

SPECIAL MEETING of the ROSS TOWN COUNCIL
FRIDAY, NOVEMBER 4, 2011

1. 8:00 a.m. Commencement.

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

2. Posting of agenda.

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

3. Minutes - September/October

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to approve the Minutes of the Special Town Council meeting on September 28, 2011 as amended. Motion carried unanimously.

Council Member Martin moved and Council Member Hunter seconded, to approve the Minutes of the Town Council meeting on October 13, 2011 as amended. Motion carried unanimously. Strauss abstained.

Council Member Hunter moved and Council Member Martin seconded, to approve the Minutes of the Special Town Council meeting on October 14, 2011 as submitted. Motion carried unanimously. Strauss abstained.

Council Member Martin moved and Mayor Pro Tempore Russell seconded, to approve the Minutes of the Special Town Council meeting on October 21, 2011 as amended. Motion carried unanimously. Hunter/Strauss abstained.

Council Member Hunter moved and Council Member Strauss seconded, to approve the Minutes of the Special Town Council meeting on October 28, 2011 as amended. Motion carried unanimously.

4. Town Council consideration/action to support nomination of Tiburon Council member Alice Fredericks as the Marin representative on the Golden Gate Bridge Highway and Transportation District Board.

Mayor Small asked for a motion.

Council Member Hunter moved and Council Member Strauss seconded, to support the nomination of Tiburon Council member Alice Fredericks as the Marin representative on the Golden Gate Bridge Highway and Transportation District Board. Motion carried unanimously.

Council Member Hunter believed it is important that a Town Council member attend the MCCMC meeting on Thursday, November 17th, 2011. Mayor Pro Tempore Russell agreed to attend.

5. Town Council discussion/action regarding the Ross School Board response to the Ross Common Encroachment Permit Extension and creation of an ad hoc Council committee to work through Ross School and Ross Common items.

Mayor Small attended the Ross School meeting and their attorney had advised the School Board that they did not need to respond to the Town. A statement was made that the way the encroachment permit was written that the outside restoration of the Common was always to be done after the School was completed and the encroachment permit pertained to the completion of the School and the Common could be done after that. She questioned is not the gym the School and that is not completed, so that did not make sense. She desired a statement from the School in that regard.

School Board member Bob Dickinson agreed it appears Town Attorney Stepanicich and the District's attorney has a different interpretation. The encroachment permit reads, "*Upon termination of this permit the District shall remove all improvements on the premises, and restore the premises.*" That clause indicates that the District can take what time needed to restore the premises that being the Common. None of what they have done could have been possible without the support of the Town and Town Council. They need to sit down and talk through whatever issues. They must look at all agreements and Ross Rec. He proposed putting together an ad hoc committee to talk through the issues. Public Works Director Bob Hemati sent over an appropriate email this week. There is a list of issues and they want to keep pushing forward to work together and resolve issues.

Mayor Small understands that they must work together, but the cost falls on the same taxpayer, the residents of Ross. She did not imagine when this project started how the School would impact the Town and its bottom line, its cost and its related cost of staff time, attorney time and consultant time, the ramification of the trees and the ball field. Ultimately, they are all part of the same community, so they must try to work together in the most fiscally responsible way possible. There are significant issues and they must figure out how to work through it. There is the issue of ramification from the structure (*i.e., baseball field, trees, etc*). There is the new problem with the design. All the ramps and sidewalks are in the Town's easement, which is an attraction to skateboarders and kids. They were to be worked out in regard to insurance and liability. With this particular design, unintended consequences will be a constant attraction to teenagers and youth whether from Ross or outside of Ross. Also, if they have an ad hoc committee, they are talking about issues that involve Ross Rec, so that will involve a situation where it must be all three groups.

Council Member Martin stated there are so many issues and many issues have been discussed over extended months and for whatever reason they continue to spiral. Rather than have an ad hoc committee, which takes time, have a joint School Board/Town Council meeting and put all these issues on the table to see if they can find resolution. Then have future discussions as a combined board forum or as a committee. Both bodies must meet and face off on these issues to discuss the best way to proceed in order to make progress. They have a number of time bombs and liability issues cannot be put off. Given that Superintendent Scott Mahoney is unfortunately still on leave, to make these decisions it requires both the Council and School Board directly. He further recommended having as soon as possible a joint School Board/Town Council meeting and formally agendaize the list of items to have discussion and potential action.

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Council Member Strauss agreed with a joint School Board/Town Council meeting. He desired the specific language worked out with former Town Attorney Hadden Roth in regard to that easement and liability issues. Mayor Small noted that in the minutes of June 11, 2009 it states that the attorneys would draft a legal documentation such as the joint use agreement between Ross School and the Town in terms of liability insurance, Town indemnification, maintenance of built structures, and the School to protect existing trees. Also, the Town has up to three years to require more School plantings around the Common. Town Manager Gary Broad stated that such document was never drafted. Mayor Small noted that there was a follow up letter on March 26th, but it did not go into any liability insurance. Towards the end of the year, it appears under Public Works on October 20th, 2009 there is a discussion about the School easement. Council Member Strauss asked if there is a draft for the Council to review.

Council Member Hunter clarified with the Council that there are ramps across the property line. Mayor Small noted that the ramps are in the Town's easement, so insurance liability is now an issue. Council Member Martin noted that the School would indemnify the Town. Council Member Strauss indicated that the Town would be indemnified for whatever happened related to the ramps because it was to their benefit. He recollected that if someone is walking and tripped on the flat path that would be the Town's problem, but once they cross that easement line it is on the School. Part of the problem is that they need studs or something to avoid skateboarders and bicycle riders. The concept was to his recollection that the stage was elevated and that area would be feathered out, due to the ball field it was not feathered out as far, so it is close, but he desired confirmation from the Public Works Department. Public Works Superintendent Robert Maccario explained that it was as high as possible because if the grade is any higher it would not work. Council Member Strauss recommended reviewing that matter, find out where the ball field is located and then go back and landscape. It is the School's responsibility to put back what was there.

Council Member Hunter stated there are several issues. He is willing to attend a joint meeting, but the two joint meetings have not been very successful. He rather form an ad hoc committee to conduct some of the initial work and figure out what the solutions might be, and then, if necessary bring it to a joint meeting. He further believed a loosely defined joint meeting at this point would not be beneficial.

Mayor Pro Tempore Russell believed a joint meeting is a good idea in the near future. It seems better to go through Public Works to start the process. He wanted to agree that they will schedule a joint meeting in two weeks or one month. He believed a joint meeting would be helpful to clarify issues. They must talk to each other and get the issues resolved. There is no sense whatsoever in taking a position that the encroachment permit does not need to be changed, but the encroachment permit absolutely needed to be extended. The School cannot hide behind their attorney. On its face it was clear that the encroachment permit ended on September 30th. The encroachment permit with respect to allowing continued access to the Common by the School ended, so there had to be a change to that permit in order for there to be continued access from the beginning of October to the end of October. He does not want to be antagonistic about this issue and believed they can work through this in a constructive and positive manner.

Mayor Small believed the construction issues could be worked out through staff. For the larger issues, consider developing an ad hoc committee to work with the School Board and

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Ross Rec when needed to develop some ideas. Once they have agreed upon solutions, bring that to a joint meeting, which may be the most effective and quickest way. She added that the Council must address this liability regarding the easement. As a Council, they must direct the Town Attorney to review.

School Board member Dickinson cannot speak on behalf of the School Board, but in his view he does not believe the School is hiding behind their attorney. There is a clause in the original agreement that stated upon termination of this permit. He does not know how the Town interprets that, but in his view it means at any time after the time the permit is done. The Council can have their own interpretation. The one-clause states at any time after the September 30th date. He wants to work the issues out. He does not know how School Board would react to a joint meeting. He hopes the summer meetings were helpful to get matters resolved. There are too many items to work out in a joint meeting. They are time sensitive, so they should parallel this process. He would advise that Town Attorney Stepanicich and the District's attorney as well as the Town Manager discuss the liability issues as soon as possible. Then address the Public Works issues, such as the series of issues that Public Works Director Hemati brought forward and include representatives from the Council and School Board to participate in that discussion. The other matter is around Ross Rec, the School and the Town in regard to the MOU in place with Ross Rec as well as the facility use agreement. He did not see reviewing all matters in one big group.

Council Member Strauss clarified from a legal point, the interpretation is that the benefit of the easement is for the School and liability is on the School. He then asked if the School could argue a different point. Town Attorney Greg Stepanicich responded that it would be unusual to have an encroachment permit by the District. It would be unusual to share risk. Typically when an easement is granted, it will identify liability of use, which is standard. Council Member Strauss believed they have recourse because the School did not respond to their letter. The Council must finalize all points with Town Attorney Stepanicich.

Council Member Hunter asked if the existing encroachment agreement indemnifies the Town. Town Attorney Stepanicich cannot say for certain, he must review in more detail. Mayor Pro Tempore Russell stated that the encroachment permit was a short-term access to build the School. It was not intended to be in context of the ramps. Town Attorney Stepanicich agreed it was for the temporary construction.

Council Member Martin stated that the encroachment permit also made reference to restoring the field including the ball field to the conditions that were evidenced in a Google photograph. He asked, by not responding to that issue immediately since the encroachment permit has expired, do they surrender any rights on that issue. Town Attorney Stepanicich stated that the District can be put on notice in regard to their obligations under that agreement. There was an agreement to restore the ball field to the preexisting condition. He could send a letter in that regard, but a letter was already sent to the District that specifically addressed that issue.

Council Member Hunter believed this is a family feud. If the District was a separate entity he understands involving attorneys, but if what has been done is sufficient, then leave it at that and move toward a solution. Town Attorney Stepanicich agreed. The key is to protect their interest.

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Mayor Small agreed as they move forward whatever happens with the ball field, they must make it clear to the community that it will come out of the same pocket, their pocket. Mayor Pro Tempore Russell noted that the School is funded in part by Kentfield as well. He agreed that they do not want to end up with confrontation. Mayor Small stated that one issue that must be addressed as soon as possible is the legal documentation that was drafted back in 2009 to protect the Town from liabilities with the ramps and outdoor stage, which is her biggest concern at this point.

School Board member Dickinson pointed out that the District has an obligation and is committed to restoring the ball field. They are ready to move as soon as the Council indicates where and how big. They have funds set aside. Restoring the ball field is their obligation in perpetuity. Mayor Small added that the problem is the cost related to the location. Council Member Martin noted it is the legal cost and potentially environmental CEQA cost associated with relocation of the ball field.

Mayor Pro Tempore Russell stated there is no question about who is responsible for any cost. It is clearly the School. The Town is indemnified and that is clear under the encroachment permit, which Town Attorney Stepanicich can confirm through a letter. Town Attorney Stepanicich responded that such letter has been sent. His conclusion was that all cost, including environmental cost is the District's responsibility. Council Member Strauss wanted to clarify that the environmental cost is the responsibility of the School.

Council Member Martin agreed with an ad hoc committee meeting before a joint Town Council/School Board meeting, but they must set forth a calendar or objectives otherwise months will pass before there is progress. He wanted to set forth general dates, guidelines and objectives today.

Council Member Hunter asked if there is a clear delineation of issues. Council Member Strauss believed Public Works could continue with the physical matters and then bring it back to the Council and Mayor Pro Tempore Russell can review the technical issues.

Mayor Small believed there are items clearly construction related that could be worked through by the Public Works Committee and staff. Then other issues such as policy, liability, use permit and hours of operation must be addressed by the ad hoc committee.

School Board member Dickinson indicated that Public Works, legal liability issues, and Ross Rec facility use regarding the gym are the three major items. Mayor Small stated that Public Works must work strictly with issues that relate to Public Works. Then the ad hoc committee can work more with the School and Ross Rec. Looking again at the relationship between the Town and Ross Rec. Town Attorney Stepanicich agreed to review. School Board member Dickinson believed there are two buckets that must be addressed: legal liability and Ross Rec.

Mayor Small indicated that an ad hoc committee would review the legal policy issues between the three entities. Mayor Pro Tempore Russell and Council Member Hunter agreed to serve on the ad hoc committee. School Board member Dickinson indicated that the point person in the absence of Superintendent Mahoney is Interim Superintendent Susan Markx. The two School Board representatives are himself and Dr. Elizabeth Robbins and staff as appropriate. The Council can contact Interim Superintendent Markx by email at: smarkx@marin.k12.ca.us.

Mayor Small wanted to review the resolution that talks about the relationship between Ross Rec and Town. Town Manager Broad noted that David Zorensky worked on the resolution. Town Attorney Stepanicich must understand the organization and how it best relates to the Town. If there is such a resolution that would be terrific and very helpful to review. Town Manager Broad agreed to provide the resolution.

Mayor Pro Tempore Russell will ask Town Attorney Stepanicich to attend the meeting in order to draft documents and likewise for the School to organize their attorney to attend. Town Attorney Stepanicich agreed to contact former Town Attorney Hadden Roth for any further insight on the matter.

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

Mayor Small asked for a motion.

Mayor Small moved and Council Member Martin seconded, to form an Ad Hoc Committee of Mayor Pro Tempore Rupert Russell and Council Member Scot Hunter to work out legal policy issues with Ross School as well as Ross Rec. Motion carried unanimously.

Council Member Strauss recommended scheduling a Public Works Committee meeting with School Board member Bob Dickinson, Dr. Elizabeth Robbins and Interim Superintendent Susan Markx. Public Works Bob Hemati agreed to touch base next week and see what progress has been made. Council Member Strauss agreed to review the easement agreement and report to Town Attorney Stepanicich.

School Board member Dickinson will communicate to the School Board, but their preference in the summer was to work through matters without a joint meeting. Mayor Small believed a joint meeting will speed up the process. It may be beneficial that once the committees do their work it is the most expedient and less stressful manner to proceed. School Board member Dickinson believed the liability alone is enough reason to resolve the issues as soon as possible.

6. **Closed session. Government Code Section 54957. Public Employee Appointment. Title: Interim Town Manager.** No public comment.
7. **Open Session. Council will return to open session and announce actions taken, if any.**

Mayor Small reported that the Council selected Pat Thompson as the Interim Town Manager at the flat rate of \$130 per hour for up to 20 hours per week, plus attendance of the Council meetings up to planning session items. The Council authorized Mayor Small to sign the contract after being reviewed by Town Attorney Stepanicich, so Interim Town Manager Pat Thompson can spend up to 8 hours next week.

8. **Council discussion/action regarding transition plan post Town Manager departure.**

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Mayor Small asked staff if there are any additions to the draft calendar. Town Manager Gary Broad will provide the final version early next week and have it ready for Interim Town Manager Thompson.

Mayor Pro Tempore Russell stated on September 2012 he noticed that staff added in the timeline that the second unit ordinance would be reviewed and recommended that staff add attics and basements as well since it will be the one-year anniversary.

Town Manager Broad stated the one major item the Council must think about well in advance is the expiration of the Post Office lease in 2013. Former Council Member Tom Byrnes negotiated the last lease and he might be a good person to contact since that is his background.

Mayor Small wanted to place Interim Town Clerk Linda Lopez as a signatory on the bank account. Council Member Hunter stated generally in business the person who does the payables is not a signatory. It is a conflict. Mayor Pro Tempore Russell suggested that the Interim Town Manager be the signatory. The Council agreed.

Interim Town Clerk Lopez explained that online banking is the issue, which is currently done under Town Manager Broad's name so that aspect must be resolved. Mayor Small believed that is the first item Interim Town Manager Thompson must address. Interim Town Clerk Lopez explained that Interim Town Manager Thompson must sign certain forms at the bank.

Mayor Small announced that the podium and projection screen will not be discussed at the November Town Council meeting.

Mayor Small asked Town Manager Broad to discuss the meetings he attends. Town Manager Broad attends the Marin Franchise Group meetings, which occur in November and December to set garbage rates. Someone from the Town must attend and Interim Town Manager Thompson would be the logical person to attend along with the Marin Managers meetings. In terms of the Marin General Services meetings, someone else will be reappointed.

Mayor Small noted that Town Attorney Greg Stepanich will review the municipal tax to be on the December agenda, which is key to make sure they are moving forward and have the timelines in place. She further noted that it will be placed on the June ballot.

Council Member Hunter suggested sending Public Works Director Bob Hemati to the Marin Franchise meetings rather than Interim Town Manager Thompson. The Council agreed.

Mayor Small asked if there was any resolution to the 36 Glenwood construction completion issues. Senior Planner Elise Semonian noted that the applicants for 36 Glenwood indicated that they would like to return to the Council in December to request the fish passage condition to be removed. The Department of Fish & Game indicates that they will support the applicant's plan for improving fish passage. However, the applicant would like the condition removed. Public Works Director Hemati noted that a June 30th completion date has been agreed upon as far as construction completion penalties. Now, they are reviewing the drainage plans. There are new conditions that have been imposed, so they are proceeding

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with the revised plans. There is a Department of Fish & Game issue in terms of the fish ladder, which is a separate issue. Culvert work has been completed. Council Member Martin asked staff if they propose to do the balance of the work in the creek next year. Senior Planner Semonian stated that they believe the culvert addressed their issue. Staff noted that there is a misunderstanding regarding what the Council required. They believe they are done and do not have to return to improve the fish passage barrier. Council Member Martin noted that Town Hydrologist Matt Smeltzer had the right to oversee those improvements. Public Works Director Hemati noted that Town Hydrologist Smeltzer signed off on the revised drainage plan. He removed himself from the fish barrier work because he was frustrated with the process. They must get another hydrologist to address that matter. Senior Planner Semonian indicated that the applicant asked that the matter be placed on the December Town Council agenda. Public Works Director Hemati noted that two other civil engineering firms have been hired in regard to drainage. They must get certification from the other engineers that the new revised drainage system is finished according to the revised requirements. Staff is inspecting.

Council Member Martin pointed out that this is one of those conflicts in regard to Town Hydrologist Smeltzer. With the conflict of interest resolution, the Council granted this relationship to continue. It is independent of that, that Town Hydrologist Smeltzer is frustrated with the lack of action by the Department of Fish & Game, but the Council needs clarification in terms of who is overseeing this project. It must be finalized.

Public Works Director Hemati reported that there have been some negotiations for a certain amount of money, but there is a balance left. There is a pending letter that staff could send out indicating the number in the Building Department's judgment is the final amount. Drainage is another issue. Plans were approved, but not a complete set. The Public Works Department required further requirements for drainage. Also, staff asked the applicant to hire other civil engineers due to the conflict of interest. Meetings occurred and the final revised drainage plan is being completed. The third item is the Department of Fish & Game issue. The culvert is done. Their representatives sent an email that they finished a year and a half ahead of schedule, but the fish ladder has not been addressed. They asked to be placed on the December agenda to renegotiate that matter. Senior Planner Semonian stated that the drainage plan was revised because the materials on the driveway surfaces had been revised from pervious to impervious.

Mayor Small expressed concern related to the transition plan that the Town has the money collected. When looking at the budget they have a \$100,000 in one area under the construction penalty area. Town Manager Broad noted that the Town collected \$301,000 and applied \$198,000 last year, so there is a \$103,000 of their money and he instructed the accountants that the money should be moved over and recognized as construction penalty revenue in November. He talked to Project Manager Glen Sherman and informed him that by using the June 30th date, they owe the Town a total of \$380,000, which means they owe another \$78,500. They are basically ready to pay. They are just waiting for the letter indicating that June 30th is the date that the penalties are accruing through. Mayor Small wanted to get that resolved. She recommended sending the letter and collecting the money. The Council agreed. Senior Planner Semonian expressed concern since the project is not final yet and wanted all planning conditions completed.

Town Manger Broad noted that Public Works Director Hemati suggested adding verbiage to the draft letter informing them that this is the dependant on them completing the drainage

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work and whatever else is outstanding and provide a completion date. Council Member Martin asked if the creek work is included. Public Works Director Hemati explained that the creek work will not happen until later. Mayor Small wanted it referenced in the letter as well as have Town Attorney Stepanicich review. She wanted to make sure they are committed to finishing the rest of the project according to the Town's conditions and findings, and if not done in a reasonable time period that penalties will start again.

Senior Planner Semonian stated that the project came through before design review regulations were required. Public Works Director Hemati noted that they added detention tanks. Senior Planner Semonian indicated that runoff is collected. They have changed the surfaces on some driveways from what planning approved. Council Member Strauss believed when such matters happen, it should come back to the Council. He recommended that the Council discuss at a later date, when changes are made in the field at what level should it come back to the Council.

Mayor Small opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public portion and adjourned the meeting.

9. Adjournment.

Mayor Small moved to adjourn at 9:52 a.m.

Carla Small, Mayor

ATTEST:

Linda Lopez, Interim Town Clerk