, noted that the School Board is interested in being on the agenda every other month. Also, the Board approved Council Member Martin to serve on the Facilities Design Committee including Council Member Skall. He also understands that there was an issue on Redwood with drop off and pick up and they support working with Town Council to make sure they are the best possible neighbors to the Town. He noted that several were not aware that November 11th is in fact a holiday and in the future he will make sure to comply with outlined holidays and apologized to the Town Council.

Mayor Pro Tempore Strauss asked President Fineman to report on school funding. President Fineman responded that the Board discussed it for 1.5 hours. The budget for the entire school project including the gym is \$37 million. In question, \$6.8 million is coming from state or federal sources. The consultants have been extremely conservative. They are under budget 20%, which is the benefit of the bad economy. Bids are lower than projected, so they are in good shape. They expected to get \$6.8 million from OPSC for school construction. They will receive a fixed amount each month, which decreases over time. They are one of 6 or 7 hardships in California and they treat hardships better. He noted that there is conceptual approval, actual approval and funding. They received conceptual approval in March. Actual approval could not take place until their plans were stamped, which just occurred, so they will be on the consent agenda shortly. The likelihood of not receiving the money is low. Yesterday they were approved by FEMA outside the \$6.8 million for \$1 million, so they are ahead \$1 million. There is still some risk, but at this point it is not a major issue. He added that the effect of the timeline could be 30 days because they do not want to accept a bid until they know they are receiving that money, so a little delay in the bidding process.

Mel Jarjoura, Public Works Director, provided the Council with a building permit that outlined the working hours and holidays including Veterans Day. He further suggested that residents contact the Police Department because Town Hall staff is not available on holidays.

9. Report from Mayor Cahill.

Mayor Cahill reported that last month Ross revived a tradition this year with a spirited Halloween window painting contest in the downtown. Thanks to organizer Bonnie Bibas who wanted to recreate the Halloween window painting. Sophie Goldberg, an 8th grader, took first place while 3rd grader Alice Owen came in second and 5th grader Rosie Owen took third place. He then congratulated the winners and gave special thanks to participants for making downtown Ross so colorful this Halloween.

10. Report from Committee Heads.

Community Protection - Council member Hunter

- Fire and Police Department goals and timelines

Council Member Hunter announced that the subcommittee agreed with the timelines and because in some ways they deal with personnel, he made one copy available to Council to review, but it is not a public document.

Council Member Martin reported on the Finance Committee that consists of Mayor Pro Tempore Strauss, Town Manager Broad and himself. Currently, there exists \$5.6 million of Town funds deposited in LAIF. It yields 2.7% annually. It is a triple AAA investment fund that is not federally insured. Town Manager Broad and the Finance Committee are considering transferring funds in a maximum amount of \$95,000 yielding closer to 4% annually and each CD is federally insured. Such a transfer of funds is in accordance with the Town investment policy and is fiscally sound.

11. Report from Ross Property Owners Association.

Diane Rudden, RPOA representative, announced that the leaf blower ordinance has been printed and is available to the public in both English and Spanish and they hope to decrease the use of non-approved leaf blowers in Town. Also, several parents are making U-turns at the school, and Friday seems to be the day they make the most U-turns. For the next few Fridays, RPOA believed it would be helpful if an officer were in the area to remind parents not to make U-turns. Tickets are needed because it is a safety hazard. Chief Reis noted that officers have been writing an increased amount of tickets this month. In terms of the Redwood Drive drop off area, there is nothing illegal about what people are doing. Currently, they are asking for voluntary compliance. They are working on a double yellow line to be placed on Redwood Drive around the corner and then it would make it illegal to make such U-turn. Other options are being discussed as well as rerouting the path children travel to school.

12. Flood Control Report.

Mayor Pro Tempore Strauss reported that URS consultant suggested pushing the date back to June of 2010 rather than 2009 on bridge construction. He along with Council Member Martin will meet with representatives, but due to Caltrans and the EIR it may be pushed. Staff is doing their best to keep it on schedule. Town Manager Broad indicated that staff has not received the administrative draft. Caltrans can take up to 135 days on their review, so they must figure out a way to push Caltrans.

Council Member Martin reported that the Army Corps of Engineers is still proceeding with their EIR relative to the Ross portion of the Corte Madera Creek, also known as Unit 4. To date, Congress has not approved next years funding for the project, though funds from other projects are being used to continue work. It may be the appropriate time to touch base with our national and state representatives to ensure that this project is priority for the business and residents of Ross Valley. Also, a tree was removed last week that was in danger of blocking the creek and two more trees must be removed. The other action is identifying from the creek side each address of the appropriate street, so they can clearly identify abuse.

13. Report from Ross Recreation Director Pam Riley.

Director Pam Riley provided an annual report to Town Council and indicated that Ross Rec managed to work out liaisons with local communities such as Marin Art and Garden Center to offer joint programs. They are working to have better relationships between the Town, School and Marin Art & Garden Center. They have new pre-school programs that doubled in size and they now operate four days per week. Summer camps were held at Middle School and many attended from Ross and Kentfield. Over 800 students attended camp this summer. They raised their prices, so they made a profit. With a budget of \$100,000 per year and they spent most of that with \$3,000 profit last year. They have an organization called "Ross

Auxiliary” that provides the community phone book. Ross Auxiliary made a large donation of \$100,000 to Ross Rec that will help carry Ross for the next two years. That donation is the most Ross Rec ever received. This year they are doing a winter dinner early February on Saturday night with a party at the firehouse that will be open to all ages. This is a wonderful way to meet residents. They have a great relationship with St. John’s Church for pre-school. They tried to expand adult programs and worked with Marin Art and Garden Center to offer 39 programs for adults. They offered cooking classes and had 178 adults this fall, which is a great turn out. They hope to continue increasing adult programs and welcome any suggestions from the community. It is a non-profit organization and is present to serve the community. Their new logo states, “*Ross Rec serving the entire Ross Valley.*” In terms of amending laws, last week they developed the new membership. The new board members are enclosed in the packet and Town Council approval is needed. There was a change to their bylaws to allow three outside liaisons who are members of the outer community. They have been non-voting in the past, but this board desired them to be voting members. President of Ross Rec is out of town, but will submit a proposal for what the bylaws would state and then at that meeting approve the board members.

Mayor Cahill requested that the Council receive such packet the Friday before the meeting in order to have time to review.

Mayor Pro Tempore Strauss desired a list of all programs offered in order to better understand what is going on in terms of the downtown. He wanted to know what activities would impact the Common. Mayor Cahill stated that they must know what size soccer field is needed and baseball diamond and what the best location might be. Specific configuration is needed at the Common. Director Riley agreed to investigate the size desired. They will always service the kids under 10 years of age. Also, the tennis courts were resurfaced last year, but those courts must be redone and asked the Town to consider discussing the possibility of redoing the courts two years from now.

Ms. Rudden, Willow Ave. resident, asked the reason for the decreased membership with tennis courts. Director Riley noted that it is \$200 to buy a key for two years. They will sell a key half way through for half price. Most residents belong to a tennis club. They sell about 70 keys per year, which is not enough.

14. Introduction of new Apprentice Firefighter Michael Gutierrez.

Tom Vallee, Fire Chief, introduced new apprentice firefighter Michael Gutierrez to the Council.

15. Town Council consideration of introduction of Ordinance No. 612 to approve the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation Program to be known as Marin Clean Energy.

Town Manager Broad summarized the staff report and recommended that the Council consider introduction of Ordinance No. 612, approving the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation Program to be known as Marin Clean Energy. Staff then introduced Dawn Weisz from County of Marin and Mark Fulmer from MRW & Associates. Staff noted that both Belvedere and San Anselmo have joined with other cities that have approved this concept, but the County was the first.

Mark Fulmer, MRW & Associates, explained that they have extensive experience in the California energy market and working with CPUC. MRW has been involved in CCA issues that involved: peer review studies of CCA feasibility analyses; active in the CCA proceeding at the CPUC; and prepared a detailed feasibility study of municipalities considering CCA in Southern California. In 2005, they evaluated price forecasts for natural gas and wholesale electricity; resource cost and resource procurement assumptions; PG&E rate forecasts; and risk and uncertainty issues. They provided a high-level review of the "*Marin-California CCA business plan*." They focused on items that are most important to making a CCA financially viable. They identified any material flaws. They were not asked to verify or replicate results of the business plan or provide legal review of the proposed JPA or CCA. They reviewed the business plan and other related documents. They discussed assumptions and conclusions from the business plan with Navigant and other consultants to the County. They identified issues that towns and cities may wish to have clarified or analyzed prior to making final, binding commitment to participate in CCA. He explained that towns and cities are not at risk for development costs of establishing CCA until after initial power procurement results are received. There are two broad categories of rates: light green, which is comparable to PG&E rates; and 100% green, which would be higher than comparable PG&E rates, at least initially. In terms of power procurement strategy, near term consists of full requirements supply from third-party supplier and long-term consists of blend of purchases and supply from own assets. The business plan contains no fatal flaws. It constitutes a workable path to provide green power in Marin while offering rate comparability and predictability. The business plan lacks a quantitative risk analysis and plan to mitigate risks. Some minor clarifications would provide decision-makers with better information going forward. The key underlying assumptions are within the range of reasonableness. The business plan does not explore results under sets of other reasonable estimates. A risk assessment would help towns understand the impact of changes to key assumptions on: expected rates for CCA customers relative to PG&E; volatility of CCA rates relative to PG&E; and cash flow risks for CCA. At a minimum, the risk assessment should consider the following:

- Natural gas and wholesale power costs
- Nature of "*fixed*" price bids from a third party power provider
- Cost and performance of the renewable power project developed by the CCA in its fifth year of operation
- Customer opt-out assumptions
- Customer migration between the 100% green and the light green options

The following are issues that need clarification:

- The expected pricing for light green power
- The meaning of the "*100% green*" power product
- Customer risk associated with the transition charge
- "*Switching*" rules regarding migration between the "*100% green*" and "*light green*" rate options
- Date of financial closing for Marin Clean Energy-owned renewable generation

Mr. Fulmer stated that given the upside potential of the CCA and the off-ramps still available, the towns and cities of Marin should continue their participation in the planning and development of the CCA. Following the issuance of the quantitative risk assessment recommended and the results of the third party bid, the towns and cities of Marin will be

well positioned to make an informed decision whether or not to move forward with participation in the CCA.

Mayor Cahill asked the intent of MCE to produce the business plan or update the business plan to incorporate all recommendations in the report, and if so, what is the timeframe. Ms. Weisz stated that they must develop an implementation plan that would incorporate the recommendations made. Some actions might occur before the implementation plan is provided. She believed those are all great recommendation and they are on the radar.

Mayor Cahill asked the entity that will produce a bid for the program, is it for profit or non-profit. Mr. Fulmer noted that they would look to for profit groups experienced in power trading business. Ms. Weisz added that a number of types of communities they would be looking to such as entities that serve municipal utilities within Northern California power authorities. It is open to bid to any of those entities. They will request bids in late February or early March and respond within one month.

Mayor Cahill clarified that the opt-out will only happen after MCE produces power because he thought there were several opportunities. Mr. Fulmer responded that there is a number of notifications required by law for those forming a CCA. Two occur before power starts flowing and two occur after, so there is a four-month window. Ms. Weisz noted that there is an opportunity to opt-out at least 6 months for cities and towns before they have a draft contract to move forward. There are some off-ramps between now and that time. Earliest potential contract vote would be June or July. It requires a minimum of 90-day review period for public and attorneys to submit comments. It could go longer, if needed, and then there will be an opportunity for each city and town to discuss whether to sign on or not. Written in the JPA agreement is an opportunity for cities to do that if they so chose. She further noted that the JPA has the final decision.

Council Member Martin asked if other communities are further ahead in implementing this program. Mr. Fulmer stated that there is no CCA serving power. The Kings River Conservation District is ahead of the town. They selected a third party to do interim buying and are dealing with regulatory issues.

Mayor Pro Tempore Strauss asked what would prevent PG&E from buying the same source. Mr. Fulmer responded that CCA is a public nature allowing them to acquire debt at much lower rate than PG&E being a private entity. Rates to user should be less than PG&E.

Council Member Hunter asked if there are any renewable sources the CCA or JPA is not considering. Mr. Fulmer responded that nuclear is not being considered. Ms. Weisz stated there is no policy on what types of power would or not be considered. 100% green and light green product is regulated by the State and would be used.

Council Member Skall asked if there is any reason why it has to be an opt-out arrangement. Mr. Fulmer stated that it is by statue in the laws that established CCA. It is dealing with customers and they wanted to give CCA and JPA that advantage to get going.

Mayor Cahill noticed in the staff report that one object of JPA is to deal with AB 32 matters, which are various programs that the County could do to decrease green house gases, which is the area where towns and cities can have some financial responsibility for contributing

toward those programs. Mark Fulmer responded that there was some discussion of creating a separate governance system for that element of the JPA. A couple of months ago several members in the task force felt they should be more explicit in their rationale by reducing green house gas emissions and comply with AB 32. Several members in the taskforce wanted this JPA to do both, launch CCA and join cities and towns together to work on AB 32 requirements. It made sense to allow the governing body to do both. It became tricky, the scenario when some cities and towns chose to move forward with CCA and others do not. Then two governing bodies might overlap. CCA is relatively new in California and the attorney recommended not going into a legally complicated structure. It made more sense to keep JPA structure clean. Explore CCA and AB 32. If members wanted to proceed with CCA then that program would take precedence and other members must withdraw. It might be that all members decide not to do CCA and decide to implement AB 32 projects. JPA could decide not to do CCA at all. They had to separate the two due to that one scenario of one proceeding and others not. Mayor Cahill then asked if the pricing comes back favorably and if the JPA goes forward and purchases power at that point would they expect AB 32 implementation part to remain or decide at that point. Ms. Weisz expected it to be in unless a significant number of cities and towns pulled out.

Council Member Hunter clarified that CCA activities help to meet AB 32 standards. Ms. Weisz responded in the affirmative. CCA would provide revenue stream to be directed toward AB 32 compliance activities.

Council Member Hunter stated if this Town wanted to opt-out are their still areas to meet AB 32. Ms. Wieze stated that there are, but they are more incremental.

Mayor Cahill stated that the goal, if all approved this, would be to sign the JPA and then anticipate starting this board. Ms. Weisz noted late January or early February would be the first meeting of JPA. They must appoint an elected representative to be the primary board member and an alternate from the elected body.

Mayor Cahill opened the public hearing on this item.

Stephen Holmes, Madrona Ave. resident, asked the ramifications for residential. Mr. Fulmer noted that it would be a net metering. It would feed back into the grid and get credited back. It can be netted against each other, so netted out on an annual basis. Ms. Weisz noted that energy bills would still come from PG&E.

Zach McReynolds, Lagunitas Rd. resident, asked about capital requirements. Ms. Weisz explained that would be handled by the third party and worked out once they receive responses from the market. The initial contract is a bridge contract to build own assets, and they use revenue bonds to do that.

Steven Walker, Baywood Ave. resident, asked why large hydro is not included in the renewable source. Tim Rosenfield, a consultant to the County on the project, explained that there is no new large hydro available. Large hydro is precluded under State laws. There are other environmental issues as well. In reality, there are not a lot of potential resources from hydro anyway. It is not available right now, so it is not considered feasible. Mr. Walker stated if green energy is not available at any demand period, where would power come from and would it be subject to any kind of tariff. Mr. Rosenfield stated not a tariff. The concept

of 100% green is not generating green power from wind and solar to match minute for minute demand for energy. There is always a balance. The amount of green energy used over one year is ultimately put into the system equal to kilowatt-hours taken out of the system. Follow load with mix of resources and conventional power. At summer time peak, wind is not producing, they are buying conventional resources such as natural gas and this is what every single utility does. No one has 100% of their own generation. All are working together on the statewide grid to balance resources. Mr. Walker believed PG&E is already doing that. His concern is that they would be subject to 100% green tariff because it fluctuates. If buying non-green sources, do they have to pay tariff. Mr. Rossenfeld stated no. There is a requirement and all transactions are managed by an independent agency. They have over 30,000 transactions each day. PG&E gets half their power from independent power producers. Most of that is under long-term contract. Municipals own more than PG&E at this point. They are investing in renewables as required by State law. It is a mix and they are entering a well-defined market place with a lot of players and choices.

Mr. Walker stated that although it is in the statute, he is not comfortable being pushed into this and then having to opt-out. He objected to being forced to change companies and go through steps to get back to a company that is already providing him with a reliable source of power. Mr. Rossenfeld stated that during the period of initial marketing and transition there will be no change. If opt-out they will never have been changed to CCA and will remain with PG&E. There is no process of changing and changing back. Ms. Weisz stated that many do not understand the power grid and how it works. There are 39 different power supplies in California all of them buy and sell power. Talking about changing, they buy whatever PG&E chooses. Under CCA, they would buy the supply they chose, so it is open to a more competitive market.

Public Works Director Jarjoura asked whether or not they are using existing solar energy systems that are outside the County or thinking of building new solar energy systems in the solar sector only within the County of Marin. Ms. Weisz stated that they will be looking at Marin and outside of Marin sources. Energy service providers must be identified sources already running. Over time they would be doing that within technical and political constraints, but land cost more, so it is a mix of both.

A Ross resident asked if this affects the infrastructure of PG&E. Ms. Weisz noted they would be responsible for the transmission and distribution.

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

Council Member Hunter felt it comes down to percentages, but the percentages are different. Ms. Weisz noted that they must put their 240 megawatts on the grid. What comes out is up to the independent system operation. Technology is there to control the source.

Majority of Council concluded that joining MEA would not pose any financial or legal liabilities to the Town at this juncture.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to introduce Ordinance No. 612, approving the Marin Energy Authority Joint Powers Agreement and to authorize the implementation of a Community Choice Aggregation (CCA) Program to be known as Marin Clean Energy (MCE). Motion carried 4-1. Skall opposed.

16. Town Council consideration of Resolution No. 1658 approving an expenditure plan for the utilization of supplemental “Citizen Options for Public Safety” (COPS) law enforcement funds in fiscal year 2008-2009.

Police Chief Reis summarized the staff report and recommended the Council’s consideration of Resolution No. 1658, approving an expenditure plan for the utilization of supplemental “Citizen Options for Public Safety” (COPS) law enforcement funds in fiscal year 2008-2009.

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

The Council agreed to continue funding one police officer position with State COPS funding at a total cost of \$136,434. The State has provided supplemental funding to local communities through the COPS program since 1996 to enhance local public safety services. The Town will receive \$90,000 in COPS funding this year, and with the current disbursement, the COPS account will stand at \$243,594. Whether the State will continue to fund the COPS program next year is unknown.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to adopt Resolution No. 1658 approving expenditure plan for the utilization of supplemental “Citizen Options for Public Safety” (COPS) law enforcement funds in fiscal year 2008-2009. Motion carried unanimously.

17. Town Council amendment to the adopted FY08-09 budget for the following items: a) to increase the staffing level for the police department by one additional police officer; b) to purchase a replacement police car in FY08-09 rather than 09-10; and c) to authorize the purchase of 10 Taser units for the police department.

Town Manager Broad summarized the staff report and recommended that the Council adopt FY08-09 budget for the following items: a) to increase the staffing level for the police department by one additional police officer; b) to purchase a replacement police car in FY08-09 rather than 09-10; and c) to authorize the purchase of 10 taser units for the police department.

Council Member Hunter noted that the Public Safety Committee was concerned and spent a good deal of time on the matter and advised Council to accept the recommendation. Mayor Pro Tempore Strauss thought when discussed they would not add another police officer and asked if it is necessary in this community. They must be fiscally responsible right now. Police Chief Reis responded that he was considerably more expensive than his replacement officer, so it would automatically flow into the next fiscal year. By hiring this officer, Ross

will be at the service level of last fiscal year. Council Member Hunter noted that there is an overtime issue as well. Police Chief Reis agreed. Town Manager Broad stated that it is hard to project with overtime. Hypothetically, with an additional position there should be some savings in overtime, but they should not quantify. Having this position will have a net savings to the overtime budget. Police Chief Reis agreed.

Council Member Martin stated that the Police Chief is in the field, so they are benefiting with more police protection with the promotion and additional officer. Police Chief Reis stated that they want the same number of staff along with him working the street. As his duties lighten up, he would patrol in the mornings and afternoons and spend time in the field, which is the Council's desire to go back to the working chief model.

Town Manager Broad explained the big picture and this allows for the department to add one officer now and then promote a second sergeant later. Public Safety Subcommittee was very diligent on questing Police Chief Reis extensively on the need as they were not readily convinced this was the step to take, financially. Also, there is discussion about the difficulty in having a model of one sergeant with a police chief. Half of the time no one is supervising the department. They consciously moved into a fire department model of a fire chief and police chief, but half the time no one manages the patrol officers. From liability perspective, staff warned the town if they do not take this step of not implementing the police chief out on the street model they are not accomplishing strengthening of the department of having supervision for all officers. We would certainly rather not spend the money, but police services are a priority in the community. Looking at the budget at least this year, there is funding to continue.

Police Chief Reis noted that they are promoting a sergeant in July, which will bring them back to the staffing level they had for the past three years. It is not adding employees, but remaining at the same staffing level of previous years. Without that they are reducing that level. Total staff is nine and with a 40-hour work week two officers could be on patrol. He would like to maintain that staffing level.

Mayor Pro Tempore Strauss suggested buying a police vehicle rather than a Dodge Charger. He would appreciate research before they purchase such vehicle. Police Chief Reis is open to a vehicle that is relatively fast, large, and has good turning radius. Council Member Hunter suggested making it a condition of approval to investigate other vehicle options.

Council Member Hunter noted that ABAG feels strongly that tasers will reduce liabilities and they will pay 50% of the cost.

Council Member Martin asked if officers have been trained on the use of tasers. Police Chief Reis noted that the County will be training each deputy on the use of tasers and they could incorporate Ross officers in their training, so they could integrate into the Sheriff's office training for little to no cost.

Town Manager Broad noted that tasers have a 6-year life span. Police Chief Reis stated that these are state-of-the-art tasers with computer chip that maintains memory to keep track of when the taser is utilized.

Council Member Hunter pointed out that when that laser light comes on many stop. Police Chief Reis agreed. Many will stop resistance just by virtue of the fact that there is a taser.

Mayor Cahill asked why 10 are needed and suggested sharing amongst officers. Police Chief Reis considered four tasers for each patrol car, but since ABAG was paying 50% of the cost, he wanted to make each officer responsible for their own taser. He believed it is a good investment.

Mayor Cahill opened the public hearing on this item.

Lee Notowich, Woodside Way resident, asked if it would lower the premium for insurance if that were part of their arsenal. Town Manager Broad responded that it would not, but if they are reducing our liability, the overall pool benefits.

Stephen Holmes, Madrona Ave. resident, pointed out that tasers cause death as well. Police Chief Reis stated when weighing the number of shootings to tasers the upside is huge. It is his recommendation that it is a wise purchase, which will reduce the liability of the Town.

Ken Fineman, School Board President, discussed the load factor, which is 100% and asked how that compares with the existing force. Town Manager Broad noted that it is the same. Retirement alone is 35% of the salary cost. Mayor Cahill noted that it is based on a contract that is common among all jurisdictions.

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

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Martin seconded, to adopt FY08-09 budget for the following items: to increase the staffing level for the Police Department by one additional police officer; purchase a replacement police car in FY08-09 rather than 09-10, with additional condition that the Police Chief come back to the Council with a proposal of a green vehicle that will accept police vehicle requirements rather than the Dodge Charger; and authorize the purchase of 10 taser units for the Police Department. Motion carried unanimously.

18. Town Council consideration of Resolution No. 1659 authorizing tax deferred member paid contributions through CalPERS to ensure compliance with IRS Ruling 2006-43.

Town Manager Broad summarized the staff report and recommended that the Council consider Resolution No. 1659, authorizing tax deferred member paid contributions through CalPERS to ensure compliance with IRS Ruling 2006-43.

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

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to adopt Resolution No. 1659, authorizing tax deferred member paid contributions through CalPERS to ensure compliance with IRS Ruling 2006-43. Motion carried unanimously.

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

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

Goal A - Staff job description updates and performance reviews

Mayor Cahill reported that Patti DiVella of PDV consultant started the project of helping the Town to create job descriptions and performance review procedures and Ms. DiVella will interview all Council members later this month and in December. The report should be available in the first quarter of 2009.

Goal B - On-going emergency preparedness, with a focus on seniors

Council Member Skall announced that sandbag materials has arrived for the rainy seasons. This year, sandbags will be available only at Natalie Coffin Greene Park and not at the Town of Ross Fire Department. Also, the Town continues its efforts to prepare residents for floods and other emergencies. Residents interested attending CERT and "Get Ready" Marin classes, as well as senior citizens who wish to be included on a special Town emergency notification list, should contact the Town. Also, Fire Chief Vallee conducted a two hour meeting and walk on Ivy Drive. They worked on access, fire, drainage and cleaning issues.

Mayor Cahill asked staff to include the new location for sandbags in "*The Morning After*." Town Manager Broad agreed.

Goal C - Town and Ross Valley flood control

Council Member Martin noted that the Marin County Flood Control District released an RFP on August 29th, 2008 for studies related to flood damage reduction in the Ross Valley/Flood Zone 9. The District is seeking qualified and experienced engineering firms to perform a detailed study of the feasibility of utilizing large detention basin to reduce or eliminate flood flows; to make suggestions on improving critical reaches where flood water leaves their banks; and suggests a sustainable dredging volume for the lower end of Corte Madera Creek. Two submits have been received. The County will award the contract in December. The survey will take one year, however, it will be phased to provide recommendations for immediate implementation.

Council Member Martin then reported that in September of 2008, the Board of Supervisors approved a contract with the Urban Creeks Council to provide free assistance to Creekside property owners in Ross Valley with erosion and vegetation management problems. The program is called the Streamside Management Program for landowners. The Urban Creeks Council is a non-profit organization located in Berkeley. They offer assistance to residents in the East Bay to understand creek-related problems, offering solutions that support the creek

environment and provide guidance and help with the permitting process. Programs will be launching in January 2009. Those interested in learning more can visit: www.urbancreeks.org. This program is targeted to benefit the communities that border the Corte Madera and Ross Creeks. A number of community meetings will be organized to encourage participation.

Goal D - Downtown plan

Mayor Pro Tempore Strauss announced that SWA Group out of Sausalito is working on the downtown plan. A community workshop is planned in January 2009 and a final plan should be ready for Town review in February. He then noted the following important dates: December 8th workshop meeting with committee and staff to discuss initial ideas; January 15th full community workshop; and in March final plan that the whole community and the Council can review. He further noted that a traffic engineer has not yet been retained, but it is a priority.

Goal E - Police and Fire Department reorganization

Council Member Hunter will sit down with the Chiefs in the coming weeks to layout specifics.

20. **Town Council consideration of the appeal of Zach and Alexandra McReynolds, 177 Lagunitas Road, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction.**

Town Manager Broad summarized the staff report and recommended that the Council consider the ordinance, the McReynolds letter and the circumstances and make a final decision on the appeal. The Council could uphold the appeal and waive the penalty, uphold the appeal and reduce the penalty, or deny the appeal. Staff will bring a final resolution back to the Council at its December meeting to memorialize the Council's action.

Zach McReynolds, owner/applicant, believed this is a unique case and will not set a precedent. This was not the kind of project in regard to the ordinance in terms of active construction for years and years that never ends or never gets finalized. They filed the permit and met all requirements. He supported the goals, but this project fell into a category of only 12 months to finish. He considers this not to be the project targeted by this ordinance. He concluded that this is not fair. The clock started months before due to the bathroom model. It is a technicality and neighborhood impacts did not start until June, which was well within the timeframe the ordinance allows. With a lot of support and corporation from Town building staff, they completed the project pretty quickly. This created a weapon the contractor used against him. If it is fair, there is provision in the ordinance for an appeal based on labor stoppage and work stoppage, which is longer than the period of the fine. The contractor was off the job for five weeks on two separate walkouts. Without the ordinance, he would have fired the contractor. There is both equity, fairness reasons and legitimate technical reasons to repeal this substantial fine.

Mayor Pro Tempore Strauss asked the status on the landscaping. Mr. McReynolds stated that due to cost overruns for this appeal, they have not been able to landscape. He agreed to place this penalty fee into the landscaping.

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

Mayor Cahill found labor stoppage legitimate grounds to accept the appeal.

Council Member Hunter stated in voting to accept they must be clear. The situation about the two permits is confusing. Small permit opened early, should the clock start, or wait nine months for a second permit or roll the larger job into the first. On that basis, he could vote to accept the appeal. Town Manager Broad suggested reviewing that section to avoid such appeals. They could look at modifying the ordinance to provide more latitude.

Public Works Director Jarjoura clarified that a small job is called “*repair*,” but every repair job constitutes a building permit to wait nine months to issue another permit. Town Manager Broad agreed to review the nine-month wait between permits and bring back findings to the Council

Mayor Cahill noted that labor stoppage is in the ordinance. Council Member Martin will go along with the appeal, but did not find this to be precedent setting and labor stoppage was the key issue.

Mayor Pro Tempore Strauss stated in looking forward suppose a homeowner fires their contractor at the 17th month, then what, so more discussion must occur. They also must discuss the timelines for larger homes. The Council and staff agreed.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to accept the appeal of 177 Lagunitas Road and cancel the penalty. Motion carried unanimously.

Mr. McReynolds suggested considering waiving the \$1,000 penalty fee for this hearing as well. Mayor Pro Tempore Strauss explained that staff time was still involved, so the fee could not be waived.

21. Planning Consent Agenda.

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

a. Ross Common and 9 Lagunitas Road, Lot Line Adjustment No. 1717

Town of Ross, Ross Common, A.P. No. 73-242-04, Civic District (C-D) and Ross School District, 9 Lagunitas Road, A.P. No. 73-242-15, Civic District (C-D). A lot line adjustment to modify the property line between the Ross School and the Ross Common to facilitate the reconstruction, raising and future expansion of the Ross School. The school would transfer 1,080 square feet to the Ross Common proximate to the redwood grove area and the Town would transfer 1,079 square feet to the school property to provide an additional 5.5 feet of parcel width adjacent to the proposed new gym/multi-purpose building.

Mayor Cahill asked for a motion.

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

Conditions:

1. Except as otherwise stated in these conditions, no changes from the approved plans shall be permitted without prior Town approval.
2. 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.
3. Prior to recordation of the lot line adjustment, all maps or legal descriptions shall be submitted to the Town of Ross for Town Engineer and/or Town Attorney review.
4. The lot line adjustment shall be recorded by map or deed description prior to November 7, 2010. A copy of all recorded documents shall be filed with the Town of Ross.
5. 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. 30 Ross Common, Commercial Use Permit No. 1723

Marcella Arana, Tony and Debra Montero, property owner, and Veronica Plasencia, d.b.a. nenesoes, applicant, 30 Ross Common, A.P. No. 73-272-11, Local Service Commercial District (C-L). A Local Service Commercial District Use Permit application for a retail store specializing in European shoes and clothing for children. The store will operate in 776 square feet of space with 2 employees and be open daily from 10 a.m. to 6 p.m.

Mayor Cahill asked for a motion.

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

Conditions:

1. The use permitted under this use permit shall be established and conducted in conformity with the description in the use permit application.
2. This use permit shall expire within one year from the date of approval if not exercised.
3. The applicant is responsible for ensuring that all improvements comply with disabled access regulations, regardless of whether a building permit is required for the work.

4. A sign permit is required from the Town prior to installation of any new signage. Any exterior modifications, including repainting, shall require approval by the Planning Department staff.
5. Any encroachment into the public right of way, such as for installation or replacement of awnings, signage, or seating, requires prior approval of an encroachment permit from the Director of Public Works.
6. NO CHANGES FROM THE APPROVED PLANS AND USE SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.
7. 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.
8. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

End of Planning consent agenda.

The Council took a short recess at 9:17 pm.

22. **7 Woodside Way, Extension of time of Variance and Design Review No. 1709**
Stephanie and Lee Notowich, 7 Woodside Way, A.P. No. 73-232-03, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). An application for approval of a final, one-year time extension to November 9, 2009, for a variance and design review application approved on November 9, 2006. Previously approved project includes a variance and design review to allow the following: 1.) remodel and addition to existing residence resulting in 8 square feet of new floor area within the rear setback area (40 feet required, 34.5 feet proposed) and 56 square feet of second floor deck area within the rear setback (40 feet required, 37 feet proposed); 2.) demolition of an existing carport and construction of a new 450 square foot two-car garage; 3.) demolition of a 402 square foot deck and replacement with a 387 square foot terrace, barbecue and outdoor fireplace within the rear setback area (40 feet required, 19 feet proposed); and 4.) new dormer, 76 square foot terrace, and covered entry for the cabaña, located at the rear property line (40-foot setback required, 0 feet proposed).

Lot area	22,294 square feet	
Existing Floor Area Ratio	19.3%	
Proposed Floor Area Ratio	19.9%	(20% permitted)
Existing Lot Coverage	14.0%	
Proposed Lot Coverage	15.7%	(20% permitted)

The existing residence and cabaña are nonconforming in setbacks.

Town Manager Broad summarized the staff report and recommended to Council in October to grant the Notowich's request for a one-year extension of the planning approval with the findings and conditions of the original approval and the new conditions outline in the staff report.

Lee Notowich, owner/applicant, apologized for not being present at the last meeting. He sent a letter to staff and they met and discussed the issue with Leslie Mueller and will agree to come up with a solution to resolve the issue. It is basically drainage. Resolution will be easy once they start their project to implement that problem. He saw the report today from Forester and talked for over an hour and understands the concern. They have not met with the professionals.

Council Member Hunter asked if when permit pulled it will include drainage plan acceptable to the neighbor. Mr. Notowich found that acceptable.

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

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve time extension for 7 Woodside Way with added condition that drainage plan submitted with building permit be acceptable to neighbor, Leslie Mueller. Motion carried unanimously.

Conditions

1. Except as specifically amended here, all conditions of this project's November 9, 2006 approval shall remain in full force and effect.
 2. Failure to secure required building permits and begin construction by November 9, 2009 will cause this approval to lapse without further notice.
 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 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.
23. **1 Spring Road and Undeveloped Lot on Madrona Avenue, Variance, Design Review and Lot Line Adjustment No. 1678 and No. 1715**
Bill and Krista Martin, 1 Spring Road, A.P. No. 73-252-16, R-1:B-A (Single Family Residence, 1 acre minimum lot size), and Bill and Krista Martin, Undeveloped Lot on

Madrona Avenue, A.P. No. 73-252-17, R-1:B-A (Single Family Residence, 1 acre minimum lot size).

1 Spring Road, A.P. No. 73-252-16

Design review to allow a 360 square foot first story addition and a 616 square foot second story addition and exterior alterations to an existing residence, originally designed by Bay Area architect William Wurster in 1938, but subsequently remodeled. A variance is required because the existing residence is nonconforming in setbacks.

Lot area	34,198 square feet	
Existing Floor Area Ratio	9.5%	
Proposed Floor Area Ratio	12.3%	(15% permitted)
Existing Lot Coverage	12.0%	
Proposed Lot Coverage	13.1%	(15% permitted)

The existing residence is nonconforming in setbacks.

Lot on Madrona Avenue, adjacent to 1 Spring Road, A.P. No. 73-252-17

Variance and design review to allow the demolition of an existing 390 square foot barn and construction of 714 square foot cottage and 480 square foot garage/carport. Design review is required for the new construction, which is 25 feet from the centerline of a seasonal creek (50 foot setback from top of bank is recommended). The cottage would be located within the east side setback (25 feet required, 20 feet proposed).

Lot area	29,752 square feet	
Existing Floor Area Ratio	1.3%	
Proposed Floor Area Ratio	4.0%	(15% permitted)
Existing Lot Coverage	1.3%	
Proposed Lot Coverage	4.0%	(15% permitted)

The existing barn is nonconforming in setbacks.

A lot line adjustment is proposed between the two parcels. The lot line adjustment would eliminate encroachments into the side yard setback for the addition proposed to 1 Spring Road and for the proposed garage on the Madrona Avenue vacant lot. The lot line adjustment proposes an equal exchange of 820 square feet of lot area between the two lots.

Town Manager Broad summarized the staff report and supported the project, which, as conditioned, will improve the creek habitat, improve the appearance and functionality of the existing structure, and is designed to be sensitive to the environment and neighborhood. Staff recommended that the Council approve this application subject to the findings and conditions outlined in the staff report.

Town Attorney Hadden Roth explained they must have an undersized non-conforming lot, so it would not be a valid basis to merge these lots.

Russ Dotter, architect, provided two color boards, one for the barn and one for the guesthouse. Originally, it was 1.5-acre lot established in 1936. The house was built in 1937. In 1963, the lot was changed into two lots and has been that way ever since. The same person has always owned the lots. He will discuss the remodeling and addition and then guesthouse. Lot 16 is the main guesthouse and they are remodeling the interior of house. They like the original simple house, and they wanted to take it back to the simple architecture. A lot of care was placed in the second floor addition, master bed and bath. It was placed above the kitchen, which is a one-story element to get the best sun. There is a lovely view and not noticeable due to the trees. This will improve the function and livability while bringing back the feel and quality of the original house. The setback variance is for a bay that is 50 sq. ft. and it could be a cantilever, if necessary. Lot 17 is the barn and they want to demo the barn. It is very small. They want to replace the barn with 714 sq. ft. guesthouse and garage. The goal is to recreate the feeling of rural character. In terms of architecture, they want to recreate that same basic look. They spent a lot of time in design placement of buildings on the lot. Tried to be very sensitive to trees, topography and make little impact as possible. The paving in the front will be grasscrete that can be driven on that appears as lawn and creates the same feeling of being a barn. Garage was designed also to be in character with the barn. Small as possible. The existing siding will be used on the garage with a corrugated rusted metal roof. On the main house they will use cedar siding, replicate as much as possible the barn siding and play around with washes and stained. In terms of the variance, they moved the house over and it pushed into the side setback. Without that five feet it would be unusable. Not that much impact on the neighbor and it fits tastefully in that area. The neighbors have a garage within 2 feet of the property line and a water tank that is 4 feet away. A lot of thought and care went into the placement of those lots. Lot line adjustment is pretty straightforward. It allows more room for the guesthouse. The goal was a long-term family home. They want to stay in Ross, so they started working on the main house with that in mind. Same with the guesthouse. Never plan on selling one of the lots. No intention of renting the guesthouse, only for their parents that live back east, so this is very long-term.

Mayor Cahill asked about an email from the Rosenbaums about the garage and proximity to front of the house, have they considered moving that garage farther back in the lot or flipping the carport and garage. Architect Dotter considered flipping the two, but as configured cars will be used 2 to 3 times per year. The second parking space could be incorporated into their outdoor living space for the most part. On rare occasions it will be used. The garage itself is very small, but functional and this is within the setbacks. If necessary, they could consider further.

Landscape architect sees this as a beautiful homestead within oak studded hillside that will remain. House is set back from the street and not very visible. They modified the courtyard for positive drainage. New plantings are natives or low water use plants. Around guesthouse they provide screening from the street and used all native plants in the area. Continuing the fence at the garage with a farm style gate that is included in the landscape drawings. They had a conversation of restoring habitat in the area and thought that was a long-range goal but she sees it is included as a condition. The grass pave is a plastic cell system and given it is not anticipated to be used often it will appear as a meadow. They anticipate minimal irrigation. It could be mowed, but it is not required. If used more frequently, the cells are engineered for fire truckload. If there is a high level of traffic, the grass would not be as tall,

but it will still appear as a meadow. They are under existing oak trees and the quality of light is limited, so it will be a natural meadow.

Mayor Pro Tempore Strauss discussed the gates and asked if they are comfortable with the 12 feet. Landscape Architect responded in the affirmative.

Mayor Cahill opened the public hearing on this item.

Stephen Holmes, Madrona Ave. resident, expressed concern that long term there is no lock in on this being a guesthouse because it is two legal lots. Since they are two legal lots and they cannot be joined, the Council must consider this as an additional single-family residence on Madrona Avenue. As a guesthouse, if two lots merged this would become a guesthouse and could not be further developed, rented out or sold. If the lots are not joined together voluntarily, he asked the Council to consider this to be a single family residence in which case the 5-foot encroachment should not be granted and moved over, so there is no variance needed. Consider not having the variance and somehow placing a single-family residence on this lot.

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

Mayor Pro Tempore Strauss felt the benefit was moving it away from the creek. Mayor Cahill noted that it is a balancing act. With the Town Hydrologist's comments, he feels comfortable. Normally, he would not be in favor of the garage in front, but in this case it is the appropriate response. In terms of materials, the intention is right to reuse siding, but it should not look chopped up between the two. He felt it is an improvement to the main house.

Council Member Martin has no objection to the main house. He would prefer the applicant to voluntarily merge both properties, which would be a good long-term solution. He also agreed with Mayor Pro Tempore Strauss that it is preferable to grant a variance to move the house away from the creek. Council Members Skall and Hunter concurred.

Mayor Cahill agreed it would be a great solution if the homeowner voluntarily merged the property.

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Skall seconded, to approve Lot 16 and Lot 17 with conditions and findings outlined in the staff report. Motion carried unanimously.

Conditions for Both 1 Spring Road and the Undeveloped Madrona Lot:

The project shall comply with the following conditions of approval, which shall be reproduced on the first page of the building permit plans:

1. The landscape plan shall be revised to include native vegetation that would restore a California riparian woodland forest in the area where development on the Madrona Avenue lot is proposed. The landscape plan shall be reviewed and approved by the Town Hydrologist prior to installation.

2. The applicant shall submit separate plans and permit applications for the work on each site.
3. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
4. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
5. The project shall comply with the approved plans. A licensed land surveyor shall string the location of the foundation.
6. The applicant shall take the following precautions to protect trees during construction:
 - a. Before the start of any clearing, excavation, construction, or other work on the site, or the issuance of a building or demolition permit, every significant and/or protected tree shall be securely fenced-off at the non-intrusion zone, or other limit as may be delineated in approved plans. Such fences shall remain continuously in place for the duration of the work undertaken in connection with the development.
 - b. If the proposed development, including any site work, will encroach upon the non-intrusion zone of a significant and/or protected tree, special measures shall be utilized, as approved by the project arborist, to allow the roots to obtain necessary oxygen, water, and nutrients.
 - c. Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist may be required. Trenches shall be consolidated to service as many units as possible.
 - d. Concrete or asphalt paving shall not be placed over the root zones of significant and/or protected trees, unless otherwise permitted by the project arborist.
 - e. Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.
 - f. Compaction of the soil within the non-intrusion zone of significant and/or protected trees shall be avoided.
 - g. Any excavation, cutting, or filling of the existing ground surface within the non-intrusion zone shall be minimized and subject to such conditions as the project arborist may impose. Retaining walls shall likewise be designed, sited, and constructed so as to minimize their impact on significant and/or protected trees.
 - h. Burning or use of equipment with an open flame near or within the nonintrusion zone shall be avoided. All brush, earth, and other debris shall be removed in a manner that prevents injury to the significant tree.
 - i. Oil, gas, chemicals, or other substances that may be harmful to trees shall not be stored or dumped within the non-intrusion zone of any significant and/or protected tree, or at any other location on the site from which such substances might enter the non-intrusion zone of a significant and/or protected tree.

- j. Construction materials shall not be stored within the non-intrusion zone of a significant and/or protected tree.
7. A drainage plan shall be submitted with the building permit application for review and approval by staff, including the Town Engineer as deemed necessary. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The drainage shall be dispersed on site.
8. Except as otherwise noted in these conditions, landscaping shall be installed in conformance with the approved landscape plan prior to project final. Prior to project final, the applicants shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
9. Any exterior lighting not shown on the approved plans shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
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. 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.
11. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) sprinklers are required for the Madrona Avenue cottage; 2.) hydrant at Spring and Madrona must be upgraded to a steamer type (one 4 ½ inch and two 2 ½ inch outlets; 3.) clear all brush impinging on access roadways; 4.) roadway must have a vertical clearance of 14 feet; 5.) a street number must be posted {minimum 4 inches on contrasting background}; 5.) all dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; and 6.) fire department shall determine whether a local or 24-hour monitored alarm system is required.
12. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
13. 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.
14. Failure to secure required building permits and/or begin construction by November 13, 2009 will cause the approval to lapse without further notice.
15. Separate building permits are required for development of the I Spring Road parcel and the undeveloped Madrona Avenue lot.
16. The lot line adjustment shall be recorded by map or record of survey prior to the issuance of a building permit for either lot. The lot line adjustment is approved consistent with State Subdivision Map Act time lines for a lot line adjustment. A copy of all recorded documents shall be filed with the Town of Ross.

17. 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.
18. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
19. 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.

24. 54 Baywood Avenue, Variance, Design Review, Hillside Lot/ Hazard Zone 3 Use Permit and Tree Removal No. 1669

Ross and Ligia Parmenter, 54 Baywood Avenue, A.P. Nos. 72-072-29 and 72-072-30, R-1:B-20 (Single Family Residence, 20,000 square foot minimum lot size). Variance, design review, hillside lot/hazard zone 3 use permit and tree removal to allow construction of a 2-story, 1,198 square foot residence and 260 square foot 2-car garage with a car lift. The residence proposes rooftop, upper level and lower level decks. 51 cubic yards of cut and 77 cubic yards of fill are proposed. A variance is requested to build a garage bridge within the front yard setback (25 feet required, 0 feet proposed) and to locate one off-street parking space within the right-of-way and within the front yard setback (25 feet required, 0 feet proposed.) Tree removal is requested to allow the removal of a 14" bay and a 14" oak tree.

Lot area	20,971 square feet
Present Floor Area Ratio	0%
Proposed Floor Area Ratio	7.0% (15% permitted*)
Present Lot Coverage	0%
Proposed Lot Coverage	11.0% (15% permitted)

(*The slope of this lot is 53%. The hillside lot ordinance would recommend a maximum floor area of 840 square feet.)

Town Manager Broad summarized the staff report and explained that over the past years, various iterations of this project have generated extensive public input and Council feedback. Staff anticipates this will again occur at this meeting and believes this hearing should be an excellent opportunity for the project proponents to present the project and for the Council to hear neighbor comments on the project.

Town Manager Broad discussed slope of the property and how to determine slope. Staff is finding with some of the more recent hillside lot applications that even with their modified definition of lot slope there still may not be a single interpretation for how to apply the definition of lot slope. The Town's definition says, "measure the slope from the high to low point

perpendicular to the contours.” One could measure from the high point perpendicular to the contours to the low point on the same line. One could go from the low point back up perpendicular to the high point on the same line. The hillside lot application asks for the lot slope and building envelope slope, which gets to the fact that what is measured as lot slope may be different from the building envelope slope and the building envelope is where the development will be situated. It is potentially pertinent to look at the building envelope and weigh that versus the lot slope and whether it is a superior condition as far as being the lesser slope or a more substantive slope. Based on all these decisions, staff used the 53% slope, which is the historic slope. That slope, staff believed, was taken from one corner to the other corner in what used to be the prior application of lot slope. It is up to Council to make an interpretation on where to measure the lot slope. The 48% number in the slope analysis is confirmed by the applicant’s surveyor and confirmed by the Town’s Engineering office, that if they take the line through the center of the building envelope they will get a lot slope of 48%, which would move this into a lower guideline category and raise the guideline floor area from 840 sq. ft. to 1,049 sq. ft. In looking at this, staff asked the Town Engineers office to review through the building a line more clearly perpendicular to the contours that ended up, according to John Moe’s office, being a slope of 50%, which still places it in not the most restrictive category as the 53%, but in one level down from that with a guideline of 1,049 sq. ft. Council has the ability to determine which line is best reflective of the lot slope based on criteria such as where development is actually occurring.

If the Council is supportive of this application, staff recommends approval with the findings and conditions outlined in the staff report. Based on the widespread interest in the project, staff would anticipate modifications to these conditions and/or the inclusion of additional conditions of approval could occur and would welcome any such refinement. If alternately the Council does not support this application, it should continue the application to a future meeting and advise the applicants of the changes it desires.

Mayor Cahill asked staff if the issues outlined in the staff report have been mitigated by the proposal before the Council. Town Manager Broad noted that civil engineer reviewed the site and the Town had a peer review as part of the earlier review and concluded that constructing on this site would enhance the stabilization of the site by virtue of the work done. In terms of drainage, there is a more recent drainage proposal that was done by LTD Engineering and it was concluded that with the green roof and other features the project drainage would not have any impact. It is not exacerbating or meaningfully changing the drainage from the initial conditions.

Fire Chief Vallee stated that fire access is much better off from this proposal. It provides more maneuverability, so they found the proposal acceptable.

Ross Parmenter, owner/applicant, tried hard for a number of years to build a home in this Town. He hopes the application before the Council is accepted and seen as an addition aesthetically in the materials and will blend in with the environment. It will not be an eyesore to anyone. It is a wonderful piece of property. He further noted that it has been a struggle and tough on him and his family.

Richard Hannum, architect, presented material boards to the Council for their review. Trying to recognize how the hillside works and mitigate issues. Bedrock is 3 to 4 feet down, so it is a stable site. Issues were created by other off site problems that occurred over the

years from different construction. By building the pull out it allows water to come across the road and dissipate over the entire property. This takes away the current drainage run that is beginning to erode and it solves and mitigates that problem. The Town Hydrologist found that solution acceptable. Due to simplicity of the structure, it reinforces that section of the roadway. The parking area near the entry is both permeable fields and dissipates water. They will replant the face so they re-knit the fabric of the natural landscape. This is a house that one will arrive by walking through the woods. The screen is called a living wall, which is an open metal structure that will appear as greenery on the hillside. It will obscure the garage. This project was reviewed by ADR twice and with story poles, they had the ability to lower it 3 feet, so they have the ability to put the entire building 9 feet above roadway. The house cascades down the hillside. They did not want to create a two-car garage and make garage feature, so they created one car garage using a phantom lift to stake cars. The lift lowers the car into a structure space and the second car is placed in that structure space. The acoustical engineer conducted analysis and the noise is unnoticeable, so it a very quiet operating system. They reduced the footprint from any prior submittal made. The hillside ordinance allows a house to be built at 1049 sq. ft. The primary structure and garage is 960 to 1,000 sq. ft. The extra square feet is underneath the mass of the house. They tried to make sure they were not requesting more mass. There is zero impact except it becomes a family house. In regard to materials, deeper colors will be used to drop the structure into the dark hillside. This is a first LEED certified house in Ross and Marin at a Gold standard. Some of that is achieved through drainage, living rooms, light quality and the structure itself. Every single element required of the house regardless of size has been mitigated. The pull out is not intended to be a parking space, but a pull out space. The piles are very soft in appearance. All rails located across and front edge of the property along the sidewalk are cable rails that are extremely light, which meets all code requirements and is virtually transparent. There is minimal intrusive impact. This project has been designed to have minimum amount of trucking up to the property. It is a pre-fabricated project. They will set two pads first to create parking for staging and they have a letter of support allowing off site parking during construction. They anticipate four road closures for this project, which has all been included in the construction mitigation plan. Also, the General Plan is not a sort of statement of must, but diversity of housing and encouragement of diversity of housing and to find ways to make that possible.

Mayor Cahill visited the site asked about the height of the garage and if the height could be lowered. Architect Hannum responded that from the story poles they realized that it could be dropped. In doing that, the edge comes down about 3 feet. The height is substantially lower in elevation. The slope gives photovoltaic and they maintain enough for good form. Trees will be planted in consultation with the town arborist.

Mayor Cahill stated if the roof is lowered then the living room comes down. Architect Hannum concurred. The elevation compared to the roadway is about 9 feet and it is 12 feet as proposed.

Mayor Cahill opened the public hearing on this item.

Beth Minick, Wellington Ave. resident, stated that there is a lot of new information and questioned the procedure of how to digest and express their comments.

32 Crest Road resident appreciated this project with all its environmental features. He believed this could be a house in “*Architectural Digest*.” His father’s expertise was engineering these types of projects, so he found this project acceptable. It is a fine project and an addition to the community and urged the Council to accept the project.

Phil Paisley, Baywood Ave. resident, opposed the project because it requires an exemption to the hillside ordinance. There is some confusion about the number tonight. 840 sq. ft. is what has been used as allowed based on 53%. The 1,049 is based on 50%. This lot is 53% and has a problem redefining how they think about slopes in the middle of this discussion. He spoke to former Town Council Members who voted for the hillside lot ordinance and all three reviewed the memory of the reason and the reasoning supports the idea that the Council look at the entire slope. Visual impact of the project was one consideration and some hazards that occurred in the 80s. There are many slides in Ross. The idea of the hillside lot ordinance was to control slides. His major concern is setting a precedent for other lots being developed. They have an ordinance that they must get behind and stay behind.

Phil Cecchetti, Wellington Ave. resident, believed the owner is receiving special treatment. The best way to illustrate this is to compare this project to his experience rebuilding their home at 58 Wellington Avenue. 1) The Town Council stated to them that no exceptions to setbacks would be allowed on their property despite 100% support of their project by neighbors. Among other things, this means that they now have a one-car, not a two-car garage. However, they hear the argument that this owner deserves variances and sweeping exceptions based on “*excellence of design*.” Their design is excellent; however, its quality did not earn them 10 feet or meet a Town objective of additional off street parking. They achieved design excellence within the rules, and they think this owner can do the same within his hillside lot limitations. 2) After early meetings with their architect, they asked the planning department for preliminary discussions of their plans. They were informed that there was no such opportunity because of lack of staff and potential conflicts of interest. Staff needed to remain objective and would only review their formal proposal. They were told, “*follow the building codes and ordinances, and you’ll be fine*.” However, this owner told them that he and his architect worked closely with staff to construct his plan. Why was this courtesy extended to this owner and not others? 3) Their property has a 34% slope, but the home is totally on the flat. Nevertheless, they were required to construct a retaining wall and catchment fence to protect their house. The fragile nature of Winship Park geology is clear. They worry that the geology of the 53% at 54 Baywood has been trivialized when they hear anecdotal comments that all is fine on the hills. That someone knows a hydrologist who knows a person who knows the hydrologist. Relax, they were told. Many neighbors are not comfortable with this development. 4) In college, his statistics professor finally convinced him that statistics could be fun. It was not fun to learn that they could not do everything they wanted to in Ross. But they built a beautiful home within the rules. But there is nothing funny about the numbers game being played with this proposal that even this B+ statistics student can see through. The HLO’s design standards provide: “*Hillside lot projects shall be in substantial compliance with “ the standards. (Ross Municipal Code 18.39.090.)*” The applicant still vastly exceeds the HLO, which allows 840 sq. ft. or 1,049. Even assuming the owner’s square-foot calculations and FAR are correct at 1,461, this would be 618 sq. ft. or almost double what the HLO allows. This size would be appropriate for a project on a slope of between 36% -40%, far below this sites 53%. However, the owner significantly understates the actual square-

footage of the project (*asserting it is 1,458 square feet total*) by omitting approximately 960 square feet:

- The top floor garage (260 square feet);
- The “*parking deck and bridge*” (at least 500 square feet); and
- The parallel parking space (approximately 200 square feet).

The staff report mentions a mechanical area of 320 square feet that is also not counted in the FAR. What guarantees do we have that this won't eventually be used for living space?

When these areas are included: the application exceeds 2,400 sq. ft. and is almost 300% more than what the HLO recommends. In addition, the FAR maximum for this site is 4%; however, this project will be 7%- almost double what the HLO recommends. Finally, with all due respect, the staff report for this project is disappointing. It sidesteps rather than affirms one of the most basic tenets of the new Town of Ross General Plan: “*The Council very rigorously applies the HLO floor area ration guidelines to all development proposals on slopes over 30%.*” Moreover, the staff report and a positive vote on this plan would establish a precedent that will destroy Winship Park. They urge the Council to vote no on this proposal.

Jon D'Alessio, Crest Road resident, project is too big. This sets a bad precedent and grants special privilege to one applicant. Height exceeds 30 feet. This is a blind corner and there are safety issues as well as water pressure issues on the hill. The green wall will block views. The right-of-way will be taken. It is a private road not city owned or maintained. This is now a pre-fabricated house. There are a lot of construction management issues that must be addressed. Flagmen are necessary at intersections of Crest Road and Wellington. There is no parking on the street and this is a one-lane road due to the mailboxes. This project is too big, sets bad precedent and gives a special privilege to one landowner.

Scott Bassin, Crest Road resident, agreed with Phil's comments that he had to comply with the rules and regulations. He cannot understand why each time this project is asking for 400 to 600 additional square feet. It impacts severely the curve in the road. He expressed concern for guest parking. He appreciated the work done, but they must meet the requirements of the ordinance as all the other neighbors.

55 Baywood Ave. resident believed all should have an opportunity to build dream home. He has concerns about the project. Garage was too high and believed it can come down other couple of feet. Excessive rainwater does come down on his property. His driveway gets a lot of use from the neighborhood to turnaround, which is quite frustrating. He leaves it up to the Town of Ross to make the decision.

Steven Walker, Baywood Ave. resident, concurs with all concerns regarding the hillside lot ordinance. He expressed concern for drainage issues during construction because there are times of erosion during construction. He must maintain his gully. He further agreed with many of the other comments expressed.

Alice Reeve, Baywood Ave., noted that she always has water problems. Three bulkheads were built. Over the years, she had French drain built as well. A tremendous amount of water runs through her property and with the new building, as attractive as it might be, there are many springs, so she is concerned about the runoff. She further noted that water runoff is a major issue.

Annie Lowengart, Crest Road resident, is a neighbor of Conrad Schweizer who allowed offered parking for construction workers. Baywood is a private road, so she asked how is someone allowed to widen the road if all the other residents are not in favor. Architect Hannum responded that it is publicly maintained. The Town owns the property and maintenance is all private. Town Attorney Hadden Ross is not certain about that statement. Public Works Director Jarjoura noted that if owned by the street, then the street would maintain it, but the Town does not maintain it.

32 Crest Road resident stated that there was an arrangement of San Anselmo portion of these roads, so it is still privately maintained even though it is a public right-of-way.

Mr. D'Alessio recently found out that he owned a property with a public right-of-way on it and indicated that Crest Road has two and the same situation occurs at the bottom of Baywood. Public Works Director Jarjoura noted that Baywood is maintained up to 44 Baywood down to Wellington, it is a Town maintained street.

Town Attorney Hadden Roth stated that this is a public right-of-way by virtue of usage. The Town in effect is the trustee of the public way. It can be widened, if widened within the public right-of-way. It might have been created by an easement or by usage initially. He wanted to know if it was offered for dedication, but it is at least a public way by virtue of usage.

Mr. Parmenter noted that his title company indicated that there is no easement. He contacted the county and they do not show owning it or offering it to the Town. Winship was created as a large area. There are no easements. It was not created as a private community. It is a public right-of-way and no one owns the road.

Linda Brown, Baywood Ave. resident, stated that the change in height of the story poles, location of the roadway, who owns it what and who will maintain it as well as the drainage springs all must be addressed. She suggested continuing the matter in order to investigate the law and procedures. She wanted the story poles replaced to see what the height is in order for the Town Council to make a sensible and logical decision after due process occurred to comment on these matters.

Jacqueline Ryan, Baywood Ave. resident, wanted the property to abide by the hillside lot ordinance.

Beth Minick, Wellington Ave. resident, stated that on February 4, 2004 Council Member Curtiss asked Mr. Parmenter if he was purchasing the property contingent on having the plans approved. Mr. Parmenter responded in the affirmative. Council Member Curtiss said that Mr. Parmenter could then walk away from the project without cost. Mayor Zorensky asked if Mr. Parmenter was aware of the hillside restrictions when he entered into this arrangement. Mr. Parmenter indicated that he was aware. Mayor Zorensky asked that the record show that the applicant submitted plans to the Council knowing that an application was subjected to the HLO regulations and that a previous application for development of this parcel was denied. Mayor Zorensky stated that it is a question of notice that the applicant knew a proposal was once denied and that the HLO regulations applied to this property. Mayor Zorensky said that the Town has recommended guidelines and he questioned what the justification would be to permit the applicant to go above these

guidelines. Mayor Zorensky said that the applicant was on notice that plans were once denied on this property and that would bar a claim for taking. She did not understand the change to 48% slope. She asked why the applicant is receiving so much favorable treatment. The Council has never been shown a design at 840 sq. ft. for the last 20 years on this site. This is not excellent design or fit. This project is too big and will negatively impact the neighborhood. She then discussed a few new questions due to the information provided tonight in regard to the 2 feet of bedrock and putting in trees. She asked if the trees need water because no one has addressed maintenance. Also, she expressed concern for the horizontal visual on that blind curve.

Conrad and Wendy, Winship Ave. residents expressed concern for drainage and water runoff. No one addressed the fact that they are looking above this structure. It is a huge impact.

A Baywood resident submitted a letter along with signatures that included the following: They strenuously object to the 54 Baywood applications as it violates the following:

- The Hillside Lot Ordinance
- Prior findings by the California Courts
- Conflict of interest laws
- Common sense

Mr. Parmenter's application supported by his architect, Mr. Hannum, is before you. Concurrently, Mr. Hannum has a pending project that has yet to be completed. Mr. Hannum's lack of regard for the rules and regulations of the Ross community is apparent by the amount of fines he personally currently carries on his own project. For you to suggest that he now can undertake the representation of Mr. Parmenter, who has already been denied the application three or four times with the assurances that the new project will "run smoothly" and meet the promises of the community laws and ordinances, seems a bit questionable. As they understand it, Mr. Hannum has over \$150,000 in fines currently pending against his own personal project. They further understand that Mr. Hannum expressed openly and repeatedly in public that he does not "believe in" the HLO as adopted by the Town of Ross. Such Blatant disregard and disrespect of the Council and the community should be taken into consideration. They would appreciate it if each Council Member would address the fines currently pending with Mr. Hannum's project and why he is allowed to present another project before he has completed the one that is personal to him. It is the same community that is affected. She then asked the Town Council the following questions:

1. Should this new application even be considered before Mr. Hannum's is complete and his fines are paid?
2. Does this Council intend to indemnify the downslope neighbors who will be adversely affected by the violation of the HLO?
3. Does this Town Council individually and as a Town intended to indemnify the neighborhood for the blatant abuse of the neighborhood's use and enjoyment of their property?

The appearance of impropriety exists. How can the person who is the head of design review also be the person reviewing his own design? Most Town Council would require him to step down from design review or recuse himself from any vote on the design review. Are there any members on this Town Council that do business with Mr. Hannum? If there are, a conflict of interest exists and they should recuse themselves. Impropriety, the change of impropriety and the appearance of impropriety is to be avoided by public representatives.

Julie McMillan, Crest Road resident, asked if Council could read into the record all the letters in support and opposition into the record. Mayor Cahill agreed to make them part of the record.

Architect Hannum submitted a signed petition of 22 neighbors in support of the project. The peer reviewer by the Town stated the project has no issues in regard to slides. The only variance requested on this project has to do with creating the structure in the front to allow the bridge. The hillside lot ordinance allows for this opportunity based on how it was structured. This is a completely passive drainage system. The Town's Hydrologist accepted this system because it does not require any maintenance. Square-footage was confirmed how staff determined square footage. Area of that square footage is per standards not there's. In terms of the roadway, the visibility is clear from both directions. They propose widening the segment to meet safety standards and improve safety in general. In regard to ADR, he sits as an alternate and was recused from this project. The only limitation is that it becomes a one-bedroom house. The area that is below the structure, which is infill or base of building, it does not alter the height, shape or massing. That was presented to ADR at their second review. In terms of the view from below the structure, all trees on the lower half are untouched. A dead bay tree and oak tree will be removed, but all the rest will remain. He further noted that very little of the house will be seen on Madrona.

Council Member Martin asked the height of the structure. Architect Hannum responded that they are marked in one-foot increments. Just under 27 feet, 30 feet and the rest are less.

Council Member Martin asked staff if the driveway bridge was included in square-footage. Town Manager Broad noted that it is not considered in the square-footage. It is a driveway rather than a deck. Staff called it lot coverage and added it into that figure. It certainly is not floor area under the definition.

Town Manager Broad then explained that it never needed a variance because it was a guideline. There was a setback guideline. The mandatory side yard setback is 20 feet. In the hillside lot ordinance guidelines there previously had been guideline setbacks for the side and rear depending on the size of structure. The Council made changes as part of clear up. One amendment was to eliminate these guideline setbacks because they impose rigid setbacks that are a variable condition from one hillside to another. Staff felt they did not make sense and did not allow on a site-by-site basis. Town wide on all hillside lots the Council made that change of deleting those setback guidelines, so they are not part of this project. Council Member Hunter stated that this is not a special case. Town Manager Broad responded that other projects were approved that did not meet that guideline because it did not make sense.

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

Council Member Hunter has been outspoken and opposed to this application the last four times he has seen it up until now. The hillside lot ordinance is clear that it is within the purview of the Council based on excellence of design to approve FAR that goes over the recommended amount. He would definitely lean toward approving this application. Due to the arrival of late information and given the many miles with this applicant, he would lean

toward a continuance. They need to review the drawings with the lower garage and determine slope. Do they except the Town Engineer's new measure or go with the historic measures. The Town Engineer's measurement is consistent with the legislation passed earlier this year to better define how slope is measured. He lives on a road that is a privately maintained public road, and they still do not understand what is involved with that, but an effort must be made to determine so it can all be in the notice and all parties can understand. His vote is that design excellent and minimizing environmental impacts as well as achieving LEED certification of Gold standards, he would vote in favor. But as a Council, they should clarify the issues.

Council Member Skall agreed with a continuance. He is perplexed that the ADR opportunity did not flush out more of these issues around the road and drainage. It is important that this project is so sensitive that they continue it and bring all this information together and understand exactly what is occurring. If approved, it is not a special privilege. They must figure out how they will deal with the residents concerns.

Council Member Martin agreed on a continuance. Extremely troubled by some of the allegations that have been presented tonight. This is an extremely complicated project. He would like to see an independent survey, third party that is well regarded to review the application of the slope measurement. For those numbers to change substantially as they have tonight, it is an important factor of determining threshold. It is a critical issue. Over the passed 14 years it was a different number. Public notice regarded it as a 53% slope. Also, he wanted clarification on the height. He spent time calling former Mayors all of whom were involved with the drafting of the hillside ordinance. The purpose is to preserve this Town and make the area safer. He wanted to really get some objective opinions that they can rely on along with worksheets to verify. This is an issue that may be tested in the courts.

Mayor Pro Tempore Strauss reviewed this a number of times and the applicant far exceeded certain requirements of what is now a very good project. He stated that the applicant had no recognized desired lot covered and the entire project needed a fresh idea. It has been continued so many times now and the applicant has achieved all goals set forward in private meetings and Town Council meetings. Fire Chief Vallee indicated that it is a safer route, drainage has been solved. Engineers have reviewed the slope. When he calculates it, he believed, it is a creative way to build the garage. They are 12 sq. ft. over and the Parameter's have been put through a lot and he believed they achieved the goals.

Mayor Cahill agreed with a continuance. The applicant should be entitled to build a house on this property. HLO gives the Council discretion to exceed the guideline. It is a difficult job to decide to what extent that is appropriate. The design is suburb. He has gone very far in meeting what the Town desired. Slope stability, drainage, fire access and issues associated with design itself: they have done a terrific job. The big issue is which slope calculation should they be using. We received this revised slope calculation in the last day or so, so we have not had much of an opportunity to review. If the guideline is 840 sq. ft., that is 60 to 70% over. HLO does not apply easily to this property. It has irregular characteristic, so it cannot be measured top to bottom. We must decide where the lines are drawn. We must continue to review this matter carefully because it has such a big implication.

Mayor Pro Tempore Strauss pointed out that it was not cut through the most proper point. Take the high and low points through the house to get accurate slope where the building envelope would be and that was identical to support the 1,049 sq. ft.

Mayor Cahill believed there is a lot of misinformation about this project and due to the new information it is appropriate for the public to have time to digest that information to comment, so he agreed with a continuance.

Council Member Martin wanted to review a few different approaches for determining the slope of that property. The Council will determine a calculation that can be justified, but he desired an accurate independent measurement. Mayor Cahill explained that he needs to take the high point, the low point and the distance and divide. The big issue is how they draw the line. The worksheet is straightforward. There maybe another way to measure the slope.

Town Manager Broad will do whatever line the Town Council desired. Council Member Martin desired a larger scale in order to read. Town Manager Broad clarified that Architect Hannum mentioned several weeks ago that slope of the lot was 48% and drawn with a different line. The same process occurred at the Bode house and staff arrived at a slope determination and the Council reviewed information from the applicant and made a final determination. Staff decided to use the historic slope of 53% and after looking at where the architect was drawing the line it became clear that there was merit to the Council looking at the architect's lines versus the historic line to reach a final decision. Part of the difference in line is a different slope definition and that opens up more interpretations as to how that line should be drawn.

Council Member Skall pointed out that the slope definition changed since this project last came to the Council and the public is not aware of that and that must be clear and that is the reason for a continuance.

Mayor Pro Tempore Strauss suggested that Council Member Martin meet with the Town Engineer. Town Manager Broad suggested inviting the Town Engineer to the next Public Works Subcommittee meeting along with staff to explore different calculations.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to continue Item 24 to the December meeting asking the Town Engineer to develop a variety of slope calculations for Council to consider; the Council desired written assessment and calculations along with graphics large enough to read to then determine slope; also review lower roof; and determine the status of the road.

25. Correspondence – Shady Lane

Town Manager Broad noted that staff agreed to research.

26. Other Business - None

27. Adjournment.

By order of Mayor Cahill, the meeting adjourned at 12:06 am.

William Cahill, Mayor

ATTEST:

Gary Broad, Town Manager