

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, OCTOBER 11, 2007

1. 6:30 P.M.

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-September

Mayor Hunter asked for a motion.

Council Member Strauss moved and Council Member Durst seconded, to approve the September minutes as amended. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression.

Frank Malin, Fernhill Avenue resident, discussed flood control measures and thanked Ross for all the attention and determination paid to flood mitigation, which is greatly appreciated. He noted that the flood zone in Ross Valley is at risk. The 100-year flood has become the 25-year flood, which must be addressed. They are making progress, but it is time for Ross to address the more difficult issue, which is projects on the agenda for consideration that all involve the same items: replacing smaller homes with larger homes; pool; barbeque; more hardscape and driveways. All increase runoff and potential flooding. He hoped the Council would try to incorporate each project in terms of flooding and how these projects will increase flooding potential and harm to citizens. He believed every project should have to meet a standard of "*no adverse impact*." He further hoped to mitigate flooding by not over developing the Town of Ross.

Mayor Hunter indicated that Ross is working on addressing flood control. Council Member Strauss noted that the Army Corp's scoping session was postponed, but they will continue to move forward in regard to flood mitigation.

6. Report from Mayor Hunter.

Mayor Hunter updated Council on fire consolidation with Larkspur. Since the last Council meeting, the Larkspur Town Council authorized staff and a member of Council to begin negotiations regarding a JPA. This morning Town Manager Broad and he met with the Larkspur Fire Chief and Council Member Joan Lundgren to talk about how to proceed. He noted that there is a desire on both sides to move forward. He further added that their first meeting was successful and they will keep pressure on Larkspur to make a decision.

Mayor Hunter reported on the Town Dinner that occurred Friday, September 28th, which was a tremendous success. There were over 500 Town residents in attendance. He gave kudos and thanks to Chief of Protocol Molly Gamble and her committee for the great organization and publicity. Also thanked Peter and Jennie Daly for making Top Productions available for tables, chairs and setup as well as tear down at a minimal cost. He further

stated the Town would be honoring the Daly's at their next month with a special commendation for all their efforts.

Mayor Hunter then discussed floodgates and indicated that the Town recently received word from John Lord, who owns 3, 5, 7, 9 and 11 Ross Common in the downtown that he has installed seven floodgates. Now, there are 16 gates that the Town provided 50% of the funding for, and the Town's share of this very effective flood preventative program, which expires October 15th, was \$4,335.50.

Mayor Hunter announced that the Town hired Matt Smeltzer as the Town Hydrologist due to the concern for flood control. The Council approved the hiring of a hydrology consultant as the Town Hydrologist to help evaluate different projects in Town and to help devise some preventative strategies. Matt Smeltzer of Geomorph has appeared before the Town on previous occasions and Council was very impressed with his understanding and ability to explain his specialty.

7. Report from Committee Heads.

General Government - Council member Durst

- Marin Telecommunications Agency

Council Member Durst attended the six hour MTA Director's Workshop on September 15th. The purpose of the workshop was to find a direction for MTA in light of recent State telecommunications legislation. They found that MTA is a unique JPA in that they are the only JPA capable of implementing countywide telecommunications policy since they are made up of elected officials from each jurisdiction. Therefore, MTA will be developing ideas around how to best use their policy-making abilities to answer the needs of Marin residents. Also, MTA has a new chair, Council Member Andy Berman of Mill Valley and a new Executive Director, Barbara Thornton. who was MTA's chair is now the executive director. Ms. Thornton is currently a San Anselmo Council member and will recuse herself when there are MTA issues. Ms. Thornton's MTA director's seat has been filled by Ted Freeman.

Council Member Durst reported that she was selected to review the Community Media Center/Designed Access Provider Agreement (DAP) along with Fairfax Mayor Larry Bragman and Sausalito Council Member Jonathan Leone and Larkspur Council Member Dan Hillmer. She further noted that they will be located at the College of Marin Kentfield campus.

- Street Tree Working Group

Council Member Durst met with Council Member Strauss and Town Manager Broad about what needed to be done to implement the Fernhill Street Tree Plan. She is working with Street Superintendent Robert Maccario to develop a budget as well as a planting strategy. Chair Janell Hobart has called for a meeting on October 24th; at that time they will complete the details on the Fernhill Street Tree Plan as well as look at some next steps. She further noted that all feedback from the report has been very positive and encouraging.

- Bolinas Avenue

Council Member Durst met on Tuesday with Town Manager Broad, Chief Heying, Public Works Director Jarjoura, San Anselmo Town Manager Debbie Stutsman, Police Chief Charles Maynard and Public Works Director Rabi Elias to review and discuss the results of the San Anselmo Speed Survey for Bolinas Ave. at Richmond. After analysis presentation by Captain Schneider and Chief Maynard, Director Elias felt that he had enough information to warrant the placement of a stop sign at this intersection without a traffic study. Given the analysis of the data and the excellent traffic survey done by Ross residents Jill Baker and John Martin, they have enough information to warrant a stop sign on Bolinas Ave. at Richmond. San Anselmo will take care of the stop sign for westbound vehicles and Ross will take care of the stop sign for eastbound vehicles. She further noted that Ross agreed with San Anselmo to work together on a grant for traffic calming and pedestrian/bike paths once it becomes necessary to pave the street.

Public Works - Council member Skall

- Transportation Authority of Marin

Council Member Skall thanked Council Member Durst for attending the last TAM meeting where they approved Ross' application for a \$246,207 grant for a pedestrian pathway on Shady Lane. Construction is scheduled to take place in 2008. This pathway is one of the improvements recommended by Safe Routes to Streets to reduce traffic around Ross School and encourage students to walk or ride bikes to school.

8. Report from Ross Property Owners Association.

RPOA president Diane Rudden discussed the Town's Disaster Plan, which she said was wonderful and the RPOA wanted this disaster plan available at the Post Office. The RPOA will place the disaster plan in a folder to be provided to all residents. RPOA thanked Chief Heying for his efforts with the disaster plan. In regard to downtown parking, they tried last month to pick up mail at different times to understand parking for seniors and it is very difficult to park during the day. Another concern is when construction starts on the school, and parking will become a bigger issue. It is very difficult to pick up mail and all must be aware of continuing construction occurring in Town and many cannot park onsite. Also, the RPOA wanted to place a brochure about fire safety at the Post Office. RPOA then requested that Council revisit Resolution No. 1466 in regard to Ross Rec, so they can figure out what compliance is.

Mayor Hunter noted that it has been well over a quarter and the Council asked Ross Rec to come back. Town Manager Broad said that Pam Riley indicated she would be happy to report to the Council at the November Council meeting.

Mayor Hunter directed staff to distribute the disaster worksheet as requested by the RPOA.

9. 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 introduce Ordinance No. 602, amending Chapter 16.18 of the Ross Municipal Code, restricting smoking to include additional regulation of secondhand smoke. If the Council

adopts this ordinance, staff will continue to monitor, and if deficiencies are found, then the Council can schedule a public hearing after the ordinance has been in effect for one year.

Town Manager Broad noted a minor change to the ordinance on page 7 under Section 6.18.100. In discussions with Mayor Pro Tempore Cahill, he questioned the need in Subsection A to have the second sentence given that litigation is always an option if something is deemed a nuisance, but encouraging litigation is not the intent of the ordinance. Staff discussed the amendment with the Town Attorney who agreed that it is not necessary to include the second sentence. Staff recommended eliminating the second sentence from Subsection A.

Mayor Hunter opened the public hearing on this item.

Traci McCarty, Ross resident, brought this ordinance to the Town's attention and indicated that secondhand smoke ordinance has made a significant impact on her family's life and their backyard. She thanked the Town for their consideration. She further noted that Governor Schwarzenegger made smoking in vehicles illegal while children are present.

John Martin, Bolinas Avenue, agreed with the ordinance and is in favor. He asked the Council to consider the differences in sizes of lots in this community. Bolinas is very different and his property is about 30 feet wide. His outdoor seating area is 7 feet from the property line, so at times smoke can be an enormous nuisance. He further asked the Council to take a leadership role and support the ordinance.

Steven Walker, Baywood Avenue resident, opposed the ordinance. He felt it is not appropriate to introduce additional statutes that could result in litigation. He did not support and urged the Council not to vote in favor of this ordinance.

Bob Curry, Marin County Tobacco Control Program, appreciated all efforts from the Town of Ross and is available for any technical support. He noted that State leaders from Sacramento are in attendance tonight as well to provide assistance, which he thanked as well for all their efforts. He further provided the Town with "no smoking" decals.

Diane Kiser, CCAP Advocacy Specialist, explained that the science related to secondhand smoke is extremely sound. The Board spent four years declaring and studying that secondhand smoke is a toxic containment. She pointed out that there is no safe level of secondhand exposure.

Ms. McCarty added that her family had a unique situation, which changed their lifestyle and would appreciate the Council adopting the ordinance as presented tonight.

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

Council Member Durst is opposed based on the general impression of Ross, but also that smoking in Ross has not been a problem. She did not see the nuisance provision. Even those that smoke must have equal protection. This will create two classes, those that smoke and those that do not, which is not conducive to a nice atmosphere. Also, California Cities News from Mike McBride indicated that Calabasas voted the ordinance down 2:3 and Belmont

passed the ordinance 3:2, but it was very contentious. They received death threats. She would like to set this aside and take a better look around restrictions on public places. In the staff report it indicated that harms must outweigh the social utility and she understands that smoking is a bad habit, and recognizes that exposure to secondhand smoke is bad for her health, but a nuisance ordinance in this case is not called for based on the nature of the Town of Ross.

Mayor Pro Tempore Cahill favored the ordinance. The regulations that are expanding non-smoking areas to public places are appropriate. The nuisance provision is correct as amended, which is to remove reference to bringing legal action. The idea is not to encourage litigation. The ordinance under odor and smoke provisions arguable already covers this issue, so this provision only clarifies. Secondhand smoke is a health issue and a problem for those that live on small lots. This can be life threatening for many people over time, so he is in support.

Council Member Skall asked Council to take a step back. He recognized that smoking is hazardous to his health, but did not want to rush through this ordinance. He talked to several residents and not one knew about this ordinance and each happened to be non-smokers and was very concerned. Not enough of the citizens understand what this ordinance will mean. He desired time to get this matter filtered out to the community and see what other issues might develop. He asked that the Council communicate to the rest of the community, and if after discussion they find this to be important, then make a decision.

Council Member Strauss concurred with Council Members Durst and Skall. He supported the first part bringing Ross into compliance with Marin County, but they must take a step back to review the ordinance. Smoking is a problem, but they must take a step back and allow the community time to review and understand because there are also certain rights to private property.

Mayor Hunter believed it is the right time to move forward. Ross led the county and many parts of the country back in 1989 when they passed their first set of smoking regulations. They provided a nuisance legislation that could be used to fight secondhand smoking problems, and now they are just clarify that legislation. Two cities passed this legislation and both report that they have had zero problems with single-family residences. The edit suggested by Mayor Pro Tempore Cahill is appropriate. The mention of legal action should be removed because this is a lever to enable one to confront their neighbor. There is no safe level of secondhand smoke. Very few residents in Ross even knew the Town had nuisance regulations. This will be used when a situation becomes dire and it is Council's responsibility to place the tools in front of the citizens to react. This is small in terms of the number of people in favor. They were presented with a petition and 134 people signed in favor of declaring secondhand smoke a nuisance. This was first heard back in July, so they had months to review. This issue was on the front page of the "IJ" as well as in "*The Morning After*." There have been only two letters against. In terms of community support, tonight four individuals noted support and only one individual is against. Also, they will revisit this matter and if it begins to be a problem they have the right to revisit. Staff will be charged to keep track of this matter. If there is a problem they will bring it back to Council to review. They are not banning smoking on private property, not banning fireplaces or barbecue smoke and they are not requiring the use of Town resources on enforcement. They are providing every Ross resident the ability to enjoy the use of their property. It is the

responsibility that the Town has and hoped Council Members Durst, Skall and Strauss will reconsider.

Council Member Durst stated that at the end of a burning piece of paper is not a person. At the end of a cigar or cigarette is a person and they are exercising a legal right to smoke. Smoking is not illegal. She is advocating that they are elected at large and represent all in the community, so all are allowed equal protection. They must be careful. Rather than cut the edge, they are a small Town and they can examine it. There is a great deal of wisdom to be careful. She reiterated that Council is elected to do the work of the public.

Council Member Strauss agreed with the first part of the ordinance, but the last part is taking away a person's right. He believed neighbors must work matters out amongst themselves. He proposed reviewing the matter in more detail before making a determination.

Mayor Pro Tempore Cahill suggested introducing the ordinance without Section 6.18.100 and re-examine that portion in more detail next month.

Council Member Durst recommended continuing the item to review specifically the front half of this legislation in more detail with more public input. She focused on the nuisance ordinance and she is not certain that there is any warrant for change just because the county is doing it. She wants to make sure there is a place to smoke in public. There is a great deal of wisdom in going slower and receiving more public input. They must be cautious. She suggested continuing to study in more detail over the next month and then re-opening the matter as two separate matters and see whether or not independent of updating to the county standard is proven.

Christine O'Rourke, project planner, noted that the county's ordinance is much more restrictive. Also, there is not a permitted area to smoke, which could be included if so desired by the Council.

Council Member Strauss wanted the ordinance to be more in line with the county. Council Member Skall agreed to continue. Council Member Durst recommended splitting the two matters. Mayor Pro Tempore Cahill agreed to have a common place for smoking, which should be incorporated and staff should review.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Skall seconded, to continue the matter to the November Town Council meeting for further study. Motion carried unanimously.

10. Town Council consideration of introduction 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 consider introduction 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. Staff then provided the Council with additional information for their review.

Mayor Pro Tempore Cahill clarified that the amendments to the 2007 code are consistent with the amendment previously in the code and are more restrictive rather than being less restrictive. Public Works Director Jarjoura responded in the affirmative.

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 Skall seconded, to introduce and waive the reading 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. Motion carried unanimously.

II. Town Council discussion of adopting wildland-urban interface fire protection standards.

Chief Heying summarized the staff report and recommended that the Council consider adoption of wildland-urban interface fire protection standards. The intent of the ordinance is to increase standards for homes in that wildland urban area. In regard to the map released on September 25th, the only area designated in Town is a small portion of Natalie Coffin Greene Park and the lowest areas of Town are rated high and the hillside areas and larger lots are listed as moderate, which is completely opposite of how it should be viewed. Staff looked at larger lots bordering the Town under the hillside ordinance as being designated high. The standards in the ordinance, when looking at operation, it is best to incorporate this into the design review process and design review ordinance. Construction standards and fire protection standards work through in the beginning. Staff noted that tonight there are standards for Council to adopt in some form and they can put them in a separate ordinance or work them in design review ordinance as a separate chapter or section. This primarily addressed Class A roof assembly, glass, exterior walls and decks, protection of eaves and soffit, assurance of emergency vehicle access, and creating and maintaining defensible space around those buildings. Staff desired direction and comments from Council. Staff will continue monitoring the State's designation, but also review their own designation and address the matter locally, which is more efficient than in Sacramento.

Mayor Hunter asked staff if they picked an area different from the state due to insurance calculations, would Ross change. Chief Heying responded that the state allows local authority to designate areas themselves. The Town is not required to adhere to the state's mapping, it is meant as assistance. Town Manager Broad noted that the state approach would create a whole separate review process, whereas staff felt it would be simpler to look at the process we have in place through zoning and design review and fit the standards into an existing, well-developed process in order to allow public safety the most discretion.

Council Member Strauss believed it is critical to determine boundaries. Also, exterior walls and decks constructed of materials with a minimum one-hour fire-resistance rating extremely limits the amount of materials that can be used.

Mayor Hunter opened the public hearing on this item.

Dick Bobo, Ross resident, is not clear on what is being stated and expressed concern for mature trees in Town.

Chief Heying noted that abundance of ignition prone designation does not exist on the lowest parts of Town since landscaping is green and maintained. They are looking at unimproved areas where vegetation dries out and has a high level of flammability. In regard to trees, they must be limbed up to the appropriate standards. Also, removal of dead or dying trees that can become flammable when they dry out is included.

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

Council Member Durst stated since this involves some cost, a committee should discuss some the issues. She must recuse herself because she lives in Zone 3. There is a complexity around this that deserves a really good look. Mayor Hunter recommended that Public Safety Subcommittee review. Mayor Pro Tempore Cahill and Council Member Skall agreed to work with staff on this issue.

Council Member Strauss suggested alternatives, such as sprinkler systems, to provide flexibility.

12. Town Council consideration of Resolution No. 1633 enacting a temporary closure of Shady Lane to ensure the safety of pedestrians on Halloween.

Chief Heying summarized the staff report and recommended that Council consider Resolution No. 1633, enacting a temporary closure of Shady Lane to ensure the safety of pedestrians on Halloween for this year.

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 discussion and action.

Mayor Pro Tempore Cahill noted that this year it will occur before daylight savings, so more kids might be in the area before sunset, so it may need to be closed earlier. Chief Heying noted that darkness compounds the problem. Staff agreed to place additional signage in the area.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to adopt Resolution No. 1633, enacting a temporary closure of Shady Lane to ensure the safety of pedestrians on Halloween. Motion carried unanimously.

13. Award of contract and authorization of expenditures for Winding Way Overlay Project, Section 10 (from Canyon Road to 126 Winding Way).

Public Works Director Jarjoura summarized the staff report and recommended that Council award contract and authorize expenditures for Winding Way Overlay Project, Section 10 to Nerviani Paving, the lowest bidder.

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.

Council Member Skull moved and Council Member Strauss seconded, to award contract and authorize expenditures for Winding Way Overlay Project, Section 10 to Nerviani Paving. Motion carried unanimously.

14. Ross School Staging, The Ross Common, Civic District Use No. 1670

The Ross School (applicant), Town of Ross (owner), The Ross Common, A.P. No. 73-242-04 Civic District (C-D)* Use of the Ross Common for a temporary campus and construction staging area during the reconstruction of Ross School between May 2008 and February 2010. Approval is requested for: 1.) installation of 19 eleven-foot tall portable buildings, placed on temporary wood foundations on new level gravel pads, to provide classrooms, an administrative office, a resource center, a library and toilets. Eight of the portable buildings straddle the school district and Ross Common lot line, and approximately half of the floor area is to be located on Ross Common; 2.) installation of a contractor staging area at the current baseball diamond; 3.) removal of four diagonal parking stalls along Ross Common and installation of a new crushed rock road to provide access to the staging area; 4.) installation of a six-foot tall chain link fence covered with a green semi-transparent fabric around the school construction site and staging area and a six-foot tall wood fence to screen the HVAC units at the rear of the portable buildings; 5.) relocation of the baseball diamond and soccer field in the southeast corner of the Common and erection of a temporary ten-foot tall chain link backstop; 6.) construction of two new asphalt paths to provide access from the Ross Common to the portable buildings.

**Uses permitted in the Civic District are uses of the town for public purposes, including educational uses. Regulations are as designated and approved by Town Council in each particular case.*

Town Manager Broad distributed revised site plans that reflect changes and explained that this is a proposed staging plan that Ross School is requesting Town approval to allow 19 portable classroom buildings encroaching on Ross Common during the period the new school is under construction.

Julie McMillan, School Board President, stated that since the bond passed in 2006 they have been working to plan and modernize the school. The challenge is the relocating plan and where to house the students, staff and staging construction material. The site is very small. They explored many options for space to lease recognizing that portables are disruptive and expensive. They tried to relocate to Marin Art & Garden Center, but that is not in compliance to house students. They worked with Councilmembers Skull and Strauss as well as Town Manager Broad in an effort to develop a proposal that works for the students, staff

and community with as little disruption as possible. They hope to begin construction in June of 2008. She then thanked Council for working with the school and recognizing that this will be a short-term interruption that will provide a long-term benefit to the community.

Tammy Murphy, Superintendent, read Goal 9 of the Ross General Plan into the record and commended staff and Council for making what is in this plan a true reality. This is a model of how the Town, school and Ross Rec can work together on behalf of the community. They hope this project will last the next 100 years. She then introduced their architectural team.

Mark Quattrocchi and Spencer Nilson, architects, have been impressed with the collaboration from all involved and walked Council through the highlights. Construction will start in June of 2008 and the access gate near Ross Common will be moved and temporary chain link fencing will be placed around the edge of school property in order to block construction views. They will continue on the other side of the ball field to create a staging area for the construction vehicles. A rock road will be created to provide truck access with a gate placed around as well. The hours of operation for the contractor will be conditioned. The remainder of campus will go through reconstruction and lifting process. During construction, students and staff will locate to temporary portable classrooms. They will abandon the pathway in place. The proposed temporary new pavement will provide safe access to the portables. A library, resource building and two portables restrooms will be provided as well. They appreciate being able to maintain more playground space. They propose a temporary chain link backstop on southeast corner. Adequate room for a soccer field would require temporary bases for the baseball field. At the end of construction, all fencing, paving and rock will be removed and turf will go back to its original condition. They will cap and maintain the irrigation system and return the baseball diamond to its original location. Also, they will document with staff the field and backstop condition.

Mayor Hunter opened the public hearing on this item.

Molly Gamble, Chief of Protocol, asked how much square feet is left on the soccer field and grove area because she is concerned in regard to the centennial celebration. The architects believed the field is 120 by 210 sq. ft., but agreed to provide the exact square-footage to staff. As for the grove, it is left untouched, except the southern most edge.

Pam Riley, Ross Rec, pointed out that the staging area will impact the little league and soccer league and desired something on the other side. If staging cannot be in the grove, then they must have some area of open space. She added that practice and games would occur elsewhere. The architects would be happy to consider another staging area if there are issues.

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

Council Member Durst desired some separation because construction and students are not compatible. As far as the baseball backstop, she is not certain of that because construction crews should be separate from the students. Ideally, they want it done as fast as possible and having students close by would slow the process down, but she found the project acceptable and would like to see this move forward.

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Council Member Strauss said they struggled and they all collectively came together on this matter. He wondered how they could combine the playfield with the larger common area on the corner, but just does not see it due to the students and classrooms.

Mayor Pro Tempore Cahill asked staff if there is enough room for the centennial celebration. Chief of Protocol Gamble responded that before this they will need every possible square inch of space from downtown Ross including significant street closures, so that is a concern.

Council Member Durst stated that for community relations, the school should provide signage in regard to the location of the portables. Also, a letter from the School Board to all Ross residents explaining the need for the space at this time is appropriate in order to inform the community because it is important for the community to understand. Construction is very stressful and difficult, so some amount of community support is needed.

Mayor Pro Tempore Cahill noticed some discussion of the multipurpose room being another phase, and if so, then the construction process will be longer and asked if consideration was given for doing both at the same time in order not to extend the construction timeframe. President McMillan explored that option, but due to constraints with the site and students, they needed the space. Currently, there is a capital campaign to raise funds for the multipurpose room, so the money is not available. The architect noted that most construction would be confined.

Council Member Skall expressed concern for the irrigation system being maintained. The architect responded that existing irrigation would be used, but significant capping and rerouting will occur because they must maintain the green.

President McMillan has a letter ready to send out to the community in regard to constructing and staging and more communication is key. Also, this issue was on the Board's agenda many times and they have a design committee comprised of many members of the community as well as the Town liaison, so all those meetings are posted and she believed residents are well informed.

Mayor Pro Tempore Cahill asked Ross Rec if they are properly accommodated. Ms. Riley thinks they will be adversely affected, but understands this must occur. They hope the soccer field will maintain soccer and lacrosse. They will work with the teachers to access space, so they will have a bigger portable to accommodate their needs, so they are all working together on this matter.

Council Member Skall asked if there is any way if that group of portables could be pushed further in regard to the fencing and ivy existing. The architect explored that area, but if removed it will be detrimental to them, but they will push that as close as possible to the fence, but they will not advocate beyond that point. Also, the architect pointed out that the Fire Department has not reviewed, but adequate fire flow will be provided to the temporary buildings.

Street Superintendent Maccario indicated that sprinklers can be modified, but at significant cost, so if they turn off one head the entire pump configuration will be changed. If they go to City water that will be at significant cost as well. It will be very expensive- \$100,000 just to renovate that field.

Town Manager Broad desired a formal agreement for the expectations during the project, after and maintenance, which have been discussed. It could go through the public works subcommittee, but staff needs more than just a handshake.

Mayor Hunter believed the school has done a great job working with all parties involved. He is worried about the centennial celebration, but does not see another option. He asked that the school work with Chief of Protocol Gamble because it is a major event.

Mayor Pro Tempore Cahill noted that if staging is moved then it would open up the area for the centennial celebration. Council Member Durst believed it would be nice to stage as they do for the Fourth of July in that grove because there is shade. She expressed concern for the trees. She wanted to preserve the grove area. Council Member Strauss noted that they could spill over to the Post Office as well. Street Superintendent Maccario stated that it would depend because the row of trees can be removed. The architect would work either way, but working around trees would be difficult.

Mayor Pro Tempore Cahill believed they must review one more time. Council Member Strauss noted that Council is open if they develop a better plan. The architect believed any level of communication would be great.

Mayor Hunter supported the concept and details will be worked out. He noted that Council is generally in support of the school using the Common and agreed to put teeth into the agreement as discussed by Town Manager Broad. Council concurred.

Council took a short recess.

15. **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%

Council Member Durst suggested that the Town Arborist recommend how to maintain and water the tree. Senior Planner Semonian noted that it is being installed at the Gorham's expense, but the neighbor would have an interest in maintaining the tree for their screening purposes.

Jared Polsky, architect, indicated that at the last meeting Council Member Strauss had a great suggestion that the roof at the rear was not steep enough and very shallow and it would look better if steeper, so they made the roof steeper. They put in a deck within the roof off the master bedroom, which changed the north elevation. Now the roof comes all the way across, which simplified the elevation. The steeper roof is in keeping with the rest of the roof pitches. The down side is that the window in their bedroom is slightly higher. Also, they cleaned up the roof over the fireplace.

Mayor Hunter opened the public hearing on this item.

Anne Hickey, Allen Avenue resident, discussed the watercourse and believed most of the time it is disregarded and wondered the purpose of the watercourse setback. Senior Planner Semonian explained that there is a 50-foot setback recommended for primary structures and 25-foot setback for accessory structures. At this site there is a concrete block retaining wall retaining one side of the creek. The lot is 50 feet wide and development is constrained by the front, side, and creek setbacks. The further they push the house away from the setback the further it is on the street, which is not a great benefit for the creek since it does not have a natural bank but is retained by a concrete block wall. The pool is within the 25-foot recommended setback. The bank of the creek near the pool is natural and the pool does not encroach into the natural bank area. As a condition of approval, riparian vegetation will be planted on this bank, so the area will be improved. There is an existing deck and bridge over the creek and would be replaced. Foundations will be pulled back from the creek, also improving the existing situation. There is no habitat under the existing deck and bridge area, no habitat upstream from the deck since the watercourse is contained in a culvert, and staff felt it was reasonable to maintain access to the rear of the site. It is not taking away riparian habit to allow the structures to remain and not a great benefit to the creek if they are removed. The Council may consider impacts on homeowners and impacts on the creek in determining if the guideline setback is appropriate. Allowing the deck to be replaced would maintain an existing situation. Staff noted that the pool was pulled back further from the top of the creek bank since the last hearing. It is now 14 feet from the top of the bank and it was 11 feet at the last hearing. Staff further indicated that there are no new retaining walls or structures in the creek other than replacing the deck.

Council Member Strauss wondered if it would be best to reduce the size of the pool.

Ross resident expressed concern for the watercourse as well. She believed it is important to keep the watercourse clear and retaining walls in her view will not solve the problem.

Ross resident expressed concern for the variances requested from the required setbacks. Senior Planner Semonian noted that there are no new retaining walls proposed. The existing deck is at the property line and has no setback and they are proposing to maintain that setback. Staff further explained that the creek goes into a culvert at the property line.

Jacob Rothenburg, Popular Avenue resident, thanked Council and staff for discussing the matter in terms of screening. He requested a larger tree and that it be installed on or about the time of demolition in order to get the process started. They are more than happy to take responsibility for caring for the tree since it is adjacent to their property. There will be significant cost associated with planting the tree and providing the water system and they requested that cost be placed on the Gorham's and asked Council to incorporate that statement into the recommendations. He further agreed to take care of the tree.

Street Superintendent Maccario believed planting a tree is fairly simple and he recommended a sycamore tree.

Dick Bobo, Redwood Drive, expressed concern for diseased sycamore trees and recommended another tree. Jeannine Rothenburg agreed with Mr. Bobo that another tree should be considered.

Michael Gorham, applicant, thanked Council because they now have a better home and a much nicer design. In regard to the proposed tree, it will exist for the sole benefit of 34 Poplar and he desired a compromise that they would pay for the tree to be installed and that the neighbor be responsible for watering the tree. He further requested that it be limited to one tree so that they are not responsible for replacing the tree if it fails for a reason out of their control.

Mayor Hunter recommended leaving the specie of tree to the discretion of the Tree Committee. Council agreed.

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

Council Member Durst found the project and site plan much better. She further believed the addition of a nice street tree would make for an excellent project. Council Members Cahill and Skall concurred.

Council Member Strauss expressed concern for the distance between the top of the bank and pool and wanted the pool pushed back or reduced in size. He appreciated the neighbors working out their issue of the street tree and agreed that the Tree Committee should select the appropriate specie, but also agreed with the applicant to limit it to one tree.

Council Member Durst noted that Tree Committee meets on the 24th and this will be discussed, so they will review a number of species. Council Member Strauss believed sycamores are a great tree, but agreed to allow the Tree Committee to review and select the appropriate specie for the area.

Mayor Hunter loved the design, but felt the design and site are not meant for each other. The project has too much bulk and mass. He added that the improvements made make it a nicer design, but it continues to be too large for this site.

Council Member Durst objected originally to bulk and mass. She also has concerns with pools in the flood zones. She noted the issues at 8 Fernhill where they had a swimming pool located near a watercourse. In regard to bulk and mass issues, she found the roofline

mitigations made it seem better and they worked out an amicable situation with the neighbor. Since the screening is in place, and they are at their FAR and under the proposed lot coverage, she finds it acceptable.

Mayor Hunter noted that from the street they would see a house from corner-to-corner. Council Member Durst pointed out that there are several homes on that street with the same design, so there is consistency. The mayor responded that it will result in a “walled” feeling on a formerly “open” street.

Council Member Strauss recommended moving the pool 25 feet from the bank or reducing its size. He wanted the pool to fit in with the backyard property line and be 25 feet from the bank. The contractor noted that with those requirements a pool could not be installed.

Senior Planner Semonian recommended an additional condition that none of the soil cut soil remain onsite, so if the pool is approved, any excavated soil should be taken off site.

Mayor Pro Tempore Cahill noted that the amount of impervious surface must be discussed and a pool increases the amount of impervious surface. Council Member Strauss noted that they cannot deny a pool at this time because they have no standard. Mayor Pro Tempore Cahill recommended continuing the pool and see if they can develop a smaller pool with guidelines, but approve the rest of the project. Council Member Strauss suggested providing guidelines and then it can be approved at staff level. Council agreed.

Council Member Durst stated that swimming pools are not life and death because of the creek it has always been difficult to find the appropriate bulk and mass in this neighborhood. If it can be screened from the neighbor that is most affected and provide improvements on the site, she could approve the house.

Mayor Hunter asked for a motion.

Council Member Strauss moved and Mayor Pro Tempore Cahill seconded, to approve the house at 18 Redwood Drive with conditions and findings outlined in the staff report with one condition that the pool be 25 feet from top of the bank and not extend into any setbacks, with final configuration being reviewed by staff; and no fill at the site is allowed. Motion carried 4:1. Mayor Hunter opposed.

18 Redwood Drive Conditions

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

1. *The pool is not approved as proposed. The pool shall be located at least 25 feet from the top of the creek bank to comply with the guideline watercourse setback and not extend into any setbacks. Revised plans for the pool shall be submitted for review and approval by the planning department. The building permit plans shall reflect the revised design.*
2. *All cut material shall be removed from the site. All grades shall remain as existing.*

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3. The front yard tree is not approved. The applicants shall work with the Public Works Department Street Superintendent to plant a street tree at the Redwood Avenue frontage of 34 Poplar. The size, species and the location of the tree shall be selected by the street superintendent and town arborist, in consultation with the neighbors. Consideration shall be given to a tree that will be consistent with other street trees and will not create a maintenance concern for the Town. The applicant is responsible for ensuring the tree is irrigated until established and shall replace the tree if necessary.
4. The project shall comply with the approved plans. A licensed land surveyor shall string the location of the foundation and the pool. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the finished floor elevation of the residence complies with the approved plans after it is constructed. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the roof heights of the residence comply with the approved plans after framing.
5. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
6. Applicants shall recycle at least 50% of construction and demolition debris. If mixed debris boxes are used, the applicants shall inform the waste hauler of this condition prior to debris box pick up to ensure the box will be brought to the recycling area. Receipts that demonstrate the material was recycled must be submitted to the planning department prior to project final.
7. A sidewalk shall be installed at the frontage of the site meeting specifications of the Public Works Director.
8. A construction management plan shall be submitted prior to issuance of a Building Permit showing work schedule, storage, travel routes, washout areas, parking and any other relevant information required by Town staff. The construction management plan shall be incorporated into the job set of plans.
9. Grading is prohibited between October 15 and April 15. Staff is authorized to make an exception to this condition if the applicant can demonstrate to staff's satisfaction that best management practices will be implemented, an erosion control plan is submitted, and independent monitoring will be conducted to prevent sediment runoff and erosion at the site.
10. The applicants shall submit appropriate air quality permits to the building department prior to demolition of the existing structure.
11. No work within the creek, including installation of any temporary structures within the banks of the creek, is permitted by this approval. The project shall be subject to the following recommendations of the town hydrologist. Costs incurred for town hydrologist review of the project shall be paid prior to building permit issuance.
 - a. No fill or foundation structures shall be placed creek ward of the existing 14-foot elevation contour on either side of the creek downstream from the proposed replacement deck and deck foundation.

- b. No fill or foundation structures shall be placed downstream of the proposed replacement deck and foundation along the east bank of the creek within 10 horizontal feet from the top of the existing east bank vertical concrete block retaining wall, except as otherwise provided in this approval.
 - c. Along the west bank downstream from the proposed replacement deck and deck foundation, the existing non-native vegetation below the existing 16-ft elevation contour shall be removed and replaced with primarily native riparian vegetation representing the natural Northern California riparian woodland plant community (e.g., as can be downloaded from www.mcstoppp.org), and irrigated and maintained for a suitable period of time as may be necessary to successfully establish self-sustaining vegetation conditions.
 - d. On the east bank, downstream from the proposed replacement deck and deck foundation, all new plantings between the existing east bank wall and the existing lawn shall be native riparian vegetation representing the natural Northern California riparian woodland plant community.
 - e. The centerline alignment of Murphy Creek should be shown on the site plan and no permanent foundation structures shall be placed within 10 horizontal feet from the Murphy Creek centerline.
 - f. If permitted by the property owner, the Town shall install a manually inspected crest stage gage in the creek stormwater flow column secured to either the existing east bank retaining wall or the existing deck. This gage is a 2-inch diameter galvanized steel pipe threaded and closed with a standard pipe cap on both ends and perforated on the bottom 2 vertical feet. A 1.5-inch square section rough-sawn wood rod is placed with a vertically secured fit within the pipe. Ground cork placed in the pipe adheres to the wood rod to record the maximum peak stage elevation of watercourse flows. The owner would allow noticed inspection of the gage after certain rainfall-runoff events to record the recent peak flow water surface elevation and reset the gage for continuing monitoring. The data collected would enter a Town of Ross database used to monitor the adequacy of the existing stormwater drainage network and develop plans for future improvements.
12. The following conditions relate to protection of the creek during all phases of construction:
- a. The creek shall be protected during construction to ensure no soil, concrete, cement, slurry, or other construction debris is permitted to enter the creek. If any soil, concrete, cement, slurry, or other debris inadvertently enters the creek, the material shall be cleaned up and removed from the channel immediately.
 - b. Staging/storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the creek channel and associated riparian area.
 - c. Spoil sites shall not be located within the stream channel, where spoil may be washed back into the creek. Building materials and construction equipment shall not be stored where materials could fall or be washed into the creek.

- d. The applicant is responsible for obtaining any Federal, State and local permits necessary for the project. The applicant shall comply with any additional requirements of the agencies.
13. A 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. The drainage from the residence and site shall not be discharged directly into the creek and shall be dispersed on site.
14. 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.
15. The town reserves the right to require additional landscape screening up to three years from project final.
16. The applicant shall take the precautions specified in the Archaeological Survey and report by Thomas Origer, dated September 18, 2007, during all phases of construction:
 - a. If archaeological remains are uncovered, work at the place of discovery shall be halted immediately until a qualified archaeologist can evaluate the finds.

Prehistoric archaeological site indicators include: obsidian and chert flakes and chipped stone tools; grinding and mashing implements (e.g. slabs and handstones, and mortars and pestles); bedrock outcrops and boulders with mortar cups; and locally darkened midden soils. Midden soils may contain a combination of any of the previously listed items with the possible addition of bone and shell remains, and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations and discrete trash deposits (e.g. wells, privy pits, dumps).
 - b. If human remains are encountered, excavation or disturbance of the location must be halted in the vicinity of the find, and the Marin County Coroner shall be contacted at (415) 499-6043.
17. Plans submitted for a building permit shall detail the required openings in the foundation walls to allow for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A MINIMUM OF TWO OPENINGS HAVING A TOTAL NET AREA OF NOT LESS THAN ONE SQUARE INCH FOR EVERY SQUARE FOOT OF ENCLOSED AREA SUBJECT TO FLOODING SHALL BE PROVIDED. THE BOTTOM OF ALL OPENINGS SHALL BE NO HIGHER THAN ONE FOOT ABOVE GRADE. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. (See FEMA Technical Bulletin I-93 <http://www.fema.gov/pdf/fima/job2.pdf> for more information)
18. Flood resistant materials shall be used below the finished floor. All structural and non-structural building materials at or below the base flood elevation must be flood resistant. A flood-resistant material is defined as any building material capable of

withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Flood-resistant materials must be used for all building elements subject to exposure to floodwaters, including floor joists, insulation, and ductwork. Any building utility systems within the crawlspace must be elevated above the base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the base flood elevation or sealed from floodwaters. (See FEMA Technical Bulletins 2-93 and 11-01 at <http://www.fema.gov/> for more information)

19. A FEMA elevation certificate shall be submitted to the Town prior to project final.
20. Any exterior lighting shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
21. 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.
22. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) A street number must be posted {minimum 4 inches on contrasting background}; 2.) All dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; and 3.) A local alarm is required.
23. 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.
24. 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.
25. Failure to secure required building permits and/or begin construction by November 11, 2008 will cause the approval to lapse without further notice.
26. 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.
27. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
28. 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.

17. **6 Norwood Avenue, Variance No. 1643b**

Charles and Jan Hoeveler, 6 Norwood Avenue, A.P. No. 73-091-26, R-1:B-10 (Single Family Residence, 10,000 Square Foot Minimum Lot Size). Variance to allow the following: 1.) 8.25 foot tall wood trellis within the front yard setback (25 feet required, 22 feet proposed) and side yard setback (15 feet required, 7.5 feet proposed); 2.) 10.25 foot tall storage shed within the front yard setback (25 feet required, 22.5 feet proposed) and side yard setback (15 feet required, 4 feet proposed); 3.) built-in gas barbecue within the west side setback (15 feet required, 1 foot proposed) and rear yard setback (40 feet required, 14.5 feet proposed); and 4.) bluestone patios within the rear yard setback (40 feet required, 4 feet proposed) and side yard setbacks (15 feet required, 4 feet proposed). The existing sheds and trellis in the northeast corner of the lot, and the shed in the southeast corner of the lot, would be demolished. The project also involves replacement of the asphalt driveway paving with a new gravel parking area and landscaping.

Lot area	7,038 square feet
Existing Floor Area Ratio	32.3%
Proposed Floor Area Ratio	32.3% (20% permitted)
Existing Lot Coverage	32.6%
Proposed Lot Coverage	31.3% (20% permitted)

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

Senior Planner Semonian summarized the staff report and recommended that the Council approve the project as proposed with conditions, except for the barbeque. Staff did not believe findings could be made to approve the barbeque in the setback area, particularly since the neighbor expressed concerns with the structure.

Scott Tseckares, landscape architect, proposed a shingle structure to match the residence. He explained that ivy trapped all moisture in the existing storage structures and ivy and shingled structures do not work well. They propose taller evergreen trees, two crab apples and hedges to screen the building and parking area.

Council Member Strauss noted that if the structure appeared more as a garden structure it would fit in better. He suggested it be modified to have a flat roof and rotated so that it will reduce the mass from the street. He objected to structures in the front yard. More of a garden structure would be appropriate. The landscape architect clarified that his suggestion is to align it with the side property line. Council Member Strauss agreed. Mr. Tseckares stated that it might be difficult to have a two-car parking lot. They looked at options to align with the property line, but it is impossible to get two cars in and out. Council Member Strauss submitted a sketch showing two cars to the landscape architect and Council for their review.

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 discussion and action.

Council Member Strauss wanted to align it with the side property line and changing the gable roof to a flat roof, which will be much lower and have a garden wall appearance rather than a structure.

Mayor Hunter believed it is an artful design. He stated that now it is a replacement utility shed and it makes sense, but what Council Member Strauss is proposing could work quite well and lessen the impact from the street. Council Member Durst agreed, but wondered if a storage unit should be located in the front yard.

Council Member Strauss recommended denying the barbeque and approving the patio concept. Senior Planner Semonian understands what is being proposed by Council Member Strauss and could be approved at staff level. Council Members Cahill and Strauss agreed to review with staff.

Mayor Hunter asked for a motion.

Mayor Pro Tempore Cahill moved and Council Member Skall seconded, to approve the application for 6 Norwood Avenue with the amendments suggested by Council Member Strauss; eliminating the barbeque structure; along with the findings and conditions contained in the staff report; with the suggested revisions being reviewed by staff along with Council Members Cahill and Strauss. Motion carried unanimously.

6 Norwood Conditions

1. *The design of the shed shall be modified to have a flat roof and the shed shall be shifted to be parallel with the side property line (shifting further away from the side property line, not closer). The intent of the modifications is to create a smaller structure that is more like a garden shed and viewed as a garden wall to the neighbor. The additional garbage can enclosure is not permitted. A revised design shall be submitted for the review and approval of the planning department. The building permit plans shall reflect the modified design as approved by the planning department.*
2. The proposed barbecue is not approved. Prior to the issuance of a building permit, the applicants shall submit revised plans for the review and approval of the Planning Department, which eliminate the barbecue.
3. Except as specifically amended here, all conditions of this project's February 2005 approval shall remain in full force and effect.
4. The Town reserves the right to require additional landscape screening up to two (2) years from project final.
5. Failure to secure required building permits and/or begin construction by October 11, 2008 will cause this approval to lapse without further notice.
6. 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.
7. 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.

 18. **33 Sir Francis Drake Boulevard, Use Permit, Variance and Design Review No. 1634**
metroPCS (applicant) and Town of Ross (owner), 33 Sir Francis Drake Boulevard, A.P. No. 73-191-16, C-D (Civic). Town Council approval to allow the following within the Civic District: use permit to allow the installation of a 50-foot tall pole, designed to resemble a pine tree, containing three metroPCS wireless communication antennas at a height of 50 feet. The faux tree pole will accommodate an additional cellular carrier’s antennas at a height of up to 50 feet.* A new Town of Ross community alert siren will be mounted at the top of the tree pole. The tree pole will be located to the west of the Town’s corporation yard building and within the Corte Madera Creek watercourse setback (25 feet required, approximately 2 feet proposed.) Associated electronic equipment for the antennas would be raised 3 feet above floodplain levels and placed within an equipment enclosure on the south side of the corporation yard building surrounded by a 9-foot tall wood fence (6 feet permitted.) A variance application has been filed to allow more than two antennas at the site.

*The Town is currently negotiating with T-Mobile to relocate their existing cellular antennas from atop the rear of the Town’s Fire Station to the tree pole.

Town Manager Broad summarized the staff report and recommended that the Council approve with findings and conditions with one additional condition to state, “*that metroPCS agrees to install the Town’s warning siren at the top of the tree pole with the siren blending with appropriate color and, if feasible, through branch screening.*” Also, there is a minor change in the conditions in regard to the lease agreement. After conversations with the Town Attorney, staff suggests that the Council keep open the option of doing a licensing agreement, so the conditions should read that if approved, a “*lease or licensing agreement*” will be finalized.

Mayor Hunter clarified with staff that the Town already priced out the cost of installing the siren. Town Manager Broad responded in the affirmative and indicated that it was around \$20,000 for just the pole.

Mayor Pro Tempore Cahill discussed Condition No. 17 and suggested stating, “*This project shall be reasonably consistent with the EMF results subject to Town approval.*” Council and staff agreed.

Council Member Durst asked staff if any signals provide video images. Town Manager Broad deferred that question to the applicant.

Maryanne Miller-Novak, metroPCS planning consultant, explained this area provides a great tree backdrop. They agreed to abide by all conditions including the changes suggested this evening. She indicated that Engineer Robert Weller is in attendance to discuss any EMF emissions. Also, their signals facilitate cellular phone capabilities.

Robert Weller, engineer, indicated that following construction of T-Mobile facility his firm took measurements around the campus and living spaces at the fire station, workout room, bedrooms and kitchen. At that time all three facilities: Sprint, T-Mobile and AT&T wireless were operating and the highest level observed was in the workout room - 1.3% of the most restrictive public limit. Federal government established a cap and that cap is not a break point to what is safe and unsafe. Safety standard has a built in 50-fold safety factor. The highest level at the fire station was say 2%, that would be 50 times below the public limit. But consider there is another 50-fold safety factor built in then really 2500 times below the point at which any sort of adverse health effects will occur. He measured this evening at College Avenue., Sir Francis Drake, Bolinas Road and the parking lot. Bolinas was undetectable. College Avenue. was roughly a tenth of one percent and the parking lot was less than a half percent, so that should provide some idea of the levels that are all very low. In regard to the fire fighter comments, science cannot prove a negative. Any test can identify adverse health effects through analysis, but they cannot prove that there is no adverse health effect. There have been some studies widely published that indicate that there could be adverse health effects. It is extremely difficult for science to overcome that question and frustrates the scientific community.

Mayor Pro Tempore Cahill asked if readings are greater or less in regard to bluetooth and cell phones. Engineer Weller responded that when talking on a cell phone exposure is much greater than a transmitter some distance away. Exposure from cell phone is quite high.

Council Member Durst asked the suspected harms from EMF emissions. Engineer Weller noted that reports show headaches, sleeplessness, and different sorts of cancers.

Mayor Hunter opened the public hearing on this item.

A Ross resident asked how they measure EMF's from cell towers. Engineer Weller responded that they do not extend to power line range. These antennas do not radiate power line frequencies.

Street Superintendent Maccario expressed concern for the fire fighters and for himself in regard to EMF emissions. Engineer Weller responded that the antennas mounted on the building drastically reduces exposure to the fire fighters inside. Superintendent Maccario asked if it is worth the risk. Also, they have three antennas and if the contract allows them to add more then they could have several more and certain times of day there are different emissions. He noted that there is a lot of energy being emitted and desired a monitoring device. Engineer Weller noted that devices are available, which are made by NARDA. He

believed they are around \$1,000. He further stated that exposure is similar to cordless baby monitors in regard to the base station.

Town Manager Broad asked for an elaboration in regard to other equipment. Engineer Weller responded that calculations show very low levels of exposure by calculation. They do vary depending on specific make and model of antennas. All of the antennas are very efficient and have very little downward energy. If one stood at the base of a lighthouse when operating, it is difficult to tell whether a light beam is on or off. These cellular phone antennas operate much the same, specific antenna design and nearly all energy is focused out to the horizon. The antennas are not perfect and some tend to minimize exposure downward better than others. There are some engineering choices that metroPCS could make in selecting antennas with lower downward characteristics, but the lower exposure antennas are larger and there could be a structural or aesthetic issue.

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

Mayor Hunter believed there are several compelling reasons to approve. These antennas are not putting off a dangerous amount of EMF's. As part of approval, he recommended purchasing one or more or research the availability of these wall-mounted meters in order to provide everyone a sense because knowledge is power. He would favor approval with the addition of investigating and purchasing a monitoring device. Town Manager Broad believed metroPCS would be willing to accept that addition and provide such device.

Mayor Pro Tempore Cahill believed this is an opportunity for T-Mobile to move and reduce the exposure dramatically from that particular antenna. Council Member Strauss stated that they must make the best choice in the actual equipment.

Town Manager Broad added a condition providing for any cell carrier to provide the Town with information related to the RF from different antennas and equipment to allow the Town the ability to assess that in final approval of equipment. The desire is equipment with the lowest RF emissions.

Mayor Hunter asked for a motion.

Mayor Hunter moved and Mayor Pro Tempore Cahill seconded, to approve the Use Permit, Variance and Design Review application for metroPCS subject to the findings and conditions in the staff report with the additions that the manufacturer will provide two monitoring devices to measure RF levels; place the emergency alert siren on top of tree pole with appropriate screening and blended color; change the conditions of approval to state, "*lease or licensing agreement*;" safest possible equipment be installed to still achieve the purpose; and change Condition No. 17 to state, "*this project shall reasonably be consistent with the EMF results from the Hammett and Edison September 11, 2007 EMF report subject to Town approval.*" Motion carried unanimously.

Use Permit/Conditions of Approval

1. This use permit, variance and design review approval shall permit the following: construction of a 50-foot tall faux (stealth) pine tree to the rear of the Town's

corporation yard building and development of a 6'8" by 10 foot equipment enclosure south of the building as shown in metroPCS plans dated September 10, 2007, and as reflected in Sheets T1, C1, A1, A2 and A3. The project shall comply with the September 12, 2007, letter from metroPCS planning consultant Maryann Miller Novak to Gary Broad, Town Manager. This approval shall permit three metroPCS Kathrein antennas with a center of up to 47.5 feet on the pole and Lucent Technologies equipment cabinets within the equipment enclosure as described in the product specifications.

2. The antennas shall be mounted on a faux pine tree pole meeting the following requirements:
 - The pole shall be painted a non-reflective color or color(s) with brown/black/green tones, subject to Town of Ross approval, designed to most closely approximate natural tree trunk color. Color sample(s) shall be provided on a metal surface prior to its use on-site.
 - Branches on the pine shall begin 15 feet above ground level, subject to Town approval. The number of architectural branches (including density and vertical height) shall be maximized to create a structure that is as natural in appearance as possible and provide maximum screening of antennas, subject to Planning Department approval.
 - The antennas shall be painted to match the color of the faux tree and each antenna shall be covered with branch screening to further ensure they are not visible from off-site vantage points.
 - The pole width and design shall be subject to Town approval prior to the issuance of a building permit.
 - Prior to the issuance of a building permit, at least three different faux pine tree designs (manufacturers) shall be submitted to the Town of Ross for review and evaluation; however, the Town shall have final authority to require additional submittals as deemed necessary prior issuance of a building permit for pole construction.
3. A detailed construction plan, showing all proposed excavation and soil borings, shall be submitted for Town Planning Department review and approval. Town Arborist review and approval shall be obtained for the construction of the equipment enclosure, including pad, proximate to the redwood tree.
4. Enclosure fencing shall be redwood and match the exterior of the adjacent corporation yard siding in design and color. Siding shall extend to grade and the concrete block (cmu) shall be eliminated, subject to staff approval.
5. Upon completion of faux pine tree installation, metroPCS shall transfer ownership of the pole to the Town, subject to Town Manager and Town Attorney approval.
6. As part of cell site construction, metroPCS has agreed to install the Town's community alert siren at the top of the pole, with the siren blending through appropriate coloring and, if feasible, through branch screening, subject to Town of Ross approval.
7. Prior to the issuance of a building permit, The Town of Ross and metroPCS shall enter into a communications site lease or license agreement.
8. Prior to the issuance of a building permit, staff will review the proposed location with the town hydrologist and with the metroPCS RF engineers in an effort to locate the pole as far from the bank as feasible without encroaching onto the parking lot surface.

9. Construction drawings for the faux pine tree shall be provided to the building department for review and approval prior to the issuance of a building permit. The faux pine shall be structurally designed to accommodate two additional cell platforms comparable to this installation with antenna center at 47.5 feet, subject to Town of Ross approval.
10. To further blend the faux pine tree into the site, metroPCS shall be responsible for planting up to an additional 3 – 6 trees, number, species, size and location as determined appropriate by the Town Arborist, in the area proximate to the faux pine tree, subject to Planning Department approval.
11. A gps antenna is shown extending above the equipment enclosure area. The antenna shall be painted the same color as the fence and shall be sited to minimize its visibility from the roadway. The metroPCS ppc/telco and meter cab should be moved to the south of the enclosure.
12. In addition to the metroPCS equipment enclosure, this use permit shall allow a total equipment enclosure of up to 210 square feet. The Town reserves the right to shift the siting of the metroPCS enclosure in the event metroPCS is initially the sole tenant of the faux pine pole.
13. As part of this approval, metroPCS agrees to install two monitoring devices to monitor RF levels (**manufactured by Narda or equivalent**), subject to Town of Ross approval, prior to project final.
14. This use permit shall permit two cell site installations, regardless of the lessee, with the second, whether T-Mobile (which may or may not relocate) or another carrier, allowed an installation with antenna centers of up to 47.5 feet. The height and antenna configuration of a second installation shall be subject to Town staff review and approval to ensure consistency with the conditions of this use permit. A maximum 14'4" by 10-foot wide additional equipment enclosure may be permitted for this carrier, subject to Town approval. Prior to the issuance of a building permit and any equipment installation, The Town of Ross and any additional carrier shall enter into a communications site lease **or license** agreement. Any future carrier shall submit full specifications for all antennas and equipment for Town approval.
15. All conditions of approval of this use permit shall be in full force and effect for any second cell site installation.
16. If T-Mobile remains in its present location, any future additional carrier shall submit an amended EMF reports for Town approval consistent with conditions 18 and 19 below.
17. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
18. The applicant shall be responsible for the removal of all telecommunications equipment and antennas upon lease expiration or upon notification to the Town of the termination of the lease between metroPCS and the Town of Ross. Said removal shall include the removal of the tree pole at the Town of Ross' discretion and the removal of the enclosure and the restoration of the area to the condition prior unimproved condition. All removal activity required herein shall be completed within sixty (60) days of lease expiration.
19. This wireless communications facilities, operating alone and in conjunction with any other telecommunications facilities, shall not generate electromagnetic frequency (EMF) radiation in excess of the standards for permissible human exposure to EMF as adopted by the Federal Communications Commission (FCC.) **This project shall**

- be reasonably consistent with the EMF results in the Hammett & Edison September 11, 2007, report, subject to Town approval.
20. Prior to installation of any cellular equipment, information detailing the RF for the proposed antennas and cellular equipment, and alternate antennas and equipment serving the same function, shall be submitted to the Planning Director to allow the Town to assess RF levels in its final approval of equipment and antennas. The objective of this condition is to ensure the installation of antennas and equipment with the lowest EMF levels for the cell site.
 21. An EMF report shall be submitted to the Planning Director within 30 days of completion of any cell site installation verifying that the levels of EMF radiation emitted by the facility operating by itself and with other existing or approved facilities which can be measured at the site comply with all adopted standards. Measurements for EMF shall be based on all proposed, approved and existing facilities operating at maximum power densities and frequencies.
 22. Post-construction EMF reports shall be submitted to the Town of Ross every two (2) years following the date of the initial EMF report to verify that actual levels of EMF emitted by the facility, operating alone and in conjunction with other facilities, substantially conform to the initial EMF report and do not exceed standards for permissible human exposure to EMF as adopted by the FCC.
 23. 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.
 24. **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.
 25. **No changes from the approved plans or project description 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.
 26. There is the possibility that buried archaeological deposits could be present, and accidental discovery could occur. In keeping with the CEQA guidelines, if archaeological remains are uncovered, work at the place of discovery shall be halted immediately until a qualified archaeologist can evaluate the finds (CEQA Guidelines §15064.5 (f)). If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work may continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.
 27. Archaeological excavation should focus on selective recovery of important remains. Emphasis should be placed on retrieval of human skeletal remains, items that are or could have been associated with graves, and artifacts. If features (e.g. hearths, house floors) are encountered they should be investigated according to standard archaeological practices. The abundant shellfish remains should be sampled by taking column samples, and not collected in their entirety.
 28. Pursuant to CEQA Guidelines Section 15064.5(d), if human remains are encountered,

- excavation or disturbance of the location must be halted in the vicinity of the find, and the county coroner contacted. If the coroner determines that remains are Native American, the coroner will contact the Native American Heritage Commission. The Native American Heritage Commission will identify the person or persons believed to be most likely descended from the deceased Native American. The most likely descendent makes recommendations for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods. If requested by the most likely descendents, human remains and associated grave goods discovered during ground disturbing activities shall be reburied on site in an area which will be protected from future earthmoving activities after the placement of concrete for the foundation, but before any additional structure is put into place.
29. 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.

The Council took a short recess.

19. **36 Glenwood Avenue, Demolition, Variance, Design Review and Tree Removal No. 1662**
John and Cindy Pritzker, 36 Glenwood Road, A.P. Nos. 73-131-25 and 73-131-26, R-1:B-A (Single Family Residence, 1 acre minimum lot size). Demolition permit to allow the demolition of a residence, guest house, garage and shed totaling 16,049 square feet of floor area. Variance and design review to allow the following: 1.) Construction of a 14,862 square foot, three-story, residence, with an attached 1,217 square foot garage and 2,416 square feet of mechanical area (two stories allowed). The master suite on the south end of the residence would have a maximum roof height of 39.6 feet, measured to the floor of the basement (29.2 feet measured to adjacent finished grade) where 30 feet is permitted; a 3,441 square foot second unit; and a 1,120 sq. ft. exercise room/office. 23,057 square feet of total development is proposed. 2.) construction of landscape improvements including new patios, terraces, sports court and 60 foot by 20 foot swimming pool; 3.) Two new 6-foot tall, solid wood, vehicular gates, between stone pillars up to 6.5 feet tall (6 feet permitted); 4.) 1,264 cubic yards of cut, 1,915 cubic yards of fill, and over 100 linear feet of new retaining walls with a maximum height of 9 feet; 5.) Watercourse design review to allow the second unit and other improvements within 25 feet of a drainage channel contained in a culvert (25 feet recommended, 3 feet proposed); 6.) Watercourse design review to allow a 10-foot landscape bench near Ross Creek (25 feet recommended, 23.5 feet proposed); and 7.) A tree removal application to permit removal of 39 trees from 6 to 70 inches in diameter, detailed in the application materials.

Lot area	221,194 sq. ft.	
Existing Floor Area Ratio	7.2%	
Proposed Floor Area Ratio	10.4%	(15% permitted)
Existing Lot Coverage	4.9%	
Proposed Lot Coverage	7.9%	(15% permitted)

(Continued at the applicants' request.)

20. **54 Baywood Avenue, Variance, Design Review, Hillside Lot/Hazard Zone 3 Use Permit and Tree Removal No. 1669**
 Ross and Ligia Parmenter, 54 Baywood Avenue, A.P. Nos. 72-072-29 and 72-072-30, R-1:B-20 (Single Family Residence, 20,000 square foot minimum lot size). Variance, design review and hillside lot/ hazard zone 3 use permit to allow the construction of a 1,200 square foot two-story residence with a 430 square foot attached garage. A variance is requested to locate the driveway retaining walls and attached garage within the front yard setback (25 feet required, 0 feet proposed for driveway, 15 feet proposed for garage). 535 square feet of decks are proposed. The project involves 105 cubic yards of cut for the lower floor, grade beams, footings and drilled piers, as well as 65 cubic yards of fill. A parallel parking space would be created on the downhill side of Baywood Avenue, within the right-of-way, with retaining walls from 6-8 feet tall. Other improvements within the Baywood Avenue right-of-way are also proposed, including widening the roadway, curbs, and driveway work. A tree removal permit is requested to allow the removal of a 14" bay tree and a 14" oak tree that are located within the footprint of the proposed structure.

Lot area	20,971 square feet	
Present Floor Area Ratio	0%	
Proposed Floor Area Ratio	7.8%	(15% permitted*)
Present Lot Coverage	0%	
Proposed Lot Coverage	8.6%	(15% permitted)

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

Senior Planner Semonian summarized the staff report and recommended that the Council approve the project with the findings and conditions. If not in support, the Council can continue the item and provide suggestions to the applicant on modifications that would address any concerns.

Matt Smeltzer, town hydrologist, explained that runoff without the house would follow contours of the slope. The engineer designed a facility to take storm water from an enclosed pipe to perforated pipes and then distribute that pattern as if the home was not present. There is a facility in between the house, known as an attenuation facility that operates like a reservoir. He reviewed all calculations and found that the calculations were done appropriately. Objections have been raised about maintaining the facility and not maintaining the facility. He felt the owners should be required to maintain the facility and described what would happen if debris blocked the facility. In his opinion, the result of a blocked facility during a 100-year storm would not be more detrimental than natural flow

from a 100 year storm event in a steep slope environment. There is a separate hydrologic issue, which is the existing condition of Baywood Avenue and the existing drainage facilities. Only a comprehensive solution would improve drainage issues for downslope neighbors.

Kimberly Jessup, architect, said the project was more refined. She thanked staff for their help and hard work on this project. This neighborhood is an amazing neighborhood in regard to their interest to this project. There are two issues: 1) variance for the front yard setback; and 2) excellence of design. As noted by staff, it is impossible to get a garage out of the setback and below the height limit. They felt the variance most appropriate for this site and common in this neighborhood is a front yard setback variance for the covered parking. The site is unusually shaped and more than half the site is not buildable with a rear yard setback of 40 feet and front yard setback of 25 feet, which leaves them with a small buildable area. It is a very tight area and those are the reasons they are asking for a variance. She then provided photographs to Council of homes on Baywood with parking structures within the front setback area or in the right of way. In regard to excellence of design, she encouraged Council to consider the proposal in its totality. It is the cumulative effort of this project that demonstrates excellence of design. They are only removing three trees. They reduced the cut and fill. Only 40 cubic yards of soil is being removed. They are preserving views. Natural vegetation occurs on over 90% of the lot and street frontage. They tried to create minimal site retaining walls. The project occupies only 30 feet of the 260 lineal feet of frontage. They propose to widen the road to 15 feet and to provide a pull out space or an extra parking space to ease traffic as well as widen the road at the curve for better emergency vehicle access for safety. The living area is within all the required setbacks. The structure is under the 30-foot height limit. The goal is to meet the highest standard of the County green building guidelines. The driveway is located so a person backing out of the garage or parking space has good visual line in both directions on Baywood, so egress would be safe. They designed a state-of-the-art drainage system that they guarantee meets Ross guidelines and will be maintained to the hydrologists specifications. The house is designed to step down the hill to reduce its visual mass. Unlike most residences, all of the gutters are accessible from a patio or deck, so they can easily be maintained and cleaned. The project will not add any storm water runoff to the street. Five off street parking spaces are provided. The architecture is shingle style with well-articulated walls and outdoor spaces. They hope the Council realizes the depth of their effort to develop a project with excellence in design.

Charles Logie, the project engineer, discussed maintenance and work to date in establishing the attenuation of water. With approval, once they move to the next phase they will get into detailed design. He submitted a design memorandum that described what would occur. They will specify all matters and will include gutter guards as well as screens to any entrance to the drainage system. They will include catch basins with a basket, so any sediment is collected and before entering the attenuation system there is a basket filter. All these items are very effective in removing coarse debris. Fine debris would be trapped in the basket. There must be annual cleaning of the basket filter, gutters and the sediment. Into the attenuation basin, there will be redundancy of design. There is a two-inch orifice that will slow water down and a two-inch pipe will take water into a perforated pipe. In the event of any blockage, there would be a second pipe at a higher level to go through and then back into the perforated pipes, which is all buried below ground, except the perforated pipe. He further noted that it is all incorporated into the detailed design as part of the architectural package.

Mayor Hunter opened the public hearing on this item.

Julie McMillan, Crest Road resident, provided a list of 70 different people and 41 different neighbors concerned about this project and opposed to its approval. The staff report is very detailed and technical, but written before letters of opposition were submitted. Council must step back and consider much more than the technical issues considered in the staff report. Council must consider the rich elaborate history regarding this site. The decision in 1985 was that the site was obviously difficult to develop, given the terrain. This application began four years ago and has been considered five times. Court proceedings occurred. Council must be mindful of the hillside lot ordinance. She believed that the Council has never extended the guideline maximum for development of a vacant lot. She discussed the history and the Council should follow the hillside lot ordinance, if not, more doors will be open to many applications on steep hillsides. The General Plan stated that Council would vigorously apply the hillside lot ordinance. She believed that the size of the lot is smaller than what is included in the application and that the guideline maximum is 775 square feet under the hillside ordinance. She was concerned the parking area will be filled with parked cars. Excellence of design cannot mean viewing more parked cars on Baywood. The drainage system requires maintenance and if the system is not maintained there will be disastrous consequences. She encouraged Council to do the right thing and not open the door to future development. She further pointed out to Council that this is more than twice what the hillside lot ordinance would allow.

Steven Walker, Baywood Avenue resident, enjoys privacy among trees and with this design he will lose privacy because he will have a house looking down into his residence. He did not object to development, but not at the expense of another property owner.

Patty Burke, Madera Ave. resident, is very concerned about drainage. The size makes a difference. She stated that it is not the Town's job to accommodate the applicant's desire to build a modest home. A smaller house could be built on this lot. Maintenance is an issue in this neighborhood in regard to the catch basin. She expressed concern for the amount of slippage in the area. She pointed out that there is no stopping the runoff. To have a maintenance manual with screens, gutter guards and perforated pipes and to have instability is quite upsetting in her view.

Dennis Muren, Canyon Road resident, stated that a house should not be built on this site and the only appropriate development on this site would be a studio.

Jacqueline Ryan, Baywood Avenue resident, expressed concern for water runoff as well. She then submitted a letter from her engineer John C. Hom & Associates not recommending a curb. She further believed that drainage is a major problem and must be addressed.

Ken Prokuski, Madera resident, expressed concern for the hillside ordinance and the fact that the Planning Department did not give a sufficient reason for why this level above the guidelines should be given. Also, for any home of any size the entire drainage must be resolved and unless that is completely solved, then it is not a good project.

Susanne Reutern-Prokuski, Madera resident, stated that obviously there are existing problems on Baywood in regard to the slope of the street and catch basin. To approve another structure on this street without out addressing the problems that exist did not seem

appropriate. Not fixing the road seems to be negligent on the Town. The Burkes, Ryan's and their home seems to be the most affected and she strongly opposed moving forward without these problems being addressed.

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

Council Member Durst stated that certain site conditions must be taken into consideration. In regard to Condition No. 10 on page 19 of the staff report, she believed the Council should review the construction and traffic management plan due to the narrowness of Baywood and the existing poor relations with the neighbors. It should call out with specificity the number of times the project can be out of compliance before the job site is shutdown and building permit is revoked. In regard to Condition No. 13, they should add language that site conditions after April 15th shall be subject to approval by the Town Engineer and Town Hydrologist before grading can commence. The design in her opinion is not good enough for 100% over the hillside lot ordinance. Since the court upheld the Council's prior decision and the Ross design standards, she wanted to see an excellent design at 840 sq. ft. She did not see the current design truly offering the occupants a great way to live. The rooms are small, the kitchen is dark and set into the hillside, and much of the available space is taken up by the stairwell to the two small bedrooms. The idea of excellence on this site exists in a studio like living space that has the need for a single car garage only all under 840 sq. ft. The proposed decks will loom over the Burkes in a decidedly unRoss-like manner. Also, there will be little privacy from the road. Given the hillside setting, the bulk and mass should be considered. Also, the green building platinum rating is a red herring, as the rating did not address conditions on the site. She added the best statement about this building is that it will not burn as quickly as the hillside. This application should go into the RADR process given its history since 1985. Waiting a few months while they ramp up RADR will make little difference. If Council tries to decide this issue tonight without being able to come to stasis with the area residents on this design, they will be back in court defending an issue that is the polar opposite of what was decided just five months ago.

Mayor Pro Tempore Cahill asked staff about Baywood and what authority does the Town have to require the road to be fixed and drainage problems resolved. Senior Planner Semonian explained that the Town never accepted the right-of-way. So it is a not maintained road. Mayor Pro Tempore Cahill asked staff if they have the ability to require that the road be fixed. Senior Planner Semonian believed they would need a nexus for any off site improvements and she did not want to impose a condition that would create a liability concern for the Town. Staff does not want to impact other properties.

Town Manager Broad is not able to resolve the matter and how the Town would be involved. It would be a legal matter for the Town Attorney to review. Staff further reiterated that it is not a Town maintained roadway.

Mayor Pro Tempore Cahill thinks the property owner should be allowed to build a house on this site. He understands the hillside ordinance guidelines. Also, it is an excellent idea to go to RADR. Council Member Strauss suggested that the matter be peer reviewed. Mayor Pro Tempore Cahill agreed. Council Member Strauss believed more guidance should be given and then have peer review occur.

Mayor Pro Tempore Cahill stated that if it can achieve excellence in design then that is a justification of going over the hillside ordinance. He believed it is a difficult site. The architect made a great effort to limit the footprint of the house and if the FAR is reduced there will not be a significant impact on the view of the house. In regard to the front yard setback, he agreed with the staff report that a front yard variance is necessary for a parking structure on a sloping lot. His main issue is slope stability and drainage. Drainage is all about maintenance. He reviewed a recommended maintenance agreement, but desired to see a final maintenance agreement that has teeth as it is intended to have to insure that maintenance is done. A condition could be added that notice of compliance with the maintenance agreement be provided to affected neighbors as well.

Council Member Skall is impressed with all the efforts. He is amazed with all the time spent on this process. The problem is the hillside lot. There are too many individuals affected by this project and it is overwhelming and he cannot approve the project.

Council Member Strauss agreed a house can be built on this site, but the proposed home is a very chopped up house. He desired the footprint to stay at 800 sq. ft. in order to follow the guidelines. He would support peer review, not RADR since, there is no RADR currently. They must address the site as a whole hillside design. It is a difficult site. He believed a loft type home could be built.

Council Member Durst noted that RADR according to the General Plan is designed to help the applicant come to some type of resolution with the neighbors. This application has been before this Council for 22 years in one form or another trying to find what works on the hill. She is not ready to declare the lot unbuildable. It is very difficult, but application has never come in with 840 sq. ft., including the garage. It is important, in this particular instance, to pay attention to the General Plan. Instead of peer review, see if the RADR process can help the applicant and neighbors. Details around RADR are very simple to solve, and imagined with some work, depending on availability of staff, probably before the first of the year.

Mayor Pro Tempore Cahill suggested a peer review to replicate the RADR process. Council Member Durst recommended a peer review that could mimic RADR and then she could accept it.

Mayor Hunter has been consistent in his concern about the hillside lot ordinance. During the lawsuit phase of this application no agreement could be reached. There is room for some negotiation. He would love RADR to review this matter as their first application because it is ideal. He is not prepared to vote in favor of this application. He hoped a neighborhood maintenance program could be developed. He added that this is a buildable site. The neighborhood should band together to repair the road, so when an application comes in that is acceptable the applicant is not being penalized for negligence of others. He would be in favor of peer review, but agreed to let RADR review as well. Council Member Durst agreed to report back on the RADR process. Until the road is better, no decisions about how to build can be made. Prior to reconsidering this application some form of improvement on Baywood must occur.

Ross Parmenter, owner/applicant, did not understand how anyone could live in a 400 sq. ft. home. Many years ago the Town indicated that a house could be built on this site, but a home, not a studio. He desired a lovely home just like everyone else. The guidelines were not

to force someone into a studio, but a home. He wanted to enjoy the same comforts. Beauty is in the eye of the beholder. There is a huge row of trees on that site between him and all his neighbors, so the house is not a visual impact. 1,200 sq. ft. will be a lovely house and he does not know what to do. He desired a living space for his family.

Mayor Hunter believed 1,200 sq. ft. is reasonable. Council Member Durst noted that the square-footage should include the garage. Mayor Pro Tempore Cahill believes it depends on the design. They are not limiting themselves to the hillside lot ordinance necessarily because the ordinance indicates that size can be expanded based on certain criteria. He believed working with peer review or the RADR process a design can come back that has that excellence of design. It may go over the hillside lot ordinance guidelines, but have the footprint equivalent being discussed and must go to peer review or RADR to determine.

Council Member Durst recommended continuing the matter to next month and she would report back findings in regard to the RADR process. Mayor Hunter noted that architectural peer review should be offered as an option. Council Member Durst stated that it must include neighbor input. Council Member Strauss stated that public input is not a requirement.

Mayor Hunter asked for a motion.

Mayor Hunter moved and Mayor Pro Tempore Cahill seconded, to continue the matter to a future date uncertain with an option for the applicant to peer review the existing design or create a new one. Motion carried unanimously.

21. **63 Ivy Drive, Variance and Design Review No. 1667**
Steve Daane and Sheryl Garrett, 63 Ivy Drive, Ross, A.P. No. 73-152-17, R-1:B-20 (Single Family Residence, 20,000 sq. ft. Minimum Lot Size). Variance and design review to expand the existing parking area located within the front yard setback (25 feet required, 0 feet proposed) and side yard setback (20 feet required, 6 feet proposed). Project includes construction of a new 3 to 7.5 foot tall retaining wall on the downhill side of Ivy Drive with a 3-foot tall grapestake fence/railing along the edge of the wall.

Senior Planner Semonian summarized the staff report and recommended that Council approve the application subject to findings and conditions. Staff desired to further work with the applicant on the landscape plan.

Council Member Strauss expressed concern for receiving substantial information at the last minute and not having adequate time to review.

Council Member Durst recommended staying as far away from the fire hydrant as possible. Council and staff agreed.

Steve Daane, owner/applicant, explained that he received a parking ticket, which is the reason for this application. They just want their vehicles off the road. He understands staff's suggestion and they can pull in at a 45-degree angle, but to hit the strict letter of the law is to pull in parallel. In regard to backing up a foot from the wall to create room for landscaping, it is squeeze.

Mr. Daane and staff approached Council and pointed out the areas for consideration.

Mayor Hunter opened the public hearing on this item.

Jerry Cruse, Ivy Drive resident, expressed concern for an illegally built wall. If granted a variance, and that wall is not removed, then he will have to take action and file a lawsuit.

Mr. Daane did not create a wall without consultation. They want to park their vehicle off the street, have safety and make all neighbors happy.

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

Mayor Hunter believes this is a reasonable compromise. This just approves the project. It must still go through the permit phase. He would like the pavers removed and have gravel and additional landscape around the edges to be worked out with staff.

Mayor Hunter asked for a motion.

Mayor Hunter moved and Mayor Pro Tempore Cahill seconded, to approve the project with landscaping to be worked out with staff. Motion carried unanimously.

63 Ivy Conditions

1. *The applicant shall work with staff to modify the landscape plan to reduce the parking area and increase landscaping around the parking area to soften its appearance from the street. The landscaping shall be installed prior to project final and shall be watered until established.*
2. The applicant shall remove the dirt and gravel fill around the black oak tree near the parking area. A wall shall be extended around the tree to prevent soil from accumulating at the trunk of the tree.
3. 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.
4. 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.) The parking may not encroach on the road easement.
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 the issuance of any building permits.
7. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY SEPTEMBER 11, 2008 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
8. 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.
9. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
10. 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. 18 Canyon Road, Variance and Design Review No. 1655

Douglas Abrams, 18 Canyon Road, A.P. No. 72-031-27, R-1:B-5A (Single Family Residence, Five Acre Minimum). After-the-fact design review and variance to allow the following: 1.) conversion of 275 square foot carport to living space and 142 square foot addition within front yard setback (25 feet required, 5 feet proposed) for new bedroom and bathroom; 2.) reconstruction of entry porch within side setbacks (25 feet required, 8 feet proposed); 3.) reconstruction of decks within front yard setback (25 feet required, 5 feet proposed) and side yard setback (25 feet required, 13 feet proposed); 4.) new retaining walls up to 4.5 feet in height over a watercourse contained in a culvert; 5.) dormer addition within west side setback (25 feet required, 20 feet proposed) and within guideline watercourse setback (25 feet recommended, 10 feet proposed); 6.) 6 foot tall wood lattice gate between 6.5 foot tall stone-faced columns on roadway easement to 12 Canyon Road (6 feet permitted); 7.) 60 square foot shed with a maximum ridge height of 11.75 feet on road easement for 12 Canyon Road; 8.) relocation of private roadway and creation of new crushed rock patio area within front yard setback (25 feet required, 13 feet proposed) and side yard setback (25 feet required, 11 feet proposed); and 9.) relocation of existing arbor within roadway easement to west side yard setback (25 feet required, 2 feet proposed).

Lot area (less road easement)	52,703 square feet	
Existing Floor Area Ratio	5.1%	
Proposed Floor Area Ratio	5.4%	(15% permitted)
Existing Lot Coverage	5.5%	
Proposed Lot Coverage	4.6%	(15% permitted)

The existing residence is nonconforming in setbacks, maximum height, and number of stories.

Senior Planner Semonian summarized the staff report and recommended that Council approval the project subject to findings and conditions.

Doug Abrams, applicant, indicated that there are no complaints from any neighbors. He pointed out that it is a wider turn. He indicated that the Fire Department would like to see the road widened, but there is nowhere to go unless working into the embankment. He further added that now they can make a nice turn and they will repave 700 feet of road.

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 discussion and action.

Mayor Hunter noted that now the application is properly completed. He indicated that the applicant did a very nice job and supported the project.

Mayor Pro Tempore Cahill asked if there is an agreement among neighbors to allow that encroachment. Mr. Abrams noted that there is no formal agreement, but it could be formalized, if Council desired. Mayor Pro Tempore Cahill believed from a title point of view have an encroaching agreement is important. Mr. Abrams agreed.

Mayor Hunter asked for a motion.

Council Member Durst moved and Council Member Strauss seconded, to approve the after-the-fact variance and design review for 18 Canyon Road with the findings and conditions outlined in the staff report. Motion carried unanimously.

18 Canyon Conditions

1. An after-the-fact building permit and fees are required to be paid prior to permit issuance and prior to any work at the site.
2. The building inspectors shall make all necessary inspections of the work and demolition shall be required if necessary to inspect the work.
3. Sprinklers are required through the entire structure, subject to the approval of the Town of Ross.
4. All exterior lighting shall be low wattage, shielded and downcast. No lighting of exterior walls or fences is permitted.
5. The applicant shall install the proposed landscaping prior to project completion. The hedges shall be set back 5 feet from the edge of the paved roadway. The landscape plan shall conform to the requirements of the Marin Municipal Water District (MMWD) Ordinance 385. The applicant shall submit evidence that MMWD has reviewed and approved the landscape plan, or that it is exempt from the MMWD Ordinance 385.
6. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
7. The 30-inch bay tree is approved for removal. No additional tree removal is permitted without a tree removal permit. Before the start of any clearing, excavation, construction, or other work associated with the road realignment, every significant and/or protected tree adjacent to the roadway shall be securely fenced-off or

- otherwise protected. Such fences or protection shall remain continuously in place for the duration of the work undertaken in connection with the development.
8. Best management practices should be implemented to prevent stormwater pollution. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. A drainage plan shall be submitted prior to permit issuance that ensures storm water runoff is dispersed to landscaping or routed to a properly designed treatment facility.
 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. The gate location shall be reviewed and approved by the public safety department prior to construction. The gate shall comply with any additional conditions imposed by public safety.
 12. Any portable toilets shall be placed off of the street and out of public view. Project development shall comply with the requirements of the Ross Valley Sanitary District.
 13. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice. The construction start date shall be considered the date when the applicant pulled a building permit for the siding project.
 14. **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 prior to any modifications.
 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 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.

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23. Correspondence- None

24. Other Business - None

25. Adjournment

By order of Mayor Hunter, the meeting adjourned at 12:21 p.m.

R. Scot Hunter, Mayor

ATTEST:

Gary Broad, Town Manager