

REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, SEPTEMBER 10, 2009

1. 6:30 P.M. Commencement.

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

2. Posting of Agenda.

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

3. Minutes July 9th, 2009 and August 28th, 2009

Mayor Strauss asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to approve the July 9th, 2009 Town Council minutes as amended. Motion carried unanimously.

Council Member Skall moved and Council Member Cahill seconded, to approve the August 28th, 2009 Special Town Council minutes as submitted. Motion carried unanimously.

4. Demands.

The demands were met.

5. Open Time for Public Expression.

Carla Small, Duff Lane resident, wanted the Council to agendaize a discussion on the procedure to elect Mayor and Mayor Pro Tempore. She noted that Council Member Martin received the most votes during the most recent election and he was not considered for Mayor Pro Tempore. She pointed out that Council Members Cahill and Hunter held Mayor or Mayor Pro Tempore for the last four years. She wanted to know where the public input is allowed and what the procedure is in regard to election of Mayor and Mayor Pro Tempore. Also, with this economy being so hard on downtown businesses, she suggested that the Town send out a weekly email about specials and events occurring downtown to help promote and support the downtown businesses. Town Manager Broad agreed to explore the concept of using the Town's email list.

A Redwood Drive resident suggested a Ross website for all merchants to showcase their specials. He added that the Council acting as the purveyor of all information is not good in his view, so he recommended separate websites. Council Member Martin noted there is not the critical mass of merchants and in general it is difficult. A Redwood Drive resident suggested starting a website just for the merchants and then piggybacking on the Town's website is a good idea.

Mayor Pro Tempore Hunter noted that there is a business section on the website. Town Manager Broad stated the downtown must put in some energy. If the merchants created a product such as an email, staff could; distribute such information, but staff cannot create information for the merchants. Staff is happy to be a resource for publishing what the merchants chose to market. Staff further added that there is room available on the Town's website.

Council Member Martin stated that the challenge of small business is that there are several vacant storefronts. A solution would be for combined efforts between San Anselmo and Ross to jointly develop business. The idea is to get residents to shop locally. It will not be productive if only done in this Town, so he suggested having a meeting at the Town Hall with the local merchants and residents to develop a plan of action.

6. Report from Mayor Strauss.

Mayor Strauss reported that Shady Lane would be closed September 14 and 15 from 8 a.m. to 5 p.m., between Norwood Avenue and Fernhill Avenue for pathway surfacing. Many residents have commented on how the new Shady Lane pathway has made such a difference in their daily lives. He encouraged parents to leave their vehicles at home and walk or bike with their children to school. It would greatly improve traffic circulation and parking issues if more residents would walk to the downtown. Also, the annual Town Dinner will be held on the Ross Common on Friday, September 25th, beginning at 6:00 p.m. Please RSVP as soon as possible so Chief of Protocol Roseanna Lourdeaux and her committee may order the proper amount of tables and chairs. He was asked by Chief of Protocol Lourdeaux to mention that the musicians have bailed, so she is back searching for new musicians. Also, Trattoria Fresco, Marche Aux Fleurs and Ross Grocery will be providing take out orders for the Town Dinner, and pre-orders are available.

Mayor Strauss announced that the annual creek clean up day is scheduled for Saturday, September 26th, beginning at 9 a.m. Everyone is meeting at the Post Office and should bring pruning shears, shovels, waterproof boots and work gloves. The Mayor encouraged everyone to participate.

7. Report from Committee Heads.

Public Works - Council member Martin

- Status of Public Works projects

Council Member Martin reported on the Lagunitas Bridge project and they are still in the permit process. They are waiting for final review and approval of the biological assessment on the bridge project from NOAA and the US Fish and Wildlife Services. Caltrans will not issue final approval until the biological assessment is complete. The current schedule estimates that the bridge project will commence during the final week of April 2010, with demolition of the bridge occurring around June 15th. By October, the Town will initiate a process to select a project manager for the bridge replacement project. He further noted that the public works meetings are posted and members of the public are welcome to attend.

In regard to Sir Francis Drake Pathway, they are waiting for Caltrans to issue an authorization to proceed. As soon as that happens, the project will be advertised for bidding. It is expected that the project will be awarded in October, and project work will commence soon after on a weather-permitting basis. He then announced that the next public works meeting is scheduled for Wednesday, September 16th at 8:30 p.m. Also, creek dredging in the vicinity of the Lagunitas Bridge will occur at the end of September. Approximately 400 cubic yards of sediment and debris will be removed, while a biologist safeguards the steelhead downstream.

- Marin Energy Authority

Council Member Martin noted that at the last Council meeting, MEA Interim Director Dawn Weisz provided a progress report and tonight he will provide an update on several new developments. As indicated last month, twelve companies responded to the RFP issued by MEA to provide greater amount of sustainable electrical power for Marin County. Last week the MEA narrowed the field down to three companies, which will now enter into further negotiations with the MEA. These companies are Baltimore-based Constellation Energy Commodities Group, Houston-based Macquarie-Cook Power and Shell Energy North America, a subsidiary of Royal Dutch Shell. These companies have responded with electrical power costs for customers below PG&E current rates. At least 25% of the electricity they provide will be generated from renewable sources. Businesses and residents will also have the option to purchase 100% renewable energy, which will cost slightly higher than PG&E's current rates, as expected. The MEA has begun contract negotiations with the three selected bidders and is scheduled to release a draft contract in October. Cities and towns in Marin, as well as the County Board of Supervisors will be asked to review and provide comments on the draft in October. MEA Interim Director Weisz would like to make a presentation on the contract to Ross at the October Town Council meeting. The final contract will then be subject to a 90-day review period before being scheduled to consider approval by the MEA Board in February 2010.

Finance Committee - Council Member Hunter

- Town Finance and Accounting Update

Mayor Pro Tempore Hunter reported that they are exploring moving bill paying and payroll in-house. As part of this, they are looking at making a change in accounting services to be more efficient, effective and at a lower cost.

8. Report from Ross Property Owners Association.

Carla Small, RPOA representative, expressed concern for the condition of the flags in Town. RPOA would gladly order and pay for the flags as soon as possible. Fire Chief Tom Vallee agreed to handle it.

9. Flood Control Report.

Council Member Martin reiterated that the annual creek clean up is scheduled for Saturday, September 26th, beginning at 9 a.m. He further noted that Flood Zone 9 will meet and he would report back findings.

10. Report from the Ross School - None

11. Consent Agenda.

The following two items were considered in a single motion. Consent agenda Item 11b was removed for discussion.

a. 341 Upper Toyon Drive, Design Review No. 1750

Mike Guelfi, 341 Upper Toyon Drive, A.P. No. 72-051-25, R-1:B-5A (Single Family Residential, 5 Acre min. lot size), Very Low Density (.1-1 units per acre). Request for design review of retaining walls, totaling 109 linear feet, up to 6.5 feet tall, to be located on the uphill bank of Upper Toyon Drive to prevent soil erosion and protect mature trees. The walls would be finished with natural stone veneer and landscaped.

Mayor Strauss asked for a motion.

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

Guelfi, Design Review, 341 Upper Toyon Road, File 1750

Conditions:

1. The design of the retaining walls shall be engineered. A building permit shall be required for the work.
2. The retaining walls shall be at an appropriate height to prevent burying the tree crowns. An arborist shall be retained to inspect the location of piers prior to backfilling and to approve the height of the retaining walls.
3. An arborist shall review and approve the proposed landscaping and irrigation prior to installation of the plants. Any new plantings within the tree protection zone should be designed to be compatible with the cultural requirements of the protected trees (such as irrigation and nitrogen application).
4. The town arborist shall inspect the site prior to project final.
5. All costs incurred for town consultants, such as the town engineer and arborist, review of the project shall be paid as incurred and prior to project final.
6. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The applicant is responsible for ensuring storm water runoff is maintained in its natural path.
7. **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.
8. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
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 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.
11. **FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY SEPTEMBER 10, 2010 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.**
12. 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.
13. The middle retaining wall is proposed on land under the ownership of the applicant, which may be encumbered by easements in favor of others. This approval assumes that the proposed wall construction, which is outside of the area of the developed roadway and on land owned by the applicant, will not impair travel on the roadway and does not violate any easements or rights of others as provided in any agreement. It is the applicant’s responsibility to ensure that the proposed construction does not

violate any easements or agreements and this Town design review approval does not override any such easements or agreements. A title report for the roadway area shall be submitted with the building permit application, along with a copy of any easements or agreements that may apply to the road parcel area.

14. 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.

c. 10 Lagunitas Road, Variance and Design Review No. 1748

Jon and Linda Gruber, 10 Lagunitas Road, A.P. No. 73-191-23, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Design review and variances to allow construction of a new 912 square foot pool house, with a partially enclosed outdoor kitchen and patio area, to replace the existing, 560 square foot, pool house within the north side yard setback (25 feet required, 14 feet proposed). The structure would be elevated to prevent damage from flooding. The roof ridge would be 16' 4" from grade.

Lot area	90,000 square feet	
Existing Floor Area Ratio	12.5%	
Proposed Floor Area Ratio	12.9%	(15% permitted)
Existing Lot Coverage	9.6%	
Proposed Lot Coverage	10.2%	(15% permitted)

Mayor Strauss asked for a motion.

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

Gruber, Variance and Design Review Application, File 1748

Conditions:

The following conditions shall be reproduced on the first page(s) of the plans submitted for a building permit:

1. Except as otherwise provided in these conditions, the project shall comply with the approved plans. Plans submitted for the building permit shall reflect any modifications required by the Town Council and these conditions.
2. Existing screening landscaping between 20 Shady Lane and 32 Shady Lane and the site shall be preserved. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.

3. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The applicant is responsible for ensuring storm water runoff is maintained in its natural path and not directed towards adjacent sites. The site drainage may not be led directly into the creek.
4. The finished floor shall be elevated one foot above the base flood elevation as established by R. Wayne Davis, Licensed Land Surveyor, in his letter dated July 15, 2009, on file with the Town of Ross Planning Department, unless FEMA establishes a higher base flood elevation for the site prior to issuance of a building permit.
5. 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 1-93 <http://www.fema.gov/pdf/fima/job2.pdf> for more information)
6. 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)
7. A FEMA elevation certificate shall be submitted to the Town prior to project final.
8. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners.
9. Applicants shall comply with all requirements of the Marin Municipal Water District.
10. Project development shall comply with the requirements of the Ross Valley Sanitary District.
11. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following: a) all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property; b) the street number must be posted (minimum 4 inches on contrasting background), c.) the roadway must have a vertical clearance of 14 feet; d.) all brush impinging on the access roadway must be cleared as determined necessary by Public Safety.
12. 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.

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. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
14. NO CHANGES FROM THE APPROVED PLANS, BEFORE OR AFTER PROJECT FINAL, INCLUDING CHANGES TO THE MATERIALS AND MATERIAL COLORS, SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE. THE APPLICANT IS ADVISED THAT CHANGES MADE TO THE DESIGN DURING CONSTRUCTION MAY DELAY THE COMPLETION OF THE PROJECT AND WILL NOT EXTEND THE PERMITTED CONSTRUCTION PERIOD.
15. Failure to secure required building permits and/or begin construction by September 10, 2010 will cause the approval to lapse without further notice.
16. 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.
17. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

End of Consent agenda.

Council Member Cahill recused himself from Item 11b to avoid the appearance of a conflict.

b. 21 Makin Grade, Variance and Design Review No. 1749

Phillip and Sharon Pillsbury, 21 Makin Grade, A.P. No. 72-061-09, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Design review and variances to allow the following: 1.) construction of a 120 square foot storage room at the rear of the garage, within the side yard setback (25 feet required, 15 feet proposed); 2.) relocation of the existing greenhouse within the side yard setback (25 feet required, 13 feet proposed) and rear yard setback (40 feet required, 30 feet proposed); 3.) garage roof replacement and addition of a cupola,

with a maximum ridge height of 17 feet, within side yard setback (25 feet required, 15 feet proposed); 4.) decorative trellis above garage door within side yard setback (25 feet required, 15 feet proposed); 5.) conversion of lower floor mechanical equipment room and dark room to living space; 6.) new terrace outside of master bedroom; 7.) new hot tub, terrace, stone retaining walls, trellis and pool equipment vault within rear yard setback (40 feet required, 18 feet proposed); and 7.) new barbecue area, fire pit, bench wall and trash enclosure within front yard setback (25 feet required, 2 feet proposed).

Lot Area	30,808 sq. ft.
Effective Lot Area (less roadway easement)	18,990 sq. ft.
Existing Floor Area Ratio	23.4%
Proposed Floor Area Ratio	24.0% (15% permitted)
Existing Lot Coverage	22.8%*
Proposed Lot Coverage	25.6%* (15% permitted)

*These numbers were revised from mailed/posted notice.

Mayor Pro Tempore Hunter wanted to remove this item from the consent agenda to publicly acknowledge the facts that justify the multiple variances requested for the application. The project site is surrounded on three sides by Makin Grade and the road right of way. The setbacks are measured from the edge of the road right of way, not the edge of the actual roadway, which severely limits the developable area of the lot. The lot and many improvements will be within the required setbacks, but will actually be a distance from the roadway and neighbors. He supported the project and wanted the record clear that the Council does not hand out consent agenda approval for projects with so many variances without making the appropriate findings. Mayor Strauss echoed Mayor Pro Tempore's comments. Also, the General Plan discourages "wood burning" fireplaces and Mayor Strauss asked the Council to consider whether or not to move forward with that policy. He felt they must address the issue, as a community, due to the hills and trees. Wood burning fireplaces are not appropriate in his view. He recommended approving the project with the condition that a "gas only" fire pit is acceptable. He pointed out that there is a major problem in West Marin in regard to poor air quality. As a community, it was identified in the General Plan to look at "gas only" fireplaces and to start implementing. He favored the project with that one condition. He further believed the Council should start imposing that standard on all fireplaces in the future. Council Member Martin concurred.

Mayor Pro Tempore Hunter noted that the Bay Area Air Quality Management recommended that all wood burning fireplaces be banned from this point forward, and only gas fireplaces are acceptable. He believed the Council should have a hearing to discuss the matter. Council Member Skall desired more input on this matter. He pointed out that the matter has not been vetted properly, so he could not make a decision tonight. Council Member Martin wanted to hear from the applicant in regard to imposing this condition at this point.

Council Member Martin noted concerns with the project at 26 Makin Drive, not relative to this project and in the County jurisdiction. He was concerned the project could erode the road that leads up to this house. The site is within a watercourse and every tree has been removed. The hillside has been sliced. He understands it was a subdivision, but asked if it is

appropriate for the Town to inform the County about their concerns. Mayor Strauss agreed to inform the County.

Senior Planner Semonian announced that staff did report concerns regarding inadequate watercourse protection at 26 Makin Drive to the County, and straw waddles and other measures quickly appeared at the site. Staff is aware of the site, but it is out of their jurisdiction.

The applicant had no objection to the new condition in regard to the “*gas only*” fire pit.

Senior Planner Semonian agreed to bring back an ordinance to the Council in regard to “*outdoor*” fireplaces.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Martin seconded, to approve Item 11b with the additional condition that the fireplace be “*gas only*” including the findings and conditions outlined in the staff report. Motion carried 4-1. Cahill absent.

Pillsbury, 21 Makin Grade, Variance and Design Review, File 1749

Conditions:

1. The outdoor firepit shall be gas.
2. This approval is limited to work within the Town of Ross. The applicant shall obtain any appropriate permits for work within the County of Marin and the Makin Grade right of way.
3. Except as otherwise provided in these conditions, 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 for review and approval prior to the issuance of any building permits or construction in conflict with the approved plans.
4. The applicant shall reduce on site runoff by replacing the existing asphalt parking area with a porous surface.
5. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; 3.) The property must be cleared of all dead or dying flammable materials; and 4.) A local alarm system is required.
6. An arborist shall be present on site to assist in locating the foundation for the spa area to ensure the protection of the existing mature trees.
 - a. Any excavation, cutting, or filling of the existing ground surface within the root zone shall be minimized and subject to such conditions as the project arborist may impose. Retaining walls shall likewise be designed, sited, and constructed so as to minimize their impact on significant and/or protected trees.
 - b. Underground trenching shall avoid the major support and absorbing tree roots of significant and/or protected trees. If avoidance is impractical, hand excavation undertaken under the supervision of the project arborist is required.

- c. Concrete or asphalt paving shall not be placed over the root zones of significant and/or protected trees, unless otherwise permitted by the project arborist.
 - d. Artificial irrigation shall not occur within the root zone of oaks, unless deemed appropriate on a temporary basis by the project arborist to improve tree vigor or mitigate root loss.
 - e. Compaction of the soil within the root zone of significant and/or protected trees shall be avoided.
7. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
 8. FAILURE TO SECURE REQUIRED BUILDING PERMITS AND/OR BEGIN CONSTRUCTION BY SEPTEMBER 10, 2010 WILL CAUSE THE APPROVAL TO LAPSE WITHOUT FURTHER NOTICE.
 9. 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.
 10. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 11. 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.
 12. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

Council Member Cahill reconvened his position on the Town Council.

12. Town Council consideration of adoption of Resolution No. 1676 amending taxicab regulations of the Marin General Services Authority.

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adoption of Resolution No. 1676, amending taxicab regulations of the Marin General Services Authority.

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

Mayor Strauss asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to adopt Resolution No. 1676, amending taxicab regulations of the Marin General Services Authority. Motion carried unanimously.

13. Town Council consideration of adoption of Resolution No. 1677 enacting a temporary closure of the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on September 25, 2009.

Police Chief Jim Reis summarized the staff report and recommended that the Council consider adoption of Resolution No. 1677, enacting a temporary closure of the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on September 25, 2009.

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

The Council agreed to temporarily close the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on Friday, September 25. The roadway will be closed between Lagunitas Road and Redwood Drive, although southbound traffic will be detoured behind the Ross Post Office. Residents are encouraged to walk, bike and carpool to the Town Dinner.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Skall seconded, to adopt Resolution No. 1677, enacting a temporary closure of the Ross Common for the annual Town Dinner from 4 p.m. to 10 p.m. on September 25, 2009. Motion carried unanimously.

14. Town Council approval of continued placement of temporary signs and locations for the Street Smarts Pilot Program, a traffic education campaign.

Police Chief Jim Reis summarized the staff report and recommended that the Council approve continued placement of temporary signs and locations for the Street Smarts Pilot Program. Staff explained that Street Smarts is a traffic education campaign designed to change driver, cyclist and pedestrian behavior and reduce accidents. The program targets five problematic behaviors: speeding, stopping, right-of-way violations, distracted driving, and bicyclist violations and safety. Staff further noted the signs will be attached to existing poles and will be removed as soon as the school year is well into session and initial efforts to slow traffic down is renewed.

Mayor Strauss opened the public hearing on this item.

Dick Bobo, Redwood Drive resident, asked staff if this would be year round. Police Chief Reis indicated that this is geared toward the start of the school year in order to have

heightened awareness, but staff is not against having the signs erected longer. Mayor Strauss believed specific locations might be appropriate.

Jessica Hart, Thomas Court resident, suggested a strong educational program to teach children how to walk bicycles through intersections. She believed bicyclists should follow the same rules as vehicles. Police Chief Reis noted that some signs address bicyclist conforming to the traffic laws as well. Mayor Strauss had a conversation with Superintendent Robert Maccario about adding arrows to promote a program to share the roads with pedestrians and bicyclist. He further agreed that everyone must be respectful of stop signs.

Council Member Martin noted that Bob Dickenson and Lynn Langford are working on a program called, "Walking School Bus." It is where kids and parents walk to school as a group throughout the year. Mayor Strauss encouraged everyone to work together. Police Chief Reis will endorse educational programs for bicyclist focusing on stop signs, riding single file and close to the right hand side of the road, as practical.

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

The Council agreed to continue placement of temporary Street Smarts signs. Six banners are currently hanging on downtown light poles, and twelve additional signs will be placed around Town, including locations at Bolinas Avenue, Shady Lane, Winship Park and Ross School.

Mayor Strauss asked for a motion.

Mayor Strauss moved and Council Member Martin seconded, to approve the continued placement of temporary signs and locations for the Street Smarts Pilot Program. Motion carried unanimously.

15. Town Council consideration of approval of Marin County Major Crimes Task Force Joint Exercise of Powers Agreement.

Town Manager Gary Broad summarized the staff report and recommended that the Council consider approving Marin County Major Crimes Task Force joint exercise of powers agreement. Staff explained that in 2004, the City of San Rafael withdrew from the JPA, requiring members to shoulder a greater portion of the organizations costs. Due to severe budget problems, the City of Novato had planned to withdraw from the task force in June, effectively dissolving the JPA. The new agreement allows Novato to assign an existing police officer to the task force, substantially reducing their cash contribution.

Mayor Pro Tempore Hunter asked staff if there was any effort with new personnel to bring San Rafael back in. Town Manager Broad noted there has been a continued effort. In part, San Rafael assists the taskforce with personnel and grants, but San Rafael made a financial decision not to lose in-house personnel. It was a 3: 2 decision by City Council, so it may ultimately change. Mayor Pro Tempore Hunter asked staff if there is an issue that involves San Rafael will their police force coordinate with the taskforce. Town Manager Broad responded in the affirmative.

Council Member Martin heard there is a mild difference of opinion between San Rafael's Mayor and the sheriff. He then asked staff if there is enough of a financial pool. Town Manager Broad noted that the sheriff proposed the restructuring. The County pays more than their fair share. Staff indicated that the cost was brought down by a third and staff hopes that grants are available for law enforcement for additional personnel for the long and short-term. Mayor Pro Tempore Hunter pointed out that it is spelled out in the staff report in regard to the County's contribution, which is substantial.

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

Council Member Cahill asked what happens if the Twin Cities pulls out. Town Manager Broad explained that it would affect the budget for 2010-2011.

The Council agreed to approve a Marin County Major Crimes Task Force Joint Exercise of Powers Agreement and revise the task force's organizational and financial structure. The MCTF, which has been in existence since 1997, is a specialized undercover unit focused on drug-related criminal activity. Ross' fiscal year 2009-2010 contribution to the task force is approximately \$17,000.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Cahill seconded, to approve of Marin County Major Crimes Task Force Joint Exercise of Powers Agreement. Motion carried unanimously.

16. **Town Council consideration of adoption of Resolution No. 1678 amending preferential parking on Redwood Drive.**

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adoption of Resolution No. 1678, amending preferential parking on Redwood Drive.

Mayor Strauss opened the public hearing on this item.

Dick Bobo, Redwood Drive resident, believed it is not necessary to have all day restrictions. He pointed out that not being allowed to park on Redwood during the day places a hardship on those conducting business in Town. He suggested considering enforcement of two to three hour parking restrictions along Redwood Drive, the south end of Ross Common and Ross Common through the Town. He also recommended that the school consider a crossing guard, and he would gladly donate funds for the vest.

Carla Small, Duff Lane resident, did not understand why teachers couldn't park on Lagunitas and walk through Allen. Restrictions should be in place and violators should be ticketed. Mayor Strauss agreed if tickets are issued then it would become apparent that parking is being enforced. Town Manager Broad agreed to add information to that effect in "*The Morning After*."

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Council Member Martin noted that Bob Dickenson and Lynn Langford have great recommendations because they know the numbers of children that use those intersections daily. They recommend that teachers use Marin Art & Garden Center for parking as well as parents dropping off their kids. He pointed out that Mr. Dickenson is an ongoing School Board member and is committed to developing ideas. He further noted that public works will discuss at their next meeting and he would report back findings.

Council Member Cahill encouraged the audience members to contact the School Board in addition to Town Council. Council Member Skall agreed to reiterate these items to Tammy.

Mr. Bobo asked the Town and the police force to work together to enforce parking restrictions. Police Chief Reis has started the enforcement efforts and issuing citations seems to be the most effective way to get the message across. Citations have been issued for both Redwood Drive and the special three-hour parking restriction.

Ms. Small pointed out that in the past teachers had permits, but it should be limited to certain areas. Mayor Strauss suggested reducing the time north of the Post Office. Police Chief Reis agreed with Ms. Small's idea in regard to restricted permit parking for teachers.

Council Member Skall agreed that public safety would work with Police Chief Reis on this matter.

Mayor Strauss asked if parking could occur at the Marin Art & Garden Center. Town Manager Broad responded that Marin Art & Garden Center must allow parking.

Ross resident suggested specifying where on Lagunitas parking is allowed in terms of the church. Council Member Martin believed the west side of Lagunitas Road was used for teacher parking.

Margaret Francis, Redwood Drive resident appreciated the suggestions and pointed out that she has written letters to the School Board and the Council in regard to seeing the traffic patterns change. The most problematic area are illegal U-turns occurring on Town property, which is 6 Redwood. In terms of examining public safety, she suggested looking at whether or not chaining off Town property is appropriate to avoid U-turns. Mayor Pro Tempore Hunter noted that pylons are being considered.

Mayor Strauss noted that the community must come first and they must all be respectful of one another through the construction. Also, he pointed out that the Post Office is in favor of a bicycle racks.

Barbara Call, Redwood Drive resident, noted that a police vehicle has been parked on Redwood and it has been very effective.

Cate Babcock, Redwood Drive resident, thanked the Town Council for instituting preferential parking. She pointed out that parents do not want to change their behavior. She has witnessed less behavior since the Council took this action. Due to the fear of receiving a ticket, parents are parking on Redwood less.

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

Council Member Cahill asked staff about limiting hours as suggested by Mr. Bobo. Police Chief Reis agreed with narrowing the hours, but a sign reflecting hours can become confusing. Mayor Pro Tempore Hunter suggested making it a policy that restrictions are enforced during school hours. Council Member Cahill agreed. He noted that the purpose is to deal with parents dropping off and picking up their children from school, so he suggested not changing the signage or ordinance, but have it as policy that it is enforced during school hours.

After receiving feedback from residents, the Council agreed to amend the Redwood Drive parking restrictions and now each Redwood Drive resident will be eligible to receive four parking permits. Permits will be free, and residents who have previously paid \$20 for a permit will receive a refund of their payment. The Council also decided to shorten the parking restriction period to June 10, 2010. Parking permits must be hung from the rear view mirror or displayed in the windshield. The Council discussed issuing Ross School teachers parking permits for specific locations in order to free up parking spaces near the Post Office and downtown businesses, so teachers are requested to park on Lagunitas Road.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Cahill seconded, to adopt Resolution No. 1678, amending preferential parking on Redwood Drive, with an advisory to Public Safety that enforcement is centered around school drop-off/pickup times, including the additional language in regard to hanging signage as follows: *“unless such vehicles shall have prominently displayed from the vehicles rear view mirror or windshield, a Ross residential parking permit indicating an exemption from such restriction or prohibition.”* Motion carried unanimously.

17. Town Council consideration of authorizing necessary work for the rental of 6 Redwood Drive. If authorized, the FY09-10 budget will be amended to provide funding for this work.

Council Member Martin summarized the staff report and recommended that the Council consider authorizing the necessary work for the rental of 6 Redwood Drive.

Christine Goodman, Prandi Property Management, noted that she has been in this industry for 27 years in Marin County. She believes this is a perfect fit for their portfolio. They are very happy to take this on and believed the time is right for the Town.

Jack Damato, Prandi Maintenance Director, indicated that the price could be altered, so it is flexible. They must add a simple fence in front to address concerns. Most of the work is trimming the redwood trees, which must be done regardless of this project moving forward. All the fallen trees must be removed as well. Some funds will be used for routine maintenance such as painting and cleaning the carpets. The heater is located under the house, which is not very energy efficient. Once a decision is made on what will occur, they will receive three competitive bids.

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Mayor Strauss asked if Town employees or school teachers would be exempt from the 6%. Ms. Goodman noted that it could be up for negotiation. The leasing fee only occurs with a full service of the residence. She also noted that the contact is based on a month-to-month basis. Mr. Damato pointed out that all paperwork is included in that fee. Mayor Pro Tempore Hunter desired to know the compensation Prandi Property Management will receive. Ms. Goodman explained that it all falls under the management agreement as referenced in their letter, which is the 7%.

Mayor Strauss opened the public hearing on this item.

Ross resident asked how much rent would the Town collect for 6 Redwood. Council Member Martin believed around \$1450 per month. Mr. Goodman indicated that low income would be two-thirds of the fair market rent.

Carla Small, Duff Lane resident, clarified that it is one unit and she did not see any reason to hire a property management company to rent out this property. Between Town employees and school teachers that currently rent in-law units, this would not be a stressful job on the part of Town staff or the Town Manager to find a renter for this property. 6% per month to rent one unit did not seem feasible in her view. She further believed it is a waste of money.

Dick Bobo, Redwood Drive resident, explained that property management warrants benefits in his view. They earn their money when handling matters, so everyone must look at the total picture. Mr. Damato agreed and noted that 24-hour service is included. They have emergency numbers for immediate assistance. They know the laws and rules of what must be done. It is not just the background check, but more of the accounting aspect.

Barbara Call, Redwood Drive resident, asked if the services included landscaping. Mr. Damato indicated that it is not included in the monthly fee.

Town Manager Broad added that multiple relations could be awkward. Moving from landlord/tenant relationship from employer/employee relationship is a concern. An outside body handling the tenant/landlord relationship is appropriate that way staff is not obligated to balance situations. Ms. Call agreed with staff's comments.

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

Mayor Strauss agreed with Ms. Small that the Town could manage this unit and a property management company is not necessary.

Mayor Pro Tempore Hunter pointed out that there is a lot involved in the clean up. The fee for that is roughly \$1400 to oversee the entire bid process and project management, which is a good value. He agreed with staff that this could get sticky in terms of tenant/landlord relationship and employer/employee relationship. Council Member Cahill indicated that there are notices that must be provided in terms of evicting tenants and one must be available 24/7.

Mayor Pro Tempore Hunter believed the Town could rent the property for \$1500 plus the \$175 fee. Council Member Skall noted that they have not been receiving any money for over

one year. Council Member Martin wanted to get it occupied and felt this is a productive use. Council Member Cahill noted that Town staff is not a professional property management company. There are many aspects in regard to property disclosures, lease forms and then 24/7 accountability and notices. \$175 fee is a great deal for this service, which is on a month-to-month basis.

Mayor Strauss believed it must be reviewed from time-to-time. He wanted the furnace above the flood plain. Council Member Martin noted that it would be monitored and he would assist the Town Manager. Also, the cyclone fence is collapsing, which would be a future improvement of the Town or school. It cannot be fixed due to the portables.

Mayor Strauss asked staff who has been maintaining the landscaping for 6 Redwood Drive. Town Manager Broad responded that Superintendent Maccario and Buzz Doughty have cleaned the property. Often times properties rent with the understanding that the tenant is required to maintain the yard. Council Member Martin pointed out that it is a low maintenance property. It has an irrigation system. Town Manager Broad agreed to talk with Prandi Property Management in regard to the suggestions provided.

The Council agreed to authorize necessary work for the rental of 6 Redwood Drive and agreed to amend the FY 2009-2010 to provide up to \$30,000 for the work. The Town will hire Prandi Property Management to oversee improvements to the property, including fence, roof repairs, relocation of a new heater, completion of a previous bathroom remodel, repainting and landscaping. The Council also discussed contracting with Prandi to lease and manage the property for \$175 per month. The Town will explore renting the house to a Town employee or a Ross School teacher as affordable housing.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Cahill seconded, to amend the budget to allow \$30,000 for repairs of 6 Redwood Drive to include the initial fee and coordinate the project between Council Member Martin and Town Manager Broad. Motion carried unanimously.

18. Town Council consideration of adoption of Resolution No. 1675 amending Resolution No. 1630 eliminating planning fees for second units and home occupation permits, reducing variance fees for second units in existing nonconforming structures and clarifying parcel slope determination fees. Town Council discussion of potential municipal code amendments to streamline some development applications and reduce applicant processing costs.

Town Manager Gary Broad summarized the staff report and recommended that the Council consider adoption of Resolution No. 1675, amending Resolution No. 1630, eliminating planning fees for second units and home occupation permits, reducing variance fees for second units in existing nonconforming structures and clarifying parcel slope determination fees. Town Council discussion of potential municipal code amendments to streamline some development applications and reduce applicant processing costs.

Mayor Strauss opened the public hearing on this item.

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Carla Small, Duff Lane resident, expressed concern for going two years and the fact that she did not have enough time to digest the information.

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

Council Member Skall supported staff's recommendations.

Mayor Pro Tempore Hunter wanted to add the report in regard to Item No. 6. Town Manager Broad indicated that it is in the municipal code and that matter could come back very quickly. Mayor Pro Tempore Hunter asked staff if Item No. 5 in regard to amending Section 18.20 falls under the same category. Town Manager Broad explained that Item No. 5 would take some work.

Mayor Strauss noted support for Item Nos.: 1-4. The Council agreed.

Council Member Cahill discussed Item No. 7 in regard to one-year expiration for project approval and pointed out that he is uncomfortable going out two years. He suggested eliminating the \$1,000 fee to receive the extension. He felt it is not a bad idea for the Council to have a right to take a fresh look after one year, so in his view it is appropriate to review in one-year. The Council concurred.

Council Member Martin discussed Item No. 5 and stated that it is very important to have tough zoning standards because there are some unintended uses that can slip in, such as medical marijuana. Public discussion is needed on reducing the mandatory nine-month break between building permits in regard to Item No. 9. The original intent is to give adjacent homeowners a break in between construction projects. Town Manager Broad believed the devil would be in the details in regard to Item No. 5, but staff will review, and if the Council is not comfortable, then it would not be adopted. Staff had no objection to the one-year project approval. Staff agreed to reduce the fee to \$500 in order to still retain control. Staff noted that \$1000 is a generous fee, but it depends on the project. Senior Planner Semonian believed \$500 just covers the cost in terms of notices and sometimes the \$1000 appeal fee exceeds the application fee for a project. Town Manager Broad pointed out that the fee amount could be changed in the resolution.

Mayor Strauss favored the 500-foot radius in order to keep the community aware of what is happening. The Council agreed.

The Council agreed to eliminate the \$300 second unit permit application fee and to cap variances fees for second units in existing nonconforming structures to \$300. The council also agreed to eliminate the \$100 home occupation permit fee and to reduce the \$1,000 fee to request a one-year extension of a planning approval to \$500. The Council discussed potential municipal code amendments and one proposal is to provide some permitted uses in the commercial area, such as restaurants and retail stores, so potential businesses do not need to pay \$300 and apply for a use permit. The Council also agreed to consider revising the mandatory nine-month break between building permits to give the building official discretion to allow additional work that does not have off-site impacts. The Council further supported a code amendment to extend the time a report of residential building records is

valid from six months to one year. Staff will draft an ordinance containing these code amendments for future Council review.

Mayor Strauss asked for a motion.

Mayor Pro Tempore Hunter moved and Council Member Skall seconded, to adopt Resolution No. 1675, Item Nos.: 1-4 with the addition of Item No. 7 wherein the fee for the second year renewable is changed from \$1000 to \$500. Motion carried unanimously.

The Council took a short recess at 8:47 p.m.

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

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

a. **Downtown plan** – Mayor/Hunter

Mayor Strauss will continue to work on the downtown plan, which remains on the list of Council goals for a third year. One priority is to complete drawings on the downtown plan as soon as possible.

b. **Public facilities** - Cahill

Council Member Cahill will study improvements to public facilities, including the civic center buildings and Ross Common. The Council will consider the construction of new facilities as well as an offer by the Marin Art & Garden Center to use their facilities for Town business.

c. **Flood control** – Martin

Council Member Martin will shepherd flood control projects, including development of a new stormwater ordinance. The Council agreed to include right-of-way regulation in this goal, as landscaping and parking in the right-of-way often impacts drainage.

d. **Hillside lot ordinance review** - Skall

Council Member Skall will spearhead a review of the hillside lot ordinance, with a goal to make the ordinance more specific, so applicants know exactly how it will be applied to their property.

e. **Unfunded mandates/pensions** - Hunter

Mayor Pro Tempore Hunter will study unfunded mandates and pensions. Although the Town's finances are in great shape, pensions are of countywide concern.

20. **7 Woodhaven Road, Variance, Design Review, Hillside Lot/Hazard Zone 4 Use Permit No. 1680**

Steve Bode, 7 Woodhaven Road, A.P. No. 73-021-04, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size), Very Low Density (.1-1 Units/Acre). Town Council consideration of the Town Attorney's opinion that the September 11, 2008,

appeal by Dick and Patty Treadwell, is void because there is no right to appeal a Town Council decision. If the appeal is void, the applicant Steve Bode requests the original approval be re-instated for the full one-year term. The original approval was for the following:

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

Existing and Proposed Conditions:

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

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

Senior Planner Elise Semonian summarized the staff report and recommendation by the Town Attorney that the Council provide the applicant with an additional 60-days from September 10, 2009, to file a building permit application or to request an extension of the original approval. The 60-days would account for the time that the applicant lost between the date of the approval and the date of the appeal hearing. Town Attorney Hadden Roth reasons that after the September 11, 2008 hearing, the applicant was free to submit an application for a building permit for the project. The Town Council has not received an application for a building permit for this project. The Council should consider the chronology of events related to this project and decide on the appropriate duration for its planning approval. If additional time is granted, prior to the conclusion of the time period, the applicant may request a time extension from the Town Council of up to one year. As part of that extension consideration, the Council could choose not to grant the extension or to modify the approval.

Mayor Pro Tempore Hunter desired an explanation from staff on how this occurred. Town Attorney Hadden Roth recollected that staff asked him if it made sense for the Council, sitting as the Planning Commission, to hear the same matter as the final appellate body, which, he advised, is legal. Staff apparently got the impression that he was affirming the right to appeal. An appeal can be structured by local ordinance, but that has not been done in Ross with regard to the use permits, variances or design review. Staff noted that the

Council must approve all applications. Staff further noted that this matter was first discovered in June of this year.

Council Member Martin asked staff when the appeal was granted, did they receive an appeal or protest. Senior Planner Semonian indicated that the applicant objected to the appeal, not in writing, but verbally at the meeting.

Council Member Cahill asked staff if there is a rule that for a legal challenge it must be made within 90-days. Town Attorney Hadden Roth stated there is a 90-day requirement to file and serve a writ mandate after the final decision. There is no basis for the appeal in this instance because there is no authority established by local ordinance. It is a void act. . Council Member Martin clarified that it is as if they granted the application without the appeal, so it has been running all that time and expired. Town Attorney Hadden Roth stated he looks at this as a judge would in terms of his legal analysis, and at a minimum the appeal should be declared void because there is no legal basis for the hearing on appeal. It must be reinstated due to the mistake the Town made in delaying and shortening the process at least two months. At a minimum, the Council should award the applicant 60 more days in order to ask for another extension. Attorney Roth reiterated that from a legal analysis, the Council should give reinstatement, at minimum 60 days from today. Council Member Martin asked staff if that is considered equitable estoppel. Town Attorney Hadden Roth responded that this is an equitable proceeding, but to sustain the appeal by estoppel is not warranted under the cases.

Council Member Martin noted that a similar case occurred in Fairfax that went to the State Court of Appeals in 1994. It was similar circumstances where there were administrative hearings and there was some sort of glitch, and because there was not an active pursuit of overturning, the Court found it should have gone on uncorrected. The Court found that government does not have to give equitable estoppel, and cannot find precedent. Town Attorney Hadden Roth indicated that there are cases in which equitable estoppel has been granted , but they are very rare. Attorney Roth said he is open to any ideas of the Council, but did not see how the Council can validate the appeal. There is no written authority, so it cannot be validated.

Council Member Cahill stated one reason why they changed the approval for the project was that at the time of the original approval information was submitted at the last minute. As the Council discovered, it was information that had not been digested. The Council modified their approval and limited the project based on information that was provided late on the appeal. Council member Cahill questioned if the Council could rescind an approval if information was received late. Town Attorney Hadden Roth noted that the matter could have been continued. Staff indicated that the Council has the following options: 1) rescind or declare the appeal void; and 2) make a decision to reinstate the period of time for which to complete the project, and then decide on the timeframe.

Mayor Pro Tempore Hunter asked staff if the Council could declare the project approval null and void because the one year period to begin construction or obtain a building permit has expired. Town Attorney Hadden Roth believed that could occur, but wondered if that is fair. Mayor Pro Tempore Hunter agreed it is not fair. Senior Planner Semonian noted that the applicant desired one-year from the original approval. Mayor Pro Tempore Hunter believed out of fairness, the Town must give something. The reason the appeal won was due to the

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late arrival of information. It was the Council's belief then and today that the decision was the right decision. He then asked if they were to give a longer time to the applicant would he accept the approval that came out of the appeal.

Steve Bode, applicant, stated when applying for project approval, he must rely on staff and the Council. He is unaware of all the legal aspects. One assertion is that not all information was made available to all parties involved in a timely fashion, which is not true. All parties were involved and all agreed they had the information to make their case. Why the appeal was upheld was after the original presentation and approvals were made and the citizens did not agree and made comments that should have happened the first time. The second assertion is that he has not done anything in 10 months, which is not true. He met with the Town Manager in terms of options. If his neighbors could appeal, then maybe he should appeal. Furthermore, after that meeting, he met with the Treadwell's to discuss the situation, but they did not get very far. He had the appeal and they wanted to change the project further and he did not have the money. In terms of the economy, he has been trying to find funding to build the house. He does not know the legal issues of the appeal. Now, he received a phone call from Architect Richard Hannum indicating that the appeal was not valid, so he immediately wrote a letter and is before the Council. His argument about the time is giving him 90 days, but what should he have been working on. The project he thought was approved was void. He has to start from today. It takes at least one year to put together a project such as this. Granting 90 days is great, but then he must come back before the Council before 90 days to bring in all the neighbors for another 90 days. He believed the appeal decision was an entirely new project.

Mayor Strauss clarified that the applicant moved forward with construction documents. Mr. Bode responded that he did move forward with construction documents in regard to the reduced area and then he has been in limbo due to the economy.

Mayor Pro Tempore Hunter asked if they were granted more time based on the appeal project, would that be of any interest or value. Mr. Bode explained that it is not about the size, but to modify now has significant ramifications on the design. It cost money to change the design and at 500 sq. ft. it will not impact the neighbors, but it will impact his house. Also, the Council must consider the appeal brought in the idea of taking away a second unit from the housing stock, so did not see the benefit of going back to the appeal.

Mayor Strauss opened the public hearing on this item.

Dick Treadwell, Woodhaven Road resident, stated it is quiet tree-lined, single lane dead-end road that serves five modest homes. Mr. Bode wants to demolish the existing residence and replace with two residences that are too much for this lot. They filed an appeal that was upheld by the Council reversing prior conditions. Now, one year later the Town Attorney is of the opinion that their appeal is invalid and void. He then read two letters into the record, one dated September 3rd, 2009 and one dated September 8th, 2009 as follows:

September 3, 2009 Letter:

With reference to the building permit application of Mr. Steve Bode for the development of his property at 7 Woodhaven Road, we, the undersigned, last year filed an appeal with the Council regarding its decision on this application. Our appeal was duly filed with a filing fee of \$500 and was accepted and acted upon by the Council resulting in the upholding of our appeal and the reversal of its earlier decision. The filing of this appeal

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was prompted by the fact that the applicant did not provide the required development plans for this property along with the application until the day of the Council meeting in violation of the regulations for the complete filing of a building permit application a certain number of days prior to the Council meeting at which the application is to be considered. So, neither we, nor the members of the Council, were granted the required time to review and digest the plans in order to provide intelligent commentary. This failure by the applicant to provide a complete application in a timely manner is in violation of the pertinent regulations of the town and should void the decision of the Council on this application.

Now, one year later, it appears that the validity of our appeal is in question. Our appeal has served as a trigger, which caused the Council to continue the discussion on and to reconsider its decision on this application. Whether our appeal is deemed valid or not, the reasoning and deliberation of the Council in further examining this application and then coming to a different conclusion is perfectly valid and stands on its own two feet separate of the appeal.

Gentlemen, please do not let a technicality of the appeals process trump your duty and responsibility to come to the right decision on this application in compliance with the ordinances and regulations applicable to the town.

The main issue here is the interpretation and application of the HLO. This ordinance substantially exceeds the square-footage allowed to be built on this property deemed as determined by the Planning Department's interpretation of this ordinance and includes the construction of two structures all of which requires the issuance of several variance.

In our opinion, the best solution in complying with this ordinance is the elimination of the second structure and the concentration of the allowable square-footage in the main residence. However, in any even, we suggest and request that the Council require that the square-footage of this development be limited to that amount allowed by the HLO as interpreted by the Planning Department.

*Yours truly,
Richard and Patronella Treadwell*

September 8, 2009 Letter:

With reference to our letter to the Council of September 3, 2009, this letter provides some additional thoughts for your consideration.

After we decided to appeal the decision of the Council regarding the building permit application for 7 Woodhaven Road, we approached the town through its Planning Department to ascertain the proper procedure for filing our appeal. We then filed our appeal, including a filing fee of \$500, which was duly accepted and acted upon by the Council resulting in the upholding of our appeal and the reversal of its decision on this application. Now one year later, the validity of our appeal is in question.

We are all aware of the legal principle and concept of the statute of limitations, which eliminates the right to bring a legal action after the passage of a certain period of time. If a statute of limitations applies in this case it certainly should be employed. However, even if the absence of such a specific statute, the principle and concept of the statute of limitations should apply in the Council's consideration and deliberations as to the validity of

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our appeal, considering the fact that a one year period intervened between the action of the Council on our appeal and the questioning of its validity.

Why did it take one year after the upholding of our appeal for its validity to come into question? Our appeal complied with all of the procedures required per the Planning Department and was accepted and acted upon by the Council routinely.

The Council must now consider the opinion of the Town Attorney that our appeal, one year later is being upheld by the Council, is void. The Council has the authority to reject the opinion of the Town Attorney which we feel it should do based upon its previous deliberations, conclusions and rulings relating to this application and upon the gross procrastination of the Town Attorney in giving his opinion on the validity of our appeal in a timely manner.

*Yours truly,
Richard and Patronella Treadwell*

Carla Small, Duff Lane resident, noted this was the first project the ADR group reviewed and Architect Richard Hannum sits on the ADR. The Council made a decision based on design review, and the Council did not have jurisdiction to make such decision, which is very problematic in this decision. The neighborhood will suffer. This will be creating additional mass in that neighborhood more so than deemed realistically in the ordinance. She asked the cutoff date last year at the Council meeting and from the Town Manager's answer, she does not understand the cut off dates in regard to when material must be submitted to staff. She asked if it is 10 days, 3 days or 7 days. She added that no matter how this matter is decided, these items must be very clear so they are all working under the same game plan. She further believed this is a mess because items are not clearly spelled out.

Jessica Hart, Thomas Court resident, felt the Council is acting unfairly. This project will require variances to the detriment of the abutting neighbors. She further requested that the Council uphold the design from one-year ago.

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

Town Attorney Hadden Roth indicated to the Council that he has not done a complete research, but it is doubtful that the appeal could be sustained on a statute of limitations basis. The Town must determine which statute applies in this case and what the limitations period is. Staff is not aware off hand. It seems logical that the Council cannot create something out of whole cloth. In the case where there is no procedure established, there is no rule of law. Roth desired to do more research.

Council Member Martin would be glad to provide staff the opinion he researched that covers the opinion and process. If there was a decision made incorrectly and an agency gave bad advice and the applicant did not pursue some sort of appeal to turn it over, then it does not have to be rewarded. He noted that it cannot be justified. Time has passed and bonus time is not necessary. Town Attorney Hadden Roth explained that the scales of justice must be balanced evenly between the public and the applicant. Staff recommended at minimum 60 days, which is the time lost between the initial approval and the appeal. July 10, 2008 was

the original approval. The appeal was filed on the 10th and the appeal was decided on December 11th, so 60 days later.

Council Member Martin believed they have a right of appeal. The record is not clear. Documents were submitted at the last minute and no one had the ability to digest the information. It is appropriate for this body, when on appeal, to reconsider and hear the evidence and be able to have a different perspective. Council Member Cahill believed that is a different issue.

Mayor Strauss wanted to find reasonableness. He believed the Council must rescind what they did. It is void. He recommended following the Town Attorney's advice and establish an amount of time reasonable for the community, property owner and Town. He suggested five months. Two months between the original approval and appeal and then between June and today's date, which is approximately three months, so a total of five months. Mayor Pro Tempore Hunter agreed it must be balanced. This Council voted 4:1 to approve the project the first time. The Council tries to do what is right, so there must be fairness. He would entertain the notion of a full year, if the applicant would accept what came out of the appeal. Council Member Cahill noted that the advantage of that is at the end of that period it is open to the public for the extension. The project may be reduced below what was approved at the appeal. Also, the applicant must be aware that by not agreeing to reinstate the appeal, he runs the risk in two or five months of not having as much square-footage as granted.

Council Member Martin clarified that Mayor Pro Tempore Hunter will grant one-year if the parties stipulate to that reduction. Mayor Pro Tempore Hunter suggested that if the applicant would agree to accept what came out of that appeal, the Council would start the clock now, which will give twelve months. As opposed to the 60-day option or five-month option, the applicant will be back fighting the same battle. Mr. Bode agreed to fight the same battle. His rights were taken away from the property, and in order to get those rights reinstated from that mistake he must agree to the appeal, which in his view is not fair. Mayor Pro Tempore Hunter stated that a good part of last year construction documents were compiled, and in this scenario, there is more time to find funding. Mr. Bode understands, but in the process of that design he can maybe trim some, but not 500 sq. ft. In the five months, significant progress can occur and maybe they can reach some resolution so that when he comes back in five months his odds are good.

The Council believed they should get a second opinion on this matter. Town Attorney Hadden Roth agreed to review the matter again. The only issue is whether or not the statute of limitations applies. The appeal was not legal from the beginning, since there was no process, so it is not valid. Can it be shielded from attack by the statute of limitations?

Town Manager Broad pointed out that there is a \$500 appeal fee for all appeals. Town Attorney Hadden Roth stated that State law mandates that there be a two-step process with regard to zoning ordinance amendments: a planning commission hearing and then a council hearing. That must occur in every community. It is basically the same with general plan amendments. Elise Semonian pointed out there have been reconsiderations of decisions. The Town Attorney indicated the most recent reconsideration involved a case where the neighbors were not notified, so they did not have input. This was based on a California Supreme Court opinion which held that to deprive neighbors of their right to participate in a hearing of a project is a denial of due process and in that situation reconsideration —a

rehearing —should occur. Council Member Cahill asked staff how is that different than all applicable materials provided within a certain time before the hearing and made available to neighbors. Town Attorney Hadden Roth explained that there is no cut off date established before a council meeting for the submission of materials.

Council Member Martin noted that they could establish a process in the future to allow appeals. Town Manager Broad stated under State law, sitting as a Planning Commission, not as the Council. Based on State law sitting as the Planning Commission decisions could be appealed to the Council.

Mayor Pro Tempore Hunter desired a second opinion and suggested continuing this matter to the next meeting. Part of the review will be the case provided by Council Member Martin. Town Attorney Hadden Roth agreed to review whether the statute of limitations applies and has run. Roth will review to be absolutely positive and then he would send out his opinion to the Council before the next meeting.

Mayor Pro Tempore Hunter agreed with the five months, as indicated by the applicant. It is an opportunity to work with the neighbors. Mr. Bode reiterated that he agreed with the five months and believed they are going through a lot for what really was not a big change. Council Member Martin believed this should have been worked out one year ago between neighbors. He added that when caught in a legal debate it is a mess. He agreed to continue the matter and encouraged the applicant to meet with the neighbors to hopefully reach an amicable decision between both parties before the next Town Council meeting. Council Member Cahill and Skall concurred. Council Member Cahill believed that would allow an opportunity for the Town Attorney to research and understand whether or not the statute of limitations does apply. He further noted that this is the kind of issue neighbors ideally work out in a reasonable manner.

Mayor Strauss asked for a motion.

Council Member Martin moved and Council Member Cahill seconded, to continue the matter to the October Town Council meeting awaiting the opinion of the Town Counsel and hopefully resolution from the neighbors. Motion carried unanimously.

Town Attorney Hadden Roth excused himself from the Ross Town Council meeting at 10:00 p.m.

21. 81 Wellington Avenue, Variance No. 1746

Paul & Valerie Herzog, 81 Wellington Avenue, A.P. No. 72-072-21, R-1:B-10 (Single Family Residential), Medium Low Density (3-6 units per acre). Request for variances to permit an outdoor fireplace, outdoor kitchen, and new patio and deck areas within the side setbacks (15 feet required, 0 feet proposed) and rear yard setback (40 feet required, 3 feet proposed). A tree removal permit is also requested to remove a pittosporum, privet and bay tree.

Senior Planner Elise Semonian summarized the staff report and noted that the applicant is requesting that the Council approve variances to permit an outdoor fireplace, kitchen and other landscape improvements within the required yard setbacks. The applicant had submitted the required neighbor acknowledgments. Staff recommended that the Council approve the application based on the findings and conditions.

Paul Herzog, applicant, spoke with many council members who visited the property and explained that they are taking an existing entertainment area in the backyard and making improvements. They desired a nicer backyard area. The property works out very well with the road higher. He worked with his landscape architect and they found solutions to the conditions.

Council Member Martin asked if the patio area would be a pervious surface. Landscape Architect Brian recommended a patio surface drain to a percolation pit located on-site, so it will take all surface runoff into a detention pit below grade to allow water to infiltrate back into the ground. The tank is below ground. It is 24-in. diameter pipe at 8 to 10 ft. in length that is set horizontally in the ground. The volume of that pipe would allow for retention of water surrounded by gravel. Council Member Martin asked if that is satisfactory size to handle a fairly significant amount of water. Landscape Architect Brian responded in the affirmative. If necessary, they can provide calculations.

Mayor Pro Tempore Hunter asked if the fireplace is wood burning or gas. Mr. Herzog loves wood fires and would rather have an EPA certified wood burning fireplace. The spare the air website indicates the days when wood burning is not allowed. He has a wood burning fireplace in the existing house. He pointed out that he has less than ten fires per year outside. He further noted that it is a dream to have a wood burning fireplace outside.

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

Council Member Skall had no objection. He pointed out that it is a controlled environment, so in this case, he favored a wood burning fireplace. Mayor Strauss favored the project, but not the wood burning fireplace.

Mayor Pro Tempore Hunter stated that if they are going to change policy, then they must have a separate hearing in regard to prohibiting wood burning fireplaces. Without having passed an ordinance, he would not require the applicant to have a gas burning fireplace. Council Members Martin and Cahill concurred.

Mayor Strauss wished the applicant would reconsider a gas fireplace.

Mayor Strauss asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to approve the application at 81 Wellington Avenue as described in the staff report with findings and conditions outlined in the staff as well as work with staff in regard to the calculations of the runoff. Motion carried 4-1. Mayor opposed.

Herzog, 81 Wellington Avenue, Variance, File 1746

Conditions:

1. All new site drainage shall be dissipated on site and not directly to any culvert or watercourse. Plans submitted for the building permit shall demonstrate that all new patio and deck areas will not create new runoff. The applicant shall accomplish this

- by including pervious surfaces, sloping deck and patio areas to drain into adjacent landscape areas, or other equivalent means.
2. The project shall comply with all requirements of the Bay Area Air Quality Management District Regulation 6 “Particulate Matter and Visible Emissions Rule 3 Wood Burning Devices”.
 3. Landscaping shall be installed as shown on the approved plans prior to project final. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
 4. Any exterior lighting shall not create glare, hazard or annoyance to adjacent property owners. Lighting shall be shielded and directed downward.
 5. This project shall comply with the following requirements of the Department of Public Safety: 1.) Clear all brush impinging on the access roadway; 2.) A street number must be posted {minimum four inches on contrasting background}; and 3.) The property must be cleared of all dead or dying flammable materials.
 6. No changes from the approved plans, before or after project final, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any change.
 7. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. 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.
 8. 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. As provided in Municipal Code Section 15.50.040 construction shall be complete upon the final performance of all construction work, including: exterior repairs and remodeling; total compliance with all conditions of application approval, including required landscaping; and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
 9. Any portable toilets shall be placed off the street and out of public view. Any temporary fencing shall not be an orange or other bright color.
 10. Failure to secure required building permits and/or begin construction by July 9, 2010 will cause the approval to lapse without further notice.
 11. 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. 19 Brookwood, Variance and Design Review No. 1724

Les Sherman and Patricia Duffy, 19 Brookwood, A.P. No. 73-311-02, R-1: B-10 (Single Family Residence, 10,000 SF Minimum Lot Size), Medium Low Density (3-6 Units/Acre). Design review and variances to allow a significant remodel of the existing residence, including replacement of all windows with new wood windows, addition of stone veneer at the base of the residence, and new main level deck and third floor balcony on the east facing (rear) elevation. The project involves development of the existing basement storage level with a 698 square foot second unit, 533 square foot, two-car, garage, laundry room, and circulation areas (2 stories permitted, 3 stories proposed). A total addition of 1,454 square feet is proposed. The 540 square foot detached garage would be demolished. The residence would be elevated to prevent the new lower level from damage from flooding. As a result, a height variance is requested to allow a portion of the roof to be raised further above the 30-foot height limit (30.75 feet existing, 32.5 feet proposed).

Lot area		17,119 square feet	
Existing Floor Area	3,381 sq. ft.	20.0%	
Proposed Floor Area	4,295 sq. ft.	25.0%	(20% permitted)
Existing Lot Coverage		15.2%	
Proposed Lot Coverage		14.9%	(20% permitted)

The existing residence is non-conforming with regard to building height and front yard setbacks pursuant to a variance approved in 1996.

Senior Planner Elise Semonian summarized the staff report and explained that if the Council can find substantial evidence to make the variance findings and approve the application, the Council should indicate those facts and staff will direct a resolution to be approved at the October Council meeting, subject to the conditions. If the Council requires any modifications or additional material, this item should be continued.

Mayor Pro Tempore Hunter asked staff, absent the bonus, are there findings for the FAR. If there were no desire to dedicate the low-income unit, would the bonus go away. He then asked staff what are the findings to approve the FAR. Senior Planner Semonian explained that the applicants could construct the unit if they reduce the size of the main residence.

Council Member Cahill believed the findings would be that they are removing a garage next to the creek, improving the area near the creek, reducing impervious surfaces, and building the unit in an existing mass under the main residence. As a tradeoff, the Council is allowing the applicant to move that space into an existing structure. Senior Planner Semonian indicated those could be the findings in support the application. Staff attached the applicant's statements and justifications that could be used, if so approved tonight.

Mayor Strauss asked staff if it is mandated by the State for this flood elevation. Senior Planner Semonian explained that if they do not elevate the floor, it could impact flood insurance rates in Town. Also, the Council would be approving a structure under the base flood elevation. The Public Works Department would like the base flood elevation to be something reasonable and based on accurate information. Council Member Martin believed there could be a procedure to evaluate and certify that the baseline flood elevation is lower

than what is proposed. It is possible that the finding can be made so the applicant could dig down rather than elevate the house.

Mike Sherman, applicant, appreciated the Council's time and noted that his architect will report on the issues.

Greg Johnson, architect, stated in further conversations regarding flood elevations, Larry Doyle's recommendation is that it could be done at \$10,000 to \$15,000 expense. They must figure out how Murphy Creek acts as a tributary. There is concern with lifting the building and having a portion over the height limit. They could reframe the roof to conform to the height limit. It is a small area of the roof and they would submit the proposal with that exception. Given the timeframe, cost and uncertainty, if they conduct hydrology report, it might only be 4 in. below, which would not help. He further noted that they want to move forward with the project. Mr. Sherman believed they would have to redo their entire foundation, so it would not save as much money as anticipated.

Architect Johnson stated with the overall project components, the garage is in the rear and side yard setback. Pulling it back and doing all the creek restoration, pervious surfaces and creating an area for the garage, the net impact is a reduction of 210 sq. ft. in the overall mass of the property. The second unit and internal staircase is within the internal volume of the structure. He further noted that there are several supportive neighbors.

Mayor Pro Tempore Hunter clarified that removal of the driveway would be up to the gate. Architect Johnson indicated that it is very close to the gate.

Council Member Cahill visited the site and a discussion occurred about extending the turnout with a pervious extension to add another parking space and desired a response in that regard. Architect Johnson indicated that it would not be an issue, especially with the landscape components that are present today. They had no objection to that suggestion and agreed to work with staff to determine the length. The idea is to return all of that area to natural landscape.

Mayor Strauss discussed the backup distance in regard to pulling the garage and reducing the amount of area and desired a response. Architect Johnson indicated that he ran a variety of different tests such as from the edge of the driveway and they used no more than 16 ft. distance, so there is more than ample room.

Mayor Strauss opened the public hearing on this item.

Ed Wynn, neighbor, found it very difficult to oppose a neighbors project, but he experienced a major flood in 1982. He asked his neighbors repeatedly to mitigate the noise, which has become a nuisance. He is very concerned about this project, which may exacerbate this situation. He spoke to staff and made a recommendation that if approved, he suggested that the proposed third balcony and the lighting be removed. The original approval in 1996 required the lighting to be shielded, so he asked that the required shielding be installed. He pointed out that there is an air compressor next to the subject property that runs often, which is very annoying and requested that the air compressor be shielded, directed up or relocated. He is concerned about all the construction noise. He has no opposition to the two-car garage, but expressed concern for a second unit under that house, which is basically

creating a third-story that is not permitted under the existing second unit ordinance. They are proposing to increase the square-footage, which is already at 20% and now the allowable amount would be 25%, which is substantial. The potential for increased noise is great. He noted that staff suggested that the windows be half sill to preserve privacy, which he favored. Also, having windows that are not operable would help mitigate noise. He believed there is a loophole in the floor area ordinance. They are allowing more space to be put in. He is trying to be a good neighbor, but he has lived at his residence for 35 years and this must be carefully throughout. He further asked the Council to defer any decision on the second unit until an ordinance is considered.

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

Council Member Skall has been a big proponent of, as long as the property remains within its footprint, what occurs inside is not a concern. He believed it is a fair trade. The Town is eliminating a garage unit that is impacting the watercourse and removing impervious surfaces. Also, if there are additional ways to reduce noise and lighting that should be included.

Mayor Pro Tempore Hunter stated they are talking about increasing this property by almost 1000 sq. ft. On the plus side, they are eliminating that garage and driveway and it is being returned to a pervious surface, which are all positive aspects. He agreed that the compressor should be relocated to mitigate the impacts on the neighbor. He also agreed that the lights should be shielded. On numerous occasions the Council has removed balconies, so he could support removing the third floor balcony. If it is possible to grant a variance on the additional height to not exceed 30 ft., he would be in favor of it. He further supported separating the second unit. Overall, he believed it is a fair trade with the mitigations in regard to the removal of the garage and driveway.

Council Member Martin is not comfortable granting a variance for the height. He believed changes could be made to the plans to address some of Mr. Wynn's concerns as Mayor Pro Tempore Hunter outlined. In terms of segmenting the second unit, he agreed.

Council Member Cahill agreed with Council Member Skall's comments. They have done a wonderful job and he commended the applicant on the great deal of care taken on this design. He believed it is beautiful. In terms of the height issue, he can go either way because not much is visible. He had a hard time finding the story poles. The argument against reducing that roof is that it might create an awkward design for an existing structure. It is not in keeping with the overall design of the building, but he could go either way. In terms of the FAR variance, he agreed with Council Member Skall's comments. If it is an existing structure, one should be allowed to use if there are no impacts to the neighbors. In this case, there is a second unit and there will be more activity. He is in favor of the second unit, which is encouraged in Town. Given all the equities for the property in general, the findings for the additional FAR can be made. 20% of the FAR on the lot is actually slightly more than their current space. Additional square-footage is an addition of 871 sq. ft. over their allowable. It is justified by the fact that they are removing the garage in the watercourse and adding 230 sq. ft. on the side of the house. Most of the FAR addition is within the existing spaces. The other factor is that the Town encourages second parking spaces to be enclosed. That also is a justification for allowing the additional FAR. In terms of the third-story variance, it seems

the Council has approved a lot of third-story variances when it makes sense for the project. He is not sure why they have a limit of two stories. He further agreed that the light should be shielded and the deck should be removed, if it impacts the neighbors.

Mayor Strauss clarified that the entire structure would have sprinklers. Architect Johnson responded in the affirmative.

Mayor Strauss felt if they could get everything in under the house that would be preferred. He suggested giving more depth to the one garage and pulling back a couple feet off the garage by changing the closet configuration, which would be easy to do. He supported removing the third-story deck. He believed they should separate the second unit. Council Member Cahill disagreed. He pointed out that the purpose of this second unit is for an elderly family member to move in and separating the units would defeat the purpose of that program. They do not need to make that kind of a restriction on a homeowner. The Town is trying to get credit for a State mandated requirement and the Town would receive that credit whether they block off the second unit or not. Senior Planner Semonian concurred. Council Member Cahill asked staff if it is a requirement to have an agreement to receive credit. Senior Planner Semonian explained that only a certain number of units can be counted, so if all the Town receives are second units, the Town cannot count them all as low or very low. Staff further noted that low or very low units would be based on the household unit.

Council Member Martin did not know it was to accommodate an older member of the family, so he is comfortable with not having a segregated unit.

Council Member Cahill wondered if the Council should not require the agreement. Mayor Pro Tempore Hunter noted that when they place a deed restriction on a property it is a lot to ask, especially when a second unit is included. He expressed concern in that regard on this particular property. Town Manager Broad explained that policy has not been flushed out and the applicant should not be penalized on an item that has not been fully vetted. Senior Planner Semonian noted that it could be optional because they receive a reduction in water fees from MMWD.

Mayor Strauss recommended that the Council review the two-story limit.

Mr. Sherman asked staff about combining the lots. Senior Planner Semonian indicated that it is a single parcel number, but composed of two lots in the original subdivision. Mr. Wynn reiterated to the Council the importance of the windows being at half sill. Senior Planner Semonian suggested raising the sill heights that face Mr. Wynn's property. The main level is the only level visible to Mr. Wynn's property. Mayor Strauss left the matter to the homeowners to be respectful of each other by using blinds and so forth. The Council agreed.

Mayor Strauss asked for a motion.

Council Member Cahill moved and Mayor Pro Tempore Hunter seconded, to approve the project at 19 Brookwood based on the materials submitted and the findings made at the public hearing and provided by the applicant, subject to the conditions below. The motion carried unanimously.

Conditions:

The following conditions shall be reproduced on the first page(s) of the project plans.

1. The third floor deck shall be removed from the plan.
2. A pervious extension for a third, unenclosed, parking space shall be provided.
3. The air conditioning unit shall be sound proofed.
4. A pre construction meeting with Town staff and the contractor shall be required prior to issuance of the building permit to review the conditions of project approval.
5. The pool equipment may remain in its present location but shall be insulated to reduce noise. Setback variances or design review may be required to relocate the pool equipment.
6. The project shall comply with all requirements of the Marin Municipal Water District, including payment of connection fees.
7. 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 FOR REVIEW AND APPROVAL PRIOR TO ANY CHANGE.
8. Unless evidence is provided that the lots have been merged, the lots shall be merged prior to final inspection on the project.
9. All roof runoff should be dissipated on site and not directly to the creek.
10. Except as otherwise provided in these conditions, the project shall comply with the approved plans. Plans submitted for the building permit shall reflect any modifications required by the Town Council.
11. All costs for town consultant, such as the town engineer, review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
12. In disturbed areas within 25 feet of the top bank of the creek, the landscape plans shall include plantings only from the creek side plant list. The planting plan within this area should be designed specifically to establish a native California riparian woodland plant community, and with a multi-level structure that may serve as quality bird habitat.
13. The applicant shall take the precautions for accidental discovery of archaeological resources 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.
14. Plans submitted for the building permit shall provide elevations for the roof ridges and floor levels. The applicant shall provide written evidence, prepared by a licensed land surveyor, confirming the floor elevations of the structures comply with

- approved plans. The applicant shall provide written evidence, prepared by a licensed land surveyor, that the ridge heights comply with the approved plans.
15. A FEMA Elevation Certificate shall be submitted prior to project final.
 16. A detailed construction and traffic management plan shall be submitted for the review and approval of the building official/director of public works and town planner prior to the issuance of a building permit. The plans shall include details on parking; material, equipment and waste storage; vehicle and equipment maintenance areas; portable restrooms; washout areas; delivery and truck parking; construction scheduling; and other information as required by the town.
 17. To minimize noise impacts on neighbors, construction hours shall be limited to 8 am to 5 pm Monday through Friday. No work is permitted on weekends or holidays. Noise prohibited prior to the authorized start time includes noise associated with activities such as, but not limited to, noise attributed to workers arriving on the job; vehicular noise; radios; assembling, moving or stacking construction materials; and deliveries.
 18. 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.
 19. 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.
 20. This project shall comply with all requirements of the Department of Public Safety, as outlined in their ongoing project review, including the following: a) sprinklers are required; b) a 24-hour monitored alarm system is required; c) all dead or dying flammable material shall be cleared and removed per Ross Municipal Code Chapter 12.12 from the subject property; d) the street number must be posted (minimum 4 inches on contrasting background), e.) the access roadway must have a vertical clearance of 14 feet; f.) all brush impinging on the access roadway must be cleared as determined feasible by Public Safety; and g.) a Knox Lock box is required.
 21. 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.
 22. 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 shall be subject to automatic penalties with no further notice. The construction shall not be deemed complete until final sign off is received from representatives of the building/public works, planning and public safety departments.
 23. 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.
 24. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.

- 25. FAILURE TO COMPLY IN ANY RESPECT WITH THE CONDITIONS OR APPROVED PLANS CONSTITUTES GROUNDS FOR THE TOWN TO IMMEDIATELY STOP WORK RELATED TO THE NONCOMPLIANCE UNTIL THE MATTER IS RESOLVED. (RMC §18.39.100). THE VIOLATIONS MAY BE SUBJECT TO ADDITIONAL PENALTIES AS PROVIDED IN THE ROSS MUNICIPAL CODE AND STATE LAW.
- 26. Failure to secure required building permits and/or begin construction by September 10, 2010 will cause the approval to lapse without further notice.
- 27. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

23. 15 Fernhill Avenue, Variance and Design Review No. 1751

Continued at the applicant's request.

Charles Almond, 15 Fernhill Avenue, A.P. No. 73-091-36, R-1:B-20 (Single Family Residential, 20,000 sq. ft. min. lot size), Low Density (1-3 Units/Acre). Application for variances and design review for a remodel and addition to the existing residence. The project involves demolition of the existing garage, trellis, mudroom and bathroom on the west side of the residence and construction of a new garage and trellis with a bedroom above the garage. A balcony is proposed above the garage, on the north-facing elevation of the residence. A variance is requested to maintain the existing side yard setback for the garage, trellis, and 2nd floor addition (20 foot setback required, 3.75 feet proposed). The project involves new landscaping, including new plants and modification of the driveway and patio areas. A patio, level with the first floor, would be constructed at the rear of the residence, within the west and east side yard setbacks (20 feet required, 5 feet proposed). The pool equipment would be relocated within the rear yard setback (40 feet required, 5 feet proposed). Exterior modifications include a new slate roof and replacement of several windows and doors.

Lot area	17,764 sq. ft.	
Existing Floor Area	23.4%	
Proposed Floor Area	24.8%	(20% permitted)
Existing Lot Coverage	18.9%	
Proposed Lot Coverage	18.9%	(20% permitted)

This item will be heard at the September 22nd Advisory Design Review Group Meeting.

- 24. Correspondence - Letter from Larkspur
Mayor Strauss and Town Manager Broad agreed to discuss.

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25. Other Business - None

26. Adjournment.

By order of Mayor Strauss, the meeting adjourned at 11:01 pm.

R. Scot Hunter, Mayor Pro Tempore

ATTEST:

Gary Broad, Town Manager