

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, NOVEMBER 8, 2007

1. 6:33 P.M. Commencement.

Present: Mayor Hunter; Mayor Pro Tempore Cahill; Council Member Durst; Council Member Skall; and Council Member Strauss

2. Posting of Agenda.

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

3. Minutes – October 11, 2007

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Skall seconded, to approve the October Minutes as amended. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression.

Megan Crowley, San Rafael resident/Branson high school student, was allowed by the Council to make comments about Item 14 regarding the smoking ordinance since she is unable to stay for that item. Ms. Crowley recommended that the Council approve the smoking ordinance. She believed the proposed amendment would help protect students from secondhand smoke exposure. Also, it would be in the best interest of the community to approve this ordinance because smoking has negative health effects. She further urged the Council on behalf of Branson students to approve the smoking ordinance.

Stephanie Smith Stein, North Road resident, requested that a “*Social Host Ordinance*” be placed on the agenda for discussion.

6. Senator Carole Migden, representing the 3rd District of the California State Senate, reporting on State funds for Ross Valley flood control improvements and State approval of SB 418.

Senator Carole Migden discussed State funds for Ross Valley control improvements and State approval of SB 418. She is very pleased to be present tonight before the Town Council. Tonight she will comment on flood control, flood control monies and making sure a fair share of dollars flow to Ross to repair damage and make further improvements. There was \$20 million for the County of Marin and they got caught in the cross fire of very big forces that included the Southern California farmers and getting a consensus on a plan for water supply and the use for the next 50 years. It is very contentious and many honorable differences. They must review farm subsidies and examine farmland agricultural use. They will be vigilant and go back to try and receive that money. There are no objections from the Governor’s office, democrats or republicans for flood repairs. They are still pursuing the global solution in repair and funds necessary for the residents. She views this as a setback, not the end. As they develop a plan statewide that resolves issues of water storage, dams and as a society for water use and capacity in future years, once resolved, they will get the money, just not until the rest is resolved. Finally, they did get SB 418 that returned \$24 million to be

set aside for the county. Initially, the Board of Supervisors agreed to tackle some version of housing plans and workforce housing in the first \$2 million or set aside some portion of affordable housing in the county. They must figure out a plan with all parties to pursue. They tried to do something with San Quentin in regard to housing and different interests were expressed. It is a sizable piece of land to use for other purposes that was vetoed and residents of this county have been trying to initiate another land use configuration. Also, they received a good portion of transportation money to fix Doyle Drive, widen 101/580 and the Novato Narrows. She explained that problems occur because there are no redundancies. Traffic has no place to go, but be stalled. They will have a forum in Mill Valley at the Town Hall regarding wildfire, removal of foliage and how foliage is removed. They will work with State Park Service and others to be safe and environmentally prudent on how they prepare and prevent wildfire.

Mayor Pro Tempore Cahill asked for a sense of timing when funds for flood would be resolved. Senator Migden hoped within a year to achieve a balance approach. Democrats control legislature and the Governor is republican and the republican Governor does not agree with the republicans, so it is hard to make negotiations work. She believed pushing and shoving through the interim would create reasonable negotiations.

Joan Holmes, Ross resident, thanked the Senator for attending tonight's Council Meeting and providing an update, which she greatly appreciated.

Senator Migden further noted that she would be looking into the oil spill that occurred last week and make sure that the county is prepared and that they act in a unified way. Reports show that they were not all that well coordinated with the State.

7. Report from Mayor Hunter.

Mayor Hunter discussed the Southern California wildfires where help came from all around the State. On October 21st Ross Fire Department Engine 18 responded including Jake Peterson, Tim Grasser and Mario Juarez. They joined crews from San Rafael, Novato, Mill Valley and Marin County to fight the Witch Fire in San Diego County. They had an opportunity to meet President Bush and Governor Schwarzenegger during the political leaders' visit to the area.

Mayor Hunter reported that the Ross Town General Plan was approved several months ago and the first official copy is available for purchase.

8. Report from Committee Heads.

General Government - Council member Durst

- Street Tree Working Group

Council Member Durst reported that the Street Tree Committee met on October 24th to refine the Fernhill Tree Plan. They are going to replace the proposed ginkos at the base of Fernhill at Shady with red leaf oak. The Town had previously purchased several 36-inch box red leaf oaks for the Common that were not planted, so those trees will be planted at the base of Fernhill.

The Street Tree Committee also discussed what street tree would be appropriate to screen the home on Redwood that the Council approved last month. Superintendent Robert

Maccario will recommend to the neighbor a Tulip Tree (*Liriodendron tulipifera*) for its small sycamore shaped leaf and excellent trunk and branch structure.

Council Member Durst reported that she along with Bill and Gary met last week as Finance/General Committee to find the funding for the tree plan in this year's budget. The money already exists so the budget will not need to be amended. Later this month the Committee will be sending letters to the property owners on Fernhill advising them of the design to plant a tree. She then provided a sample letter for the Council's review.

Council Member Strauss asked the Committee to review the trees along the Shady Lane pathway, which is part of the centennial celebration.

Public Safety - Council member Skall

- CERT Training - personal experience

Council Member Skall took a two-day CERT training program along with four other Ross residents. He thanked the trainers for an excellent job. He encouraged those in the community to take the two-hour program as a minimum commitment in order to help the community during a situation.

9. Report from Ross Property Owners Association.

Wendy McPhee, RPOA representative, noted that six Ross residents are certified for the CERT training and agreed with Council Member Skall that more residents should be involved. She then asked the Town to publish information more broadly about CERT training by mailing and posting information at the Post Office. Also, Leslie Reidy on RPOA is working with Ross Rec to develop a disaster booklet to be distributed to residents. RPOA wondered if there has been any work on the median between Winship and Bolinas on Sir Francis Drake. The Council directed Public Works Director Jarjoura to review the matter in terms of improvement of the downtown area. Director Jarjoura agreed to investigate.

The RPOA asked the Council if San Anselmo responded to the paving issue on Bolinas. The Council had received no response.

The RPOA is interested in social accountability for the Town. Mayor Hunter noted that a "Social Host Ordinance" would be added to a future agenda for discussion.

10. Flood Control Report.

Town Manager Broad reported that the Town received a letter from a resident and the theme of the letter was "Why does the Town not do anything about flood control." Staff noted that there is a lot happening related to flood control. Jack Curley is scheduling a flood zone 9 meeting possibly the second week of December. Staff is not sure if it is a scoping session or flood zone 9 meeting and is waiting to hear back from Jim Miller to establish dates. In terms of other good news since the 2005 flood, in addition to the Army Corp project, they have the Lagunitas bridge replacement where environmental review has started. Staff distributed material to the Council on 14 houses being raised above the 100-year flood plain, which is a very significant number of improvements by property owners. Fairfax had only one house raised and San Anselmo has not provided requested information on this. In regard to the floodgate program, last month there have been 16 floodgates installed in downtown and since then the Town received a request for another 7 floodgates in the commercial area. The total would be 23 out of 35 openings in the downtown area, which is another very successful

improvement. Also, the Town hired Matt Smeltzer to provide hydrologic analysis for public and private projects. In regard to the bad, post flood, the Town established a legal defense fund as a result of litigation filed against the Town, with the bad news being the need to assess property owners \$225. The ongoing litigation diverts Town staff and financial resources from other work and affects the Town's ability to pursue drainage projects and studies in the community. Staff explained that 177 individuals are pursuing litigation against the Town. There has been a judge assigned as "special master" to oversee the discovery phase of this case and expectation is that this will be an extended discovery period and case. The attorney for the plaintiffs' indicated that they would settle for \$5 million, which is the Town's insurance coverage. Regardless of the outcome, what the Town will incur on increased insurance premiums for years to come will be significant.

Mayor Hunter noted that "*The Morning After*" is an excellent vehicle to inform the public about flood control.

II. Town Council consideration of adoption of Resolution No. 1634 commending Peter Daly for his generous assistance with Town community events.

Mayor Hunter recommended that the Council consider adoption of Resolution No. 1634, which he read into the record, commending Peter Daly for his generous assistance with Town community events.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to adopt Resolution No. 1634, commending Peter Daly for his generous assistance with Town community events. Motion carried unanimously.

12. Report from Ross Recreation Director Pam Riley.

Director Pam Riley thanked the Council for approving portables and their efforts in supporting Ross Rec during the remodeling phases of Ross School. She provided each a folder on what Ross Rec has been doing along with an update that included a list of current Ross Recreation Board Members for the Council's approval as well as meeting dates. She also provided Ross Rec financial reports that included a balance sheet and their profit and loss statement. She explained that Ross Rec's expenses is about \$700,000 per year and they spend more than they bring in, but fundraising has been wonderful, which provided \$37,000, so they showed a gain for the year. Without that donation, they would have operated at a loss of \$35,000. She noted that expenses continue to increase. All revenues come through programs and efforts of Ross Rec Auxiliary that volunteer their time, and is very grateful to the Auxiliary. She provided an update on accountability of participants and 2007 was the greatest involvement. She explained that they provide a community service and Ross School is being remodeled, so they must relocate to portables or nearby and the portables are very expensive, but their first choice. They have two preschools running this year, so now they have 2 years 9 months and 4 years old with 40 students participating. The two preschools are great revenue generators. Jean Marc Schafer's sports program is a tremendous success and a very important entity for Ross Rec. They are reaching junior high and have 92 kids participating in the dance school where the maximum has been 60. They continue to offer

new programs for their growing preschool population. They are working with the Marin Art and Garden Center to bring more programs to the center for the future. They believe this would be a wonderful addition of space and combined resources for the two groups and the community at large. They resurfaced the tennis courts as a maintenance only step. They would like to totally reconstruct the courts, but the cost is prohibitive, perhaps the Town would like to donate some funds, which would be greatly appreciated. The Town courts were donated and the only revenue for the courts was the sale of keys, which has decreased. Their major concern, which will intensify with the remodel, is the dogs on the Grove. They have had many complaints regarding dog feces and kids stepping in the mess. As the usable Common space becomes more limited, they request that the Town consider and eliminate dogs from this area for the next two years, freeing it up as a safe and healthy children's play area.

Mayor Hunter directed staff to agendaize approval of the Ross Rec Board. Town Manager Broad responded in the affirmative. Mayor Hunter asked staff to agendaize a discussion of considering moving the dog park at the Grove as well. Town Manager Broad responded in the affirmative. Director Riley agreed to coordinate with the Town Manager.

Council Member Strauss desired clarification on the use of the tennis courts. Director Riley responded that the department provides lessons on the Town's tennis courts on Tuesday and Friday mornings for adults from 9:30am to 12:30pm. She further noted that no one should be giving a private lesson that does not work for Ross Rec. She noted that enrollment is down. She further noted that it cost \$200 for a two-year membership.

Stephanie Smith Stein, Ross resident, asked what is the vision to increase enrollment. Director Riley welcomed any suggestions regarding adult programs and ideas.

Diane Rudden, RPOA, noted that better coordination is needed with the Town tennis courts in regard to private lessons and free time to use the courts. Director Riley would appreciate a phone call if violations are occurring because use of the tennis courts must be cleared with the Ross Rec Department. She further noted that a schedule is posted for when lessons occur.

Ms. Rudden requested quarterly reports from Ross Rec. Director Riley agreed to provide quarterly reports.

13. **Town Council adoption of Ordinance No. 603 amending Chapters 15.04, 15.12, 15.14, 15.16 and 15.18 of the Ross Municipal Code, and adopting the 2007 California Building Code, the California Plumbing Code, the California Mechanical Code, the California Electrical Code, the California Fire Code and the California Energy Code.**

Public Works Director Jarjoura summarized the staff report and recommended that the Council adopt Ordinance No. 603, amending Chapters 15.04, 15.12, 15.14, 15.16 and 15.18 of the Ross Municipal Code, and adopting the 2007 California Building Code, the California Plumbing Code, the California Mechanical Code, the California Electrical Code, the California Fire Code and the California Energy Code.

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

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to adopt Ordinance No. 603, amending Chapters 15.04, 15.12, 15.14, 15.16 and 15.18 of the Ross Municipal Code, and adopting the 2007 California Building Code, the California Plumbing Code, the California Mechanical Code, the California Electrical Code, the California Fire Code and the California Energy Code. Motion carried unanimously.

14. Follow-up discussion of the five Town Council goals for 2007-2008 and the implementation of these goals.

a. Flood damage reduction/warning and emergency response (Cahill)

Mayor Pro Tempore Cahill stated that the area of flood control was covered by the Town Manager earlier, so he did not see the need to further discuss. At the last Council meeting, they approved a new community alert siren on top of the metroPCS treepole, so that should be installed to replace the current horn before the end of this fiscal year. Also, they reviewed the wildland urban interface standards and staff will attend a meeting in that regard later this month and then the matter would be discussed with the Public Safety Committee.

b. Increase resident readiness, response and recover (Skall)

Council Member Skall reported that the “*Get Ready Marin*” signs were installed throughout Marin County to educate residents on the basic skills to survive a disaster. Volunteer Coordinator Cecelia Conti completed training and she along with Apprentice Mario Juarez will be co-instructing locals classes on November 14th and December 18th to train instructors with subsequent additional classes to follow. Ms. Conti will be encouraging and supporting resident classes to be taught at different community and social gatherings. Also, the Town held the second disaster awareness fair at the Post Office Park on September 29th with residents from both Ross and Kentfield in attendance and received a free gas meter shutoff wrench.

c. Advisory design review (Durst)

Council Member Durst met with staff to organize design review and determined that next month they will introduce a resolution creating the entity. They hope to have adoption by the Council by the January’s Council meeting and also have some candidates ready to organize the group. To comply with ADA requirements, the meetings must be held in Council’s chambers. The group consists of members of the community that are design professionals and interested individuals. Public notice in regard to specific sites is done through agenda posting and Town’s email system. Any stakeholders would attend meetings to discuss concerns and they would use a formula. It will be a charrette process with individuals to have an open discussion around the design review property. In order to guide that design review, she proposes that the group have a work plan that they follow to keep conversations to the issues. That group would discuss and meet once per month and that information can be absorbed by the applicant. She provided rubric to be used in the design process of evaluation. Individuals participating would go through a rubric. The system would be voluntary and three individuals would comprise a quorum. The end result is to have complete applications when presented to the Council and to make the process more efficient for the applicant. Staff members would be present at all advisory design review meetings.

c. Downtown area plan (Strauss)

Council Member Strauss received large maps of the downtown area. He met with staff and they will ask design professionals in the community to attend an initial focus meeting to brainstorm ideas and then go to the community for a visioning session. He is hoping to get participation from the community and then implement the idea. The Lagunitas bridge down through Ross Common is included in the study area. A meeting is scheduled for November 27th in the late afternoon for the design professionals and a firm date has not been set for the community component, but possibly scheduling a Saturday morning on December 6th. Staff will send out an email in that regard.

e. Conclude fire consolidation (Hunter)

Mayor Hunter indicated that Ross had narrowed it down to a JPA with the Town of Larkspur. Their goal is to have a draft JPA to be reviewed by this Council and Larkspur's Council in February.

15. Town Council discussion of programs/policies to encourage additional solar energy development in Ross.

Town Manager Broad reported that the Council significantly amended permit fees for solar energy. They dropped the cost for a building permit down to free for solar installation and also adopted an incentive in which if someone applied for additional permit work at the same time proposing a solar system they would receive a 10% reduction on building permit cost up to a thousand dollar savings. Staff pointed out that a grass roots program is being launched through a mass purchase to get a reduction in the cost of solar installation. Over 30 Ross residents expressed interest in a discounted solar program through "Go Solar Marin," so staff believed it is a worthwhile discussion for Council on how Ross can stimulate solar energy. The Town could rework existing regulations so that solar panels would no longer need to meet side or rear yard setbacks. Staff suggested reworking their language on what constitutes a variance, so solar panels could go into side and rear yard setbacks. Staff would not recommend that the Town subsidize private installation of solar panels, but other items such as change in regulations could have a better opportunity to remove some of the present restrictions that exist with the nonconforming homes.

Mayor Hunter noted that they must stipulate on existing structures, not a wall of panels that would create a new structure, but on an existing building. Town Manager Broad noted that language could be crafted however Council desired.

Council Member Strauss believed it must still go through design review. He suggested expediting the permitting process, but expand to sustainable building materials in order to look at the whole picture. Town Manager Broad noted there is a huge amount of work on "green" building. Ross has a unique problem in terms of variance conditions that is not so much an issue elsewhere. Town Manager Broad stated that staff does not need to work independently on all green building opportunities. Council Member Strauss wanted to be in line with the county. Town Manager Broad agreed.

Mayor Pro Tempore Cahill noted that there is State law that supersedes the installation of solar panels, so is that covered by State law in regard to encroaching within the setback. Senior Planner Semonian noted that it is subject to general development standards, but not design review. The law is not entirely clear, but it must comply with other ordinances of lot

coverage and setbacks. Town Manager Broad noted that an exception or exemption for solar panels on existing structures to be mounted flat could be considered. Most or all applications are on rooftops.

Council Member Strauss believed solar panels should be subject to design review. Mayor Pro Tempore Cahill pointed out that State law precludes their ability for design review. Town Manager noted that it cannot be subjected to design review.

Council Member Durst suggested updating Section 15.40 of the Ross Municipal Code to see if the language can be crafted to advance solar development. She wanted to check with a consultant for environmental design and see if there are ways to encourage solar in a more integrated way.

Council Member Skall stated there is some question about the ability to get into a home and release the smoke from the house because firefighters cannot get through these panels, so that must be considered.

Mayor Hunter opened public comment on this item.

John Martin, Bolinas Ave. resident, asked the Council to consider regulations related to tree removal to encourage solar, especially on small lots. Also, he encouraged the use of cisterns.

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.

Town Manager Broad noted that Senior Planner Semonian would prepare a memo for the Council's review.

16. Town Council consideration of introduction of Ordinance No. 602 amending Chapter 16.18 of the Ross Municipal Code, Restricting Smoking, to include additional regulation of secondhand smoke.

Town Manager Broad summarized the staff report and recommended that the Council consider introduction of Ordinance No. 602, amending Chapter 16.18 of the Ross Municipal Code, restricting smoking, to include additional regulation of secondhand smoke.

Council Member Strauss asked staff to discuss the definitions on page 4 in regard to partitions. Town Manager Broad explained that it is talking about a porch. Council Member Strauss asked for clarification in that regard. Mayor Hunter recommended stating, "*inside a dwelling.*" Porches are not defined as an enclosed space, so it would be regulated as a nuisance. Mayor Pro Tempore Cahill believed it is vague and not clearly defined. An open porch would not be an enclosed space. Council Member Durst asked about a screened porch area. Town Attorney Roth believed it would be an enclosed space. Council Member Strauss did not understand why it must be defined. Town Manager Broad indicated that the Council has discretion.

Mayor Hunter asked staff about a resident having a party and people are smoking cigars, if that would fall under nuisance legislation. Town Attorney Roth responded that a nuisance fact must exist. There must be some evidence that this is potentially harmful.

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Mayor Hunter stated the whole idea of the nuisance clause is to provide the neighbor leverage. Town Manager Broad suggested that good laws make good neighbors and believed the best way to resolve matters is to have laws on the books that allows a neighbor to have some leverage in trying to remedy a situation.

Mayor Pro Tempore Cahill asked staff if there have been other incidents other than the Ausnit's. Town Manager Broad stated not to his knowledge and is only aware of the one incident.

Mayor Hunter opened the public hearing on this item.

Pam Riley, believed all public areas should be included. Mayor Hunter noted that Marin County ordinance allows for a designated smoking area, which the Town's ordinance did not include, but it will be discussed by Council tonight. Also, he pointed out that Marin Art & Garden Center is a private area and private areas are not being regulated.

Joan Holmes, Ross resident, got the impression that there was a lot of discussion about litigation and wrote the Town a letter in that regard and asked the Council why litigation is not a concern. Mayor Hunter explained that the Council would discuss the issue of litigation after hearing from the public.

John Martin, Bolinas resident, desired the ordinance and supported private and public provisions. He is representing the children and urged the Council to pass the ordinance.

Susan Nielsen, Ross resident, felt it is an evasion of privacy and property rights. She opposed the ordinance. She is not clear on what is going on and she did not feel the Council is clear on the ordinance. She urged the Council not to approve. She recommended that the Council continue the matter in order to further review what is being proposed and think about private yards. She further believed it is very mixed up and hoped the Council will let this entire matter go.

Peter Ausnit, Ross resident, thanked staff and the Council for developing a very balanced solution. This ordinance is not leverage, there is no enforcement, and there are no fines, just a context that smoking is a nuisance and an intrusion. They tried to reach an agreement with their neighbors over a course of one year and the owner did not understand the seriousness. They approached the Council and quite quickly they reached an agreement with their neighbor. They have a great neighborly relationship that has taken into context that secondhand smoke can be harmful. He presented a study from Stanford in regard to secondhand smoke and it is significant. They would consider moving if they were not able to solve the problem. He made financial offers to the neighbor, but through a statement that this is a nuisance the issue was resolved. This is real and has consequences and without that there would be no balance. To reject this legislation, it is stating that smoking is a protected activity. He further agreed that good fences and good laws make good neighbors.

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

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Council Member Skall thanked staff for utilizing communication outlets to spread the word about the topics on tonight's agenda. He favored the improved smoking ordinance in regard to public areas.

Mayor Hunter wanted to address the proposed ordinance for all matters except nuisance and it would seem there is one question: Do they want to establish a smoking zone? Council Member Skall stated that in regard to public areas and the school being under construction, is there any issue of construction workers and their ability to smoke. Council Member Durst stated that the center area of the Commons is being used as a staging area and issues of construction management is bothersome. Town Manager Broad stated that Town owned areas are regulated, so smoking on Ross Commons is not allowed. The school facility is not regulated. The school regulates their own grounds. Council Member Durst stated that while kids are present, smoking is not allowed. Town Manager Broad noted that smoking is not regulated on the streets and smoking at Ross Commons is not allowed.

Project Planner O'Rourke stated that other communities have smoking regulations on construction sites. Staff noted that construction workers are not referenced in this ordinance. The county ordinance stated 20 feet of working road is protected, but that is not included in the Town's ordinance.

Council Member Strauss asked staff if there is anything more restrictive. Town Manager Broad responded that the Town's ordinance is less restrictive and the Town is not obligated to follow the county.

Council Member Strauss agreed with how they are interpreting the county. Better definition on the enclosed space is needed to be clear. On page 6 under the 4th item, he recommended striking that entire sentence that states, "*In a designated smoking area established in the parking lot between the Ross Post Office and the downtown commercial area.*" In regard to Item C, "*no smoking signs*" should not be posted all over Town, so that must be reviewed. He recommended striking Item 3 on page 6 as well in regard to theatrical performances being allowed to smoke. Also, under enforcement on page 7, there is a contradiction under the first paragraph and suggested striking Item D that stated, "*Notwithstanding any other provision of this chapter, a private citizen may bring a legal action to enforce this chapter.*"

Mayor Pro Tempore Cahill agreed they should not designate a specific smoking area because there are plenty of areas with the street and sidewalk. He also agreed with striking "*no smoking signs*" because it is not appropriate to have signs posted all over Town. He disagreed with Council Member Strauss in regard to theatrical performances and smoking should be allowed in that regard. He further agreed with deleting Item D on page 7 in regard to the private citizen legal action section.

Council Member Durst discussed page 6 under Item 6 on the top of the page and pointed out that Ross's sidewalks are not 20 feet from any entrance, so she believed a designated area must be included. Also, in the "*Whereas Section*" on page 3, they should restrict other events that occur on the Commons such as drinking.

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Mayor Hunter agreed that they should delete the section regarding designating a smoking area. He also agreed with deleting Item C regarding “no smoking signs” as well as deleting Item D under enforcement.

Mayor Hunter then discussed the nuisance clause and this was discussed in great detail at the last meeting. They must go back to the original purpose and the idea of the nuisance was for leverage. They are providing a tool. They talked about the instance of “one off,” yes the nuisance ordinance will cover a one-time situation, but the likelihood of an individual bringing suit based on that one instance is not likely because it is very expensive. From what the Council has heard and read, the majority is in favor. He urged the Council to give this serious thought in order to help some of the families in Town.

Council Member Skall expressed concern for this hands-off approach. They must be more involved. The fact that they are pushing it away concerns him. They must have a method to quantify this matter. Is once per month a chronic situation? He wanted to be the independent objective body to avoid litigation. He wanted this ordinance to have an expiration date. He did not desire a permanent ordinance. He desired some type of recourse. He recommended an independent body such as RADR. Mayor Pro Tempore Cahill did not want to be smoking mediators. The Town Attorney noted that they could have a sunset provision. Council Member Strauss objected to a sunset provision. He preferred to edit the ordinance to feel comfortable.

The Council indicated that the first portion being in line with the County is acceptable.

Council Member Strauss wanted to declare secondhand smoke a nuisance, but not how it is crafted. He suggested stating, “*secondhand smoke is declared a nuisance.*” Town Attorney Roth stated this is leverage of context that gives a real assist to private property owners in regard to litigation. Council Member Strauss did not believe that is needed. Mayor Hunter recommended stating, “*secondhand smoke constitutes a nuisance.*” Council Member Strauss agreed.

Mayor Pro Tempore Cahill would be in favor of the nuisance provision if they had a continuing problem with secondhand smoke. They had one incident and as far as the record has shown no other incident of this nature that would give rise to the effect of the nuisance provision. He suggested passing this ordinance without the nuisance provision now and be alert as to whether there are any nuisance incidences in Town, and if so, bring the matter back for consideration.

Council Member Durst would never find the nuisance provision around smoking acceptable. Smoking can be regulated in public places. They cannot regulate a legal activity. They do have the authority to regulate smoking in public places. She desired tight and easily understood regulations. She believed theatrical performances should be allowed to smoke. She suggested introducing the ordinance, but clean up the language and delete Section 16.18.100 as suggested in the staff report. They may need to tighten it up and make it a much clearer and cleaned up document. By removing Section 16.8.100 it will provide greater clarity. She further recommended cleaning up the document, so that it is worded exactly how the Council desired.

Mayor Hunter noted that this is their third meeting and in front of them is an ordinance. They reached consensus at the last meeting, except on the declaration of nuisance. He

suggested agreeing on declaration of nuisance to a sunset or a formal review 12 months out. Then it will be in the code for one year and then the Council could revisit. He further recommended passing with the changes as discussed, which included:

- Delete designated smoking area
- Delete the posting of “no smoking signs”
- Modify language to read, “secondhand smoke constitutes a nuisance.”
- Define “enclosed space” to mean, “Structure enclosed in by roof and four walls with or without windows and appropriate openings for egress and ingress.”

Town Attorney Roth asked the Council if Section 16.18.100 should be included and should there be a sunset. Council Member Strauss wanted the Town to declare secondhand smoke a nuisance, but is not comfortable with the crafted language. Mayor Pro Tempore Cahill suggested removing Section 16.18.100 and if there are material complaints in the nature of Mr. Ausnit that they immediately revisit the nuisance provision.

Mayor Hunter asked if there was any consensus on a sunset clause. There was none.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Strauss seconded, to approve Ordinance No. 602, regulating secondhand smoke with the removal of the nuisance provision that is Section 16.18.100; the two “*whereas clauses*” on page 3 of the ordinance and are identified by their footnotes 19 and 20; that they change the definition of enclosed to the Town Attorney’s proposed language; remove paragraph A4 in Section 16.18.050 regarding designated smoking area; remove Item C of Section 16.18.060 regarding posting no smoking signs; and remove Item D of Section 16.18.070 regarding private citizen legal actions. Motion carried unanimously.

The Council took a short recess at 9:22pm.

17. Town Council consideration of the appeal of John Shalavi, 122 Winding Way, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction, and adoption of Resolution 1635.

(This item was continued at the applicant’s request.)

18. **Planning Application Consent Agenda.**
The following four items will be considered in a single motion, unless removed from the consent agenda:

Council Member Strauss pulled Item “d” for further discussion.

- a. **7 Woodside Way, Extension of Time No. 1613**
Lee and Stephanie Notowich, 7 Woodside Way, A.P. No. 73-232-03, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). A one-year time extension to November 9, 2008, for a variance and design review application approved on November 9, 2006, 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.

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve Consent Calendar Item “a” as presented. Motion carried unanimously.

Conditions Notowich 7 Woodside Way

1. Except as specifically amended here, all conditions of this project’s November 8, 2006 approval shall remain in full force and effect.
2. Failure to secure required building permits and begin construction by November 8, 2008 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 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. 83 Laurel Grove, Extension of Time No. 1567

Eric and Trisha Ashworth, 83 Laurel Grove Avenue, A.P. No. 72-092-03, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size). A second one-year time extension to October 19, 2008 for a variance and design review application approved on October 19, 2005 to allow the following: 1.) construction of a 470 square foot two-car detached garage on the foundation of a previously-existing garage; and 2.) construction of a 200 square foot shop structure on the foundation of a previously-existing accessory structure within the north side yard setback (25 feet required, 20 feet proposed.)

Lot area	96,570 square feet	
Existing Floor Area Ratio	3.8%	
Proposed Floor Area Ratio	4.5%	(15% permitted)
Existing Lot Coverage	2.2%	
Proposed Lot Coverage	2.9%	(15% permitted)

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve Consent Calendar Item “b” as presented. Motion carried unanimously.

Conditions Ashworth 83 Laurel Grove Extension

1. Except as specifically amended here, all conditions of this project’s October 19, 2005 approval shall remain in full force and effect.
2. Failure to secure required building permits and begin construction by October 19, 2008 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 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.

c. 2 Hillgirt Drive, Extension of Time No. I626

Timothy and Katrina Harmon, 2 Hillgirt Drive, A.P. No. 73-082-03, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). A one-year time extension to December 14, 2008, for a variance and design review application approved on December 14, 2006, to allow the following: 1.) a 59 square foot addition to the lower level of the residence, within the existing crawl space; 2.) landscape improvements including patios, a fireplace and a barbecue within the side setback (25 feet required, 1.5 feet proposed) and rear setback (40 feet required, 7 feet proposed); 3.) 300 linear feet of retaining walls ranging in height from .5 feet to 5 feet tall (average height 1.6 feet); 4.) grading associated with the project, which includes approximately 100 cubic yards of cut and 15 cubic yards of fill; and 5.) tree removal permit for a 16 inch diameter apple tree within the rear setback.

Lot area	17,069 square feet	
Existing Floor Area Ratio	22.4%	
Proposed Floor Area Ratio	22.8%	(15% permitted)
Existing Lot Coverage	11.0%	
Proposed Lot Coverage	11.0%	(15% permitted)

The existing residence is nonconforming in rear and side setbacks.

Mayor Hunter asked for a motion.

Council Member Durst moved and Mayor Pro Tempore Cahill seconded, to approve Consent Calendar Item “c” as presented. Motion carried unanimously.

Conditions Harmon 2 Hillgirt Drive

1. Except as specifically amended here, all conditions of this project’s December 14, 2006 approval shall remain in full force and effect.
2. Failure to secure required building permits and begin construction by December 14, 2008 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 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.

d. 14 Walnut Avenue, Design Review No. 1671

Loretta Gargan and Catherine Wagner, 14 Walnut Avenue, A.P. Nos. 73-171-51 and 73-171-52, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Design review of modifications to all four elevations of the residence for new windows and doors.

Lot area	7,500 sq. ft.	
Existing Floor Area Ratio	8.7%	
Proposed Floor Area Ratio	8.7%	(20% permitted)
Existing Lot Coverage	10.8%	
Proposed Lot Coverage	10.8%	(20% permitted)

The existing residence is nonconforming in front and side setbacks and covered parking (1 covered space required).

Loretta Gargan, owner, noted that she had neighbor acknowledgements to submit to the Council from all neighbors. Senior Planner Semonian noted that staff’s primary concern with the project was that widows with metal cladding would be used and staff wanted to ensure the character of the existing residence was preserved. Ms. Gargan explained that the windows have not been selected and she wanted the option of having metal outside due to the weather. Also, they wanted to complement the existing old growth redwood exterior siding and they were concerned new wood windows might be more of a contrast than metal. She further noted that they would not be divided light.

Council Member Strauss stated that the house is very charming, but finds aluminum windows without divided light out of context.

Tristan Warren, architect, provided an architectural drawing showing the south elevation and described the existing windows. Council Member Strauss expressed concern for sliding doors. Architect Warren noted that it is a barn door and doors are mounted onto exterior hardware as opposed to a typical patio door. Council Member Strauss felt the divisions as shown for the windows is out of character for the house and proposed mullions or equal or better. Mayor Hunter agreed.

Council Member Strauss expressed concern with the east elevation. Architect Warren explained that they intended to stay within the existing realm. They saw the beauty in the wood and the fact that the corner has an existing door that was added in the 70s or 80s that is out of character. The intention was to fulfill the client's goal and create an open amount of glass. He would be happy to consider divided light. They had no direct guidance in terms of existing historical value and took what they felt was appropriate.

Ms. Gargan objected to divided light windows because there is a beautiful view of the hillside and they wanted a more unobstructed view. She did want to be in keeping with the existing character so she was not pushing for an ultra modern look and felt the barn doors was in keeping with the architecture.

Council Member Durst is fine with the barn door concept due to the rustic nature of the cottage. In regard to the front and south elevation, with the proposed windows, she thinks adds charm with curtains or window coverings. She believed the house is very nicely proportioned. If the applicant desired more light, she had no problems with the windows as proposed. Council Members Cahill and Skall agreed.

Council Member Strauss asked staff to review the storage shed and make sure it complies with the Town's zoning. Senior Planner Semonian agreed.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to approve Item 18 "d" as outlined in the staff report with conditions and findings. Motion carried 3:2. Hunter and Strauss opposed.

Conditions 14 Walnut Avenue

1. All windows and doors must substantially resemble traditional wood windows and doors and are subject to Planning Department approval prior to installation. The window and door material and colors shall be approved by staff. Cladding shall not appear to be metal and shall not be reflective.
2. Prior to issuance of a building permit, the applicant shall record a voluntary merger form, merging Assessor's Parcels 73-171-51 and 073-171-52, and extinguishing any underlying parcels.
3. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) A local alarm system is required.

4. 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.
5. 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.
6. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to any modification.
7. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY NOVEMBER 8, 2008 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
8. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

19. **23 Baywood, Amendment to Design Review No. 1471**

Richard and Cynthia Hannum, 23 Baywood Avenue, A.P. No. 72-071-06, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Amendment to a June 14, 2007 variance and design review condition of approval that requires all windows on the west elevation to be opaque.

Senior Planner Semonian summarized the staff report and recommended that the Council permit the changes subject to the conditions and findings outlined in the staff report.

Mayor Hunter opened the public hearing on this item.

Andy Mascheroni, Baywood resident, submitted photographs for the Council's review. He explained that four years ago he reviewed Mr. Hannum's plans and in the interest of privacy and screening, allowed him to have glass on the condition that it be made opaque. There were several iterations and thought they had an agreement of opaque glass. They discovered that not only is the glass a problem, but the oak tree as well, so the little screening they have will be gone. They believed some sort of screening should be required. It is a good possibility that excavation caused the death of the tree, but the end result is that the tree must be removed, so some sort of screening must be required.

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Council Member Durst sympathized with the Mascheroni's. The oak tree is experiencing sudden oak death and they do face the possibility of removing that tree. Without the tree, the Hannum's will have a direct view into their family room. She further suggested that the Hannum's maintain the opaque glass as originally agreed.

Mayor Pro Tempore Cahill stated that it is very difficult for him to re-evaluate conditions that were previously approved by an earlier Council. This condition was heard and decided and unless there is information that he is missing, he did not understand why they would modify.

Mr. Mascheroni noted that there have been several convoluted changes and it is very confusing because he never signed the later design. Julie Mascheroni stated that they were presented with a design of a kitchen on the top floor and on the lower level of the house Mr. Hannum had two 18 by 18-inch windows that he was asking for approval because they were new windows, so they approved those two windows. The picture provided to Council was not the same design that she signed off on.

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

Council Member Strauss felt clear glass should be allowed as a matter of right and that landscaping could screen the home.

Mayor Hunter stated that from a design aspect it would be a mistake to require the windows to be glazed. There is clearly controversy. Town Manager Broad noted that during the initial 2003 approval it was discussed.

Mayor Hunter believed screening should be provided to the extent possible. He believed it is a shared responsibility to screen along with drapes. Council Member Strauss cannot follow the history 100%, so he favored clear glass. He further noted that drapes and screening is the responsibility of the property owners.

Council Member Durst stated that the applicant has been very difficult in terms of the number of changes and mass and volume of changes and it is very difficult to follow. The whole action must be reviewed. Mayor Pro Tempore Cahill understands how it appears the applicant is working the system, but it does not make sense to have obscured glass in that location and he would be in favor with the condition that they provide direction to staff about landscaping. It should be a shared responsibility between the property owners.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to approve the 23 Baywood application with clear glass for the library window, the upper window on the west elevation; that landscaping shall be the responsibility of both parties to do what they determine is appropriate for their side of the property, the Council suggested drapes; the lower windows on the west elevation were still required to be obscure glass. Motion carried 4:1. Durst opposed.

20. **30 El Camino Bueno, Amendment to Demolition Permit, Variance, Design Review, Hillside Lot Hazard Zone 3 Permit, and Tree Removal No. 1615**
Colin Lind and Anne Dickerson-Lind, 30 El Camino Bueno, A.P. No. 72-171-04, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size). Amendment to plans approved by the Town Council on April 17, 2006, extended to April 17, 2008, for a demolition permit, design review, hillside lot hazard zone 3 use permit and tree removal application associated with the demolition of the existing residence and construction of a new 6,708 residence and related improvements. The modifications requested include: 1.) design review for new retaining walls ranging from 2.5 to 9 feet tall that associated with widening the 250-foot long driveway to a minimum width of 14 feet; 2.) new utilities access deck within the front yard setback (25 feet required, 2 feet proposed); 3.) height variance to allow a maximum roof height of 33.5 feet (30 feet allowed, 32.5 feet approved); 4.) minor changes to the location of exterior windows, doors and walls; 5.) change in window material from copper clad to wood; and 6.) addition of solar thermal and PV panels on the roof and elimination of the geo-thermal system. The approved cut and fill would increase from 1,475 cubic yards of cut and 730 cubic yards of fill to 1,570 cubic yards of cut and 850 cubic yards of fill.

Lot area	108,029 sq. ft. (2.48 acres)
Existing Floor Area Ratio	5.8%
Proposed Floor Area Ratio	6.2% (15% permitted*)
Existing Lot Coverage	3.9%
Proposed Lot Coverage	6.5% (15% permitted)

*THE SLOPE OF THIS LOT IS 40%. THE HILLSIDE LOT ORDINANCE WOULD RECOMMEND A MAXIMUM FLOOR AREA OF 6,708 SQUARE FEET.

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

Council Member Strauss asked staff if the Town required the 14-foot driveway. Senior Planner Semonian responded that the ordinance did not cover specific width. The standard is 12 feet with one-foot shoulders. Council Member Strauss directed staff to review in more detail.

Brooks Walker, architect, believed the 14-foot road width was the one-foot shoulder on each side, which is required by public safety. It was not their choice. It triggered taller retaining walls. Looking at cost savings they had an opportunity to value engineering and precise budgeting and the building is the same with some change in fenestration. They propose reclaimed teak product that will require more maintenance, but nice aesthetic appearance. They reduced the amount of stone on the west elevation. Used integral colored plaster. The master bedroom increased in height about one-foot. Also, the building is primarily steel frame to support a green roof.

Mayor Pro Tempore Cahill asked if a landscaping plan for the retaining walls had been prepared. Landscape architect indicated that he would plant native drought tolerant plants on the top of wall. In regard to the down slope, they do not have a specific proposal due to the tree canopy. It could be planted, but it would be redundant. The tree canopy is the most effective screening they can achieve.

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

Mayor Pro Tempore Cahill stated that it is over the height limit when measured to basement floor. Architect Walker noted that the master bedroom area, which is declared a technical area due to the crawlspace, is all below grade. Mayor Pro Tempore Cahill is in favor of the revisions. The Council concurred.

The Council noted that due to the code, they cannot allow the 8-month extension as requested by the applicant.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to approve the application for 30 El Camino Bueno with staff findings and conditions. Motion carried unanimously.

Conditions 30 El Camino Bueno

1. Except as specifically amended here, all conditions of this project's April 17, 2006 approval shall remain in full force and effect.
2. The project shall comply with all recommendations of the Herzog Geotechnical Consulting Engineers report.
3. An engineered drainage plan shall be submitted with the building permit application for review and approval by staff. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. Runoff shall be routed to on-site stormwater treatment facilities and peak flow rates shall be controlled to pre-development rates.
4. 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.
5. All costs for town consultant, such as the town hydrologist, 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 prior to project final.
6. Failure to secure required building permits and begin construction by November 8, 2008 will cause this approval to lapse without further notice.
7. 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.
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 contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney’s fees and costs and participates in the defense in good faith.

21. **37 Upper Road, Variance and Design Review No. 1650**

Thomas and Susan Reinhart, 37 Upper Road, A.P. Nos. 73-111-02 and 073-111-05, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size). Variance and design review to permit the following landscape improvements: 1.) 222 square foot pool changing room and outdoor shower within west side yard setback (25 feet required, 8 feet proposed); 2.) 650 square foot, two-story, outdoor kitchen and pool equipment room with a maximum roof ridge of 22 feet; 3.) 62 cubic yards of cut and 101 cubic yards of fill associated with the landscape work, which includes lowering the grade of the lawn area behind the residence and within the guideline watercourse setback (25 feet recommended, 2 feet proposed); 3.) demolition of a deck and construction of a new deck and outdoor fireplace within the guideline watercourse setback (25 feet recommended, 18 feet proposed) and north side setback (25 feet required, 22 feet proposed); 4.) over 100 linear feet of landscape retaining walls ranging from 6 inches to 7 feet tall; 5.) expansion of motor court into west side yard setback (25 feet required, 7 feet proposed; and 6.) tree removal permit to remove an 18-inch diameter magnolia and 18 inch diameter poplar

Lot area	82,439 square feet	
Existing Floor Area Ratio	12.8%	
Proposed Floor Area Ratio	13.7%	(15% permitted)
Existing Lot Coverage	7.9%	
Proposed Lot Coverage	7.8%	(15% permitted)

The existing residence is nonconforming in height (30 feet permitted) and number of stores (2 stories permitted).

Senior Planner Semonian summarized the staff report and recommended that the Council approve the application with findings and conditions.

Tom Reinhart, owner, received approval for the house, not landscaping, so they reviewed the landscaping in more detail and in that regard changed their landscape architect who has more experience in Ross. They wanted a program designed that would be respectful of Church architecture, given the challenging architecture and programs and activities his family desired. At the end of the day, they are comfortable with the deck as proposed, but wanted to incorporate a few changes, and believed the design submitted accomplishes their goals.

Hans Baldauf, BCV architects, believed this is a wonderful historic house that has the challenge of a very complex site. Their design is to connect the entire area together and since last design review they tried to free themselves up from the dogma of Church Garden and the main breakthrough was to break the outdoor dining and pool changing component into two pieces allowing both to be smaller. Instead of filling up the space, they pulled back and now are not so focused on the Church trellis and opened up the sense of views. In terms of massing, the Council’s suggestions provoked them to achieve great design.

Todd Cole, landscape architect, stated that due to the creek and slope they are very restricted. They are proposing a design with excellence of design. They divided up each architectural element. The lawn as it exists on the upper part is being sloped closer to grade and allows visual access that made bigger usable spaces. They reduced the impact of the creek setback by maintaining the view by pulling the deck. They desired the visual access. They wanted to maintain and enhance visual access to Mt. Tam and reduce the impervious surface throughout and have done so by 1,100 feet. They tried to increase useable space with larger areas of open flat areas. They are using blue stone around the pool. Local stone or blue cobble used in Ross as well as brick. Walls will be a brick lattice wall between the parking area. By reducing the impermeable surface they will reduce runoff.

Mr. Reinhart discussed the watercourse setback and provided information for Council to review. They tried to incorporate several of Council's suggestions. They reduced mass of the structure. They moved the fireplace out of the watercourse setback into a different location. They reduced the amount of impervious surfaces. They pulled back encroachment of existing deck and reduced the amount of grade, cut and fill. They are significantly reducing the amount of mass and structure. They pulled the deck further away from watercourse and eliminated a lot of square-footage in the watercourse setback, which shows their progress. Page 3 shows the 1,100 reduction of impervious surface as well as areas that are paved to be replaced with plantings. They reviewed the language and there are two issues: 1) to protect natural resource value; and 2) protect residents from flooding. It is a guideline and not a requirement. Protect riparian way as seen on page 5, this is an area unattended for years, if not decades, infested with evasive plants and debris. It is a riparian way in disrepair and they are more than happy to re-establish that riparian way and rebuild that creek. Page 6 shows flooding and they do not believe they affect any flooding or geological hazards. There is distance from the creek. December of 2005 was at most 2 or 3 feet deep. They are trying to prevent further flooding downstream by reducing the amount of impervious surfaces by plantings and reducing runoff to the creek. The last page of the handout reminded the Council that this is not new construction. They are being responsive to the Council's suggestions and pulling back by 6 feet and trying to maintain some of the originally Church elements. He believed this plan is a win/win and being responsive to the Council's suggestions previously. Over the last 6 or 8 months, the Council approved 8 projects with some development in the watercourse, so the Council is using its best judgment for individual applications.

Mayor Hunter opened the public hearing on this item.

Robert Dickenson, Glenwood Ave. resident, explained that the creek runs down to his property through a culvert and then under Glenwood Ave. He has been there for 9 years and that creek has flooded, so they cannot withstand any additional capacity of runoff into that stream. His concern is about the amount of water and any change to the drainage pattern. He has been extraordinarily pleased with Mr. Reinhart's inquiries and the 1100 sq. ft. less impervious surface and controlled dissipation pits that can mitigate the amount of runoff and landscaping that there will not be any addition of the creek as indicated by Mr. Reinhart. He asked that consideration be given during construction to minimize the amount of silt and dirt to the creek to avoid safety issues on Glenwood Ave. Also, he asked Council to consider including in design review the kinds of elements the Reinhart's have done. Anyone constructing a building along an active creek should take the same steps that any

water runoff would be maintained at or below reconstruction levels. He then noted his appreciation for Mr. Reinhart.

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

Council Member Durst believed this project is a thousand times better. Preservation of that Church axis is essential to the plan. Church Gardens are unusual and contain a circular element. Since the Reinhart's did not remove the Church pool, what they have done is excellent and would support deleting Condition No.1 in regard to moving structures out of the watercourse. As proposed, they have met the conditions quite well. With the Church Garden and to have outdoor dining areas, but also places to live in the yard, she is very pleased. The Council agreed.

Council Member Strauss recommended that the footings not be in the watercourse setback.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Skall seconded, to approve the application with the conditions and findings with the exception of deleting Condition No. 1 in the draft conditions in the staff report. Motion carried unanimously.

Conditions of Approval for 37 Upper Road - Reinhart

1. A drainage plan shall be submitted prior to issuance of a building permit that ensures all site runoff will be directed away from the drip line of protected oak trees and not directly discharged into the creek. Costs incurred for town hydrologist review of the project shall be paid prior to building permit issuance.
2. 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.
3. Exterior lighting shall comply with the Town regulations, shall be low wattage, and shall be shielded and directed downward. No uplighting of landscape features or trees is approved.
4. Prior to project final, the applicant shall file an application for a voluntary merger with the planning department and submit material as required by staff or document this is a single lot of record.
5. The materials shall be as shown on the project plans.
6. The applicant shall provide a copy of the 1973 Thomas Church plan on file with the Town Planning department as well and detailed photos of the site landscaping to the U.C. Berkeley Environmental Design Archives prior to issuance of a building permit.
7. The following measures shall be taken to protect the creek during and after construction:
 - a. All invasive plants shall be removed from the creek area prior to project final.
 - b. Best management practices shall be used to prevent construction debris and materials from entering the creek during construction.
 - c. Construction near the creek is limited to periods when the creek is dry.

- d. Landscaping shall include plant non-invasive plant species. Plants in the watercourse setback shall be appropriate for the creek area.
8. The applicants shall comply with the recommendations in the Moritz Arboricultural Consulting Arboricultural Assessment to protect the two oak trees to the west of the residence during and after construction. Prior to the issuance of a building permit, the applicants shall submit a tree protection plan drafted by a certified arborist for the review and approval of the Planning Department and Town Arborist. The submitted plan must be based upon a review of final construction-level plans, including drainage and grading plans, and should focus on the protection of all on-site trees and upon the ongoing preservation of their health and vigor. The tree protection plan shall include specific provisions acceptable to both the Planning Department and the Town Arborist for independent on-site monitoring of the following conditions:
 - a. Before the start of any clearing, excavation, construction, or other work on the site, or the issuance of a building permit, every significant and/or protected tree shall be securely fenced-off or otherwise protected at the non-intrusion zone, or other limit as may be delineated in the required tree protection plan. 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 is 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. 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.
 - i. In no case shall construction materials or debris be stored within the non-intrusion zone of a significant and/or protected tree.
9. 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.
10. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on access roadway; 2.) Roadway must have a vertical clearance of 14 feet; 3.) A street number must be posted {minimum four inches on contrasting background}; 4.) The property must be cleared of all dead or dying flammable materials; and 5.) A local alarm system is required.
 11. 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.
 12. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. If this project is completed as part of the existing building permit it must be completed prior to the construction completion date for that project. The Town has a nine-month "cooling period" between permits.
 13. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.** Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits and/or prior to modifications.
 14. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY NOVEMBER 8, 2008 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**
 15. 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.
 16. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 17. 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.
 22. **Upper Toyon, Variance, Hillside Lot Hazard Zone 3 Permit, Lot Line Adjustment, Parcel Map, and Conditional Exception to the Subdivision Regulations No. 1672**
Harvey W. Glasser, owner of Assessor's Parcels 12-081-07, 12-121-03, 12-121-21 and 72-031-29 (all vacant) and 72-031-45 (121 Winding Way); Douglas Abrams, owner of Assessor's Parcel 72-031-27 (18 Canyon Road); and Mike Guelfi, owner of Assessor's Parcels 72-051-15 and 72-051-17 and 72-051-21 (341 Upper Toyon Drive). The lots are zoned R-1:B-5A (Single Family Residential, Five Acre Minimum Lot Size). A hillside

lot hazard zone 3 permit and parcel map to allow the merger and re-subdivision of four vacant lots into two lots. A variance and conditional exception to the zoning and subdivision regulations are requested to allow access to the resulting lots from a private road (public street frontage is required) and to be less than 5 acres in size (after the lot line adjustment described below, Lot 1 would have a net lot area of 4.4 acres and Lot 2 would have a net lot area of 4.2 acres). All existing lots are nonconforming in size and do not have public street frontage. The applicant is requesting the Council to establish a guideline maximum floor area for the two lots at 8,500 square feet each, which is greater than what would be recommended under the hillside lot ordinance, but less than the total guideline maximum floor area for the lots in their current configuration.

Lot line adjustment to allow the transfer of 6,384 square feet from 121 Winding Way to 341 Upper Toyon Road and 7,428 square feet from vacant Assessor's Parcel 012-121-21 (a portion of Lot 1 on the parcel map application) to 341 Upper Toyon Road. The net area of 121 Winding Way would decrease from 4.2 acres to 4.0 acres. The net area of the vacant lot will decrease from 1.5 acres to 1.3 acres. The net area of 341 Upper Toyon Road would increase from 2.1 acres to 2.4 acres. A variance and conditional exception to the zoning and subdivision regulations is requested to allow 121 Winding and the vacant lot to further decrease below the 5-acre minimum lot size.

Lot line adjustment to allow the transfer of 35,563 square feet from vacant Assessor's Parcel 072-031-29 (a portion of Lot 2 on the parcel map application) to 18 Canyon Road. The net area of the vacant lot would increase, and the net area of 18 Canyon Road would not change, since the area transferred is encumbered with a roadway and utility easement.

No new construction is proposed at this time for any of the lots.

Senior Planner Semonian summarized the staff report and recommended that the Council approve the application, but allow a maximum square footage in the range of 5,277 and 7,642 sq. ft., subject to design review.

Bill Cheek, representing Mr. Glasser, understands that this was improperly noticed so no decision can be made tonight unless they approve a 8,500 sq. ft. maximum floor area for each site. He is requesting 9,500 sq. ft. for each site. He indicated that his lot slope was calculated using a strict interpretation of the Town lot slope definition, not the alternative slope calculation method proposed by staff using a line more perpendicular to the contours. He explained that if they proposed no change to the lot configuration they would have the right to place a house over 10,000 sq. ft. on one site and one 9,148 sq. ft on the other lot. He thought it would be more reasonable to redraw the lines so the lots are more conforming, having 5-acres each, and give up rights to develop the other two lots. By approving at 9,574 sq. ft. floor area maximum the Council may still review any design through design review. If the design submitted is not suitable they can lower the square feet. He is willing to take a continuance to allow the project to return as a consent item if the Council agreed on his mathematical calculation for the maximum floor area.

Council Member Strauss pointed out that they have the potential of having 19,000 sq. ft. of house on the ridge. He asked why they cannot approve the application without specifying a

maximum FAR. Mr. Cheek would not agree to that because he is setting up two estate size lots. Council Member Strauss was concerned with assigning a maximum floor area without knowing more regarding the proposed development. Mr. Cheek stated that he gives up potential floor area with this proposal and if he does not pursue this plan they could still apply for two houses near the ridge.

Mayor Hunter opened the public hearing on this item.

Ken Wachtel, attorney, representing 341 Upper Toyon, desired the Council to approve the lot line adjustment related to 341 Upper Toyon and continue any matters with regard to Mr. Cheek's parcel map application. Regardless of what the other applicant desires, the transfer of land should occur as a separate item and other matters can be continued.

Doug Abrams, Canyon Road resident, stated that it is the Council's job to read the ordinance as written in terms of calculations and to calculate in a different manner could be trouble. The intent of the land transfer with 18 Canyon is to obtain the road rights and easements and a subsequent application would be submitted to adjust the lot lines. It has no impact to the developable rights of the parcels above. He had no issue with size requested. He thinks that Council must determine whether they want to be approving building envelope sizes.

Council Member Strauss noted that building envelope is defined in regard to FAR, so all he can approve is the lot line adjustment and not the merger.

Mr. Abrams will not feel any impact. The civil engineer felt very comfortable, so he is not impacted from a drainage standpoint. In regard to visual impact, he did not see the difference in square-footage. Without seeing actual design of a home, it will be a tremendous foresight to predict the impacts.

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

Mayor Hunter could not recall establishing FAR on a property without a design to go along with it. The project description is all about the lot line adjustment. It is a very logical adjustment of a series of lot lines, but to establish FAR at this point without a design makes no sense. Town Manager Broad indicated that it has not happened before. A big piece was left out of the discussion that the hillside ordinance indicates that no buildings can be built on a ridge. Staff had a lot of discussion as far as when one can go over a hillside lot guideline number and if all other hillside guidelines are met, a maximum floor area above the 5,277 sq. ft. may be appropriate up to the 7,000 sq. ft. The applicant can keep the existing configuration of parcels. The Council could say they are willing to consider that floor area, but must come in with a design of a house before considering the FAR number or come in with some sort of schematic or simulation that gives comfort.

Mayor Hunter stated that if the laws change in the meantime and lots are marketed with a certain amount of FAR that could be a problem. Senior Planner Semonian noted that it is subject to design review, so Council will never be locked into that number. Town Manager Broad noted that they have a ridgeline and steep hillside and access constraints as well, staff did not know if approval up to the guideline level even within the hillside ordinance, so the

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Town does not want to float a number that suggests the number is feasible when not based on any facts. Mr. Cheek objected to the last statement.

Council Member Strauss asked if they could strike “*may be appropriate*” and approve this lot line adjustment. Council Member Durst agreed with staff and development shall be subject to design review and the Ross Hillside Lot Ordinance.

Mr. Cheek noted that this has been a five-year process, which required a LAFCO proceeding and great deal of research to receive easements all under the understanding that this “*horse trading*” would be approved. He indicated that the ridge in San Rafael is not a protected ridge. These three San Rafael lots should be in Ross. It was his understanding that if he did that he would not lose development rights. So, he went forward in good faith to bring these lots over to Ross, since it was not a protected ridge. What he had was certain development rights different from Ross. Now, after bringing these lots into Ross, he is trying to do a logical subdivision and believed they must take advantage of the ridge. He expressed concern for his development rights changing. He desired two estate size lots. Mayor Hunter understands the logic, but cannot establish an FAR without knowing the envelope. It is part of the design review process. Mr. Cheek stated that the only reason was to take that issue out of the equation. They would just be stating a fact. Mayor Hunter is confused why he has a different number than staff. Before Council is a lot line adjustment and did not see where pre-establishing FAR is a part of that review.

Mayor Pro Tempore Cahill suggested hiring an architect to design some houses and then once approved have a more valuable pair of lots to sell. Mr. Cheek stated that it is his experience that individuals want to design their own homes. Mayor Hunter stated that if the intent is to market the lots for sale, why not just do the subdivision and then market the lots. He would agree to a continuance to think about this application. He loves the idea of taking three lots out of the inventory, but they are hung up on pre-determining the FAR.

Mayor Pro Tempore Cahill recommended that Mr. Cheek talk to staff and determine the correct square-footage. Mr. Cheek stated that it is calculated from the lowest to highest elevations.

Senior Planner Semonian noted that the lot line adjustments could be approved separate from the parcel map. Town Manager Broad noted that Mr. Cheek must agree to do so. Staff also recommended deleting Condition No. 3 in the staff report as well if the Council wanted to approve the lot line adjustments. Mr. Cheek must confer with Mr. Glasser in that regard and would not consent to the Council approval of the lot line adjustments.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to continue the matter to a later date.

23. Correspondence - None
24. Other Business - None
25. Adjournment.

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By order of Mayor Hunter, the meeting adjourned at 11:25 p.m.

R. Scot Hunter, Mayor

ATTEST:

Gary Broad, Town Manager