

# REGULAR MEETING of the ROSS TOWN COUNCIL THURSDAY, SEPTEMBER 11, 2008

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

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

## 2. Posting of Agenda.

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

Mayor Cahill then asked for a moment of silence to honor those victims of the 9/11 terrorist act that occurred seven years ago.

## 3. Minutes –July 10<sup>th</sup> and July 31<sup>st</sup>

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve the July 10<sup>th</sup> and July 31<sup>st</sup> Town Council minutes. Motion carried unanimously.

## 4. Demands.

The demands were met.

## 5. Open Time for Public Expression.

President of Ross School Board thanked the Ross Town Council for their continued support and enabling them to set up temporary classrooms. He also thanked district residences for their overwhelming support for the bond measures to build the gym. Renovation of Ross School and gym are the utmost importance to the Town. The School Board and the Council have a civic and moral duty to get this project done right. This is a 50-year decision. This project is an important part of their legacy. The Council and School Board agree on 95% of the issues. The remaining issues seem to be causing all parties to spend unnecessary and unproductive effort wasting dollars. There is a significant level of misinformation at the Town Council level. He spoke separately to 4 of the 5 council members and added that the existing mechanisms for Town and school communication have not been effective. Due to the Brown Act, small decisions take a long time. They are looking at two to three months to resolve any issue or two to three times that long. A simple encroachment permit that was agreed upon back in 2007 took eight months to get signed. They are at a critical juncture and additional delays will cost more money. Last night the Board voted unanimously to host a joint School Board and Town Council session in order to get on the same page to understand the issues and together at that meeting determine a critical path and timeline. At this joint session, they will all be treated as equals. It will pave the way for the School Board and Town Council to get on the same track with one common purpose and vision. They hope to hold a joint meeting within 30 days. Any solution other than a full joint session is like putting lipstick on a pig.

The Town Council agreed and discussed possibly having a special meeting next week.

Mary Skewes-Cox, Ross resident, noted that Saturday afternoon she had a rapid heartbeat and emergency services were called and they were absolutely wonderful. She cannot say enough about their efficiency and manner and thanked the firefighters for their assistance.

Carla Small, Duff Lane resident, agreed with the President of the School Board and encouraged the Council to establish a schedule. Also, she believed it is important for the community to hear what is going on and believed the community must be involved. She did not want to see unnecessary delays.

Mayor Cahill stated that the Brown Act is part of the problem and they are not allowed to have open communication, so this will be a good opportunity to meet in a public, open session for all to understand the issues.

**6. Report from Mayor Cahill.**

Mayor Cahill reminded everyone about the centennial celebration on Friday September 19<sup>th</sup> and Saturday, September 20<sup>th</sup>. There is an adult only dinner and a show planned for Friday night. 1,400 people have already signed up, including many Ross School alumni and former residents coming from all over the country. The deadline to reserve seats is September 15<sup>th</sup>. Residents must be aware that parking will be very limited around the Ross Common and the Post Office during the centennial events, and there will be a very large increase of trucks and cars setting up from Wednesday, September 17<sup>th</sup> through Sunday, September 21. There will be handicap parking only along the Common and behind the Post Office during the centennial events. Regular parking will be available at the Marin Art & Garden Center and shuttles will be running from both the College of Marin and the Marin Art & Garden Center. There will be a parade down Shady Lane at 10 am on Saturday, followed by a picnic and fun on the Ross Common until 4 pm. There is no admission, but tickets are needed for lunch and the rides that can be purchased at Marmalade Café or at the event. There will be several street closures on Saturday for the parade.

Mayor Cahill then congratulated Senior Planner Elise Semonian on the birth of her son, Peter Semonian. Senior Planner Semonian continues to make cameo appearances in the planning office despite being on maternity leave. The Town has hired Dani Hamilton to fill in for Senior Planner Semonian while she is out for the next few months. Also, the Ross Farmer's Market will continue through September 25<sup>th</sup>.

**7. Report from Committee Heads.**

Community Protection - Council member Hunter

- Public Safety update

Council Member Hunter reported that on Tuesday he along with Town Manager Broad met with Police Chief Jim Reis and Fire Chief Tom Vallee and in both cases he was taken by the fact that not only were both reports, goals and objectives on point, but tremendous enthusiasm from both new chiefs on the possibilities. They are meeting again to prioritize goals and place timelines. He further believed it is a great start.

Public Works - Council member Strauss

- Committee meeting topics status

Mayor Pro Tempore Strauss stated that he along with Council Member Martin have been meeting with public works to address flood control and the bridge. They met on July 23<sup>rd</sup> to discuss the fish ladder and thanked Charlie Goodman for remembering that they are sharing the cost of 98.5% with the federal government. They sent off a letter to the Army Corps of Engineers in regard to a scoping session for the EIR. The project will not occur before 2010 or 2011. In terms of the downtown, the Town Manager hired a surveyor for the downtown

area and plans are underway to hire a traffic engineer and a planning consultant to develop ideas for the downtown plan. In regard to Ross School and the boundary, they do want to work with the school and the Council looked forward to holding these meetings. In regard to Bolinas Avenue, they are sharing the cost with San Anselmo to look at traffic calming, roadway drainage and paving. Winship curb and gutters have been completed. Facilities for police and fire have been placed on the back burning due to the bridge and school construction going forward. On October 4<sup>th</sup> between 9 and noon there is a scheduled creek day walk. With utilities, they will look at monies available and review Lagunitas Road up to the church and use public funds for utilities coordinated with the bridge. In regard to street maintenance, the Public Works Director will send out letters in advance if they anticipate any work in the right-of-way. Also, parking on Laurel Grove will be discussed later this evening.

Finance

-Council member Martin

Council Member Martin noted the Finance Committee will meet in October for their first meeting to review past financials as well as past audits. Most of the revenue will start coming in by December, so they will start looking at where they are in terms of their budget. They will meet at least quarterly or more often, if needed.

- Marin Telecommunications Agency

Council Member Martin reported that the MTA recently met, which is a joint powers authority administering the Comcast Franchise Agreement. Ross serves on that board of directors along with 11 other county and cities that are part of the franchise agreement. They receive roughly \$37,000 per year from franchise fees from Comcast. They discussed the budget and audit, but he had nothing more to report.

- Ross Recreation Board update

Council Member Martin stated that later this fall Pam Riley would make a presentation to the Town Council. Ross Rec had a successful summer. They launched the new pre-care program for children 9 months to 3 years. They took over the café at the Marin Art & Garden Center for the daycare. Mayor Cahill noted that Ms. Riley agreed to report quarterly to Council.

**8. Announcement of recent promotions of Captain Tim Grasser and Firefighter Rick Rosecrans.**

Fire Chief Vallee announced the promotions of firefighters Tim Grasser and Rick Rosecrans. Firefighter Grasser has been promoted to Captain, while Firefighter Rosecrans was promoted to Engineer. The Council congratulated Firefighters Grasser and Rosecrans.

**9. Report from Ross Property Owners Association.**

Frank Doodha, RPOA representative, expressed concern for traffic and safety issues around Ross School and the Post Office. Several residents find it difficult to pick up their mail. They asked Council to consider assigning an officer to help with the traffic situation. Chief Reis believed it is doable. Usually an officer circulates the area, but when two officers are available they will place an officer in the downtown area to address some of the problems. Mayor Cahill suggested having an individual open doors to let kids out of the car to avoid parents having to stop and get out of the car to possibly help with the congestion.

Mr. Doodha then discussed leaf blowers and the Town Manager has been very considerate in posting notification, but they asked what is the next step for violators? Town Manager Broad discussed this matter with Chief Reis. The RPOA had offered to develop two sided cards with English and Spanish. Chief Reis stated that the initial step would be to send an officer out to have a conversation with the property owner to make sure they are aware of the rules and regulations before issuing a fine.

Mayor Cahill asked staff if they have a problem with repeat violators. Chief Reis stated that violations are occurring in afternoons and residents are not home, so there is a communication problem. With two sided cards with mention of the \$100 fine, he believed would solve the problem.

**10. Flood Control Report.**

Deferred to Item 13.

**11. Town Council revisit of anonymous correspondence policy.**

Council Member Hunter reported that at the June 12<sup>th</sup> Council meeting due to several anonymous letters and flyers in Town, he suggested, and Council agreed, to instruct staff to disregard all anonymous submissions in the future. He received two well thought out correspondence against that policy from Ross residents and after consultations with Council believed such a policy will have unintended consequences. As such, he suggested that they reverse the previous policy and process anonymous letters in the same manner as signed correspondence. The Council agreed.

**12. Town Council designation of Marin Telecommunications Agency committee alternate.**

Mayor Cahill announced that Council Member Skall agreed to act as the alternate for the MTA Committee.

**13. Review of preliminary architectural design for the replacement of the Lagunitas Road Bridge.**

Mayor Pro Tempore Strauss read a letter into the record from the Moya Library/Ross Historical Society as follows:

*“Exactly 100 years ago, the first elected Ross Town Council held its second Council meeting. The subject of that meeting was the improvement of the Town’s Lagunitas Road Bridge. At that time, all the bridges of Ross were constructed of wood and badly in need of repair.*

*After much study and consideration, the Town Council decided to replace the old wood Lagunitas Bridge with a more durable concrete bridge. A bond measure was passed at a special Ross election in May of 1909. The Council contracted civil engineer, John Buck Leonard, a pioneer of reinforced concrete bridge construction, to design the new Lagunitas Bridge as well as the four other Town bridges.*

*Due to his innovative work in the early 1900s, John Buck Leonard is now a historically prominent figure. The five bridges of Ross are the only remaining cluster of Leonard’s work in the entire State of California. In 1979, the Ross Bridges were nominated to be placed on the National Registry of Historic Places, but due to the lack of follow-through, they were never officially registered.*

*Soon after the Lagunitas Bridge was completed, the “miracle” of electricity became available in the Town of Ross. In 1911, Harriette DeWitt Kittle (an early 1881 Ross settler) submitted a design for an artistic “Electrolier,” and suggested that four of these beautiful light fixtures be placed on the Lagunitas Bridge. This was done, and those very fixtures have lit the way of many generations of Ross residents. The Lagunitas Bridge*

*is the oldest and most photographed public structure in the Town of Ross. The historic and rare “Electroliers” are a prominent feature in hundreds of historic photographs. The Lagunitas Bridge elegantly spans not only decades, but acts as a central connector, joining the two sides of the Town which are separated by the main creek, thus creating a sense of community.*

*While the Ross Historical Society recognizes the Council’s desire to reconstruct/engineer the bridge to mitigate local flooding, we urge the Council to preserve the historic elements of the bridge and to accurately reproduce (as nearly as possible) the original appearance of this historically important Town centerpiece. We feel confident that this can be done without sacrificing flood safety.*

*We especially request that the exquisite, signature “Electroliers” be preserved and affixed to the new bridge. If (due to their age/condition) these lamps cannot structurally withstand being repositioned on the new bridge, we request that molds be made, and that historic replicas be created and placed on the new bridge. If replicas are used for the new bridge, we suggest that the original electroliers be restored and relocated to a prominent location in Town. The important local history behind these rare light posts makes them a Town treasure, which would not be lost to future generations. We appreciate your time and consideration.”*

URS Engineer David Anderson and Project Architect Don Donaldson unveiled preliminary architectural elevations for the Lagunitas Road Bridge replacement. The new bridge features a walkway speared from the roadway by a crash-resistant, cast concrete barrier to provide safer pedestrian passage. The design echoes the existing bridge, but provides increased traffic lane widths and improved seismic strength. In order to increase the storm water flow capacity to 5,400 cubic feet per second, the design eliminates the existing piers in the middle of the creek and raises the bridge deck two feet. They have not replicated the existing light standards, but have some more modern lights proposed. There are several options, one with a single luminar on top, a double or triple. Also, they will add the renderings to the Town’s website for public view.

Council Member Martin asked the cost in terms of the suggestion from the historical society. Architect Donaldson suggested replacing all of them with a fiberglass shape that is a very strong element.

Mayor Pro Tempore Strauss believed it is a great idea to keep the look and the height and distance between lights, and it would be nice to replicate the existing appearance as close as possible. He liked the reduced height of the handrail. Architect Donaldson suggested a plaque to commemorate the 100-year celebration.

Mayor Pro Tempore Strauss pointed out that through discussions there is a proposal to relocate the crosswalk to Town Hall down to a proper area at intersection with stoplights, which will allow the grading transitions to occur quicker.

URS Engineer Anderson believed with complete closure of the bridge, it could be completed within three months during the summer. The ideal is summer of 2009. Environmental permits are the critical scheduled item, but they are relatively confident they will fall into place.

Mayor Cahill opened the public hearing on this item.

Mike Yandle, landscape architect, stated that it is critical to replicate that light exactly due to the historical significance.

A Ross resident asked what is the downfall if they wait until after the school construction. Council Member Martin responded that the downside is flooding.

Carla Small, Duff Lane resident, asked that the other sizeable construction projects be considered in terms of traffic because everyone will use Shady Lane, Bolinas or Glenwood. Mayor Pro Tempore Strauss indicated that they want to hire a traffic engineer to review the entire area.

Mary Amonette, Ross resident, expressed concern for debris and believed quarterly or annual creek clean up days would help the flooding situation.

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.

Council Member Martin noted that volunteer efforts are scheduled on October 4<sup>th</sup> starting at 9 am to noon. They want to attract the Council and at least 50 citizens to help. They are working with public works and they share the habitat with fish, so anytime they dredge that limited channel it requires a federal permit through the State and County. The channel itself from Ross Creek, from the fish ladder up to San Anselmo is part of the Army Corps project. The study and scoping of that project has begun. There may be a widening of the channel and dredging further up. Until then, they must do their part to get people active and aware of problems and remove debris.

Robert Maccario, Public Works Superintendent, noted that some debris must remain for the salmon, but by addressing the fish ladder that will address several problems.

Council Member Martin noted that two lawsuits hampered flood solutions and final argument will be heard in the fall and a decision will be made on that lawsuit at the end of the year. Marin taxpayer's lawsuit is currently in litigation and mediation, so there may be progress in that regard as well.

Mayor Pro Tempore Strauss asked URS Engineer Anderson if any further information is needed. URS Engineer Anderson desired consensus on the proposal before them. The Council agreed, but wanted the existing lighting replicated. The Council also felt the adjustments were great.

**14. Award of contract and authorization of expenditures for preliminary engineering and design services for Sir Francis Drake Boulevard Pedestrian Pathway Project.**

Town Manager Broad summarized the staff report and recommended that the Council award the contract and authorize expenditures for preliminary engineering and design services for the Sir Francis Drake Boulevard pedestrian pathway project.

Mayor Cahill opened the public hearing on this item.

Joan Holmes, Ross resident, asked staff what length of Sir Francis Drake is included because she expressed concern for parked vehicles. Town Manager Broad responded that it would be the entire length. A 4-foot wide asphalt walkway is proposed. Staff further noted whether

the walkway should be on the east or west side of the roadway is being reviewed by the engineer.

Mayor Pro Tempore Strauss pointed out that the engineers must develop their study and then the Council will assess. They must consider the drainage, so more study is needed.

Town Manager Broad Questa has a public outreach process, so there is an opportunity for members of the public to provide feedback.

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

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Skall seconded, to approve the proposal and authorize expenditures in the amount of \$30,000 for preliminary engineering and design services for the Sir Francis Drake Boulevard pedestrian pathway project by Questa Engineering Corporation. Motion carried unanimously.

15. Award of contract and authorization of expenditures for the Shady Lane Safe Pathways to School Project phase one (*from 10 Shady Lane to Southwood Avenue*).

Town Manager Broad summarized the staff report and recommended that the Council award the contract and authorize the expenditures for the Shady Lane safe pathways to school project phase one. Staff further noted that work is anticipated to occur after the centennial celebration.

Public Works Superintendent Maccario believed paving should be completed in a day.

Council Member Skall asked staff how many phases are anticipated. Town Manager Broad anticipated two phases and bids will occur with the second phase. There should not be a significant cost differential to complete the project in two phases.

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

Mayor Cahill asked for a motion.

Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to approve the bid and authorize expenditures for the construction and award the contract to McGuire and Hester in the amount of \$43,775 for the Shady Lane safe pathways to school project phase one. Motion carried unanimously.

16. Town Council consideration of adoption of Resolution No. 1656 opposing State of California budget decisions that would “borrow” local government, redevelopment and transportation funds.

Town Manager Broad summarized the staff report and recommended that the Council consider adopting Resolution No. 1656, opposing State of California budget decisions that would “borrow” local government redevelopment and transportation funds.

Mayor Cahill noticed the fourth and fifth “*whereas clauses*” that talks about proposition 2004 and 2006, which in his view seems like an error. Town Manager Broad agreed to investigate because possibly the wrong proposition was listed.

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

Mayor Cahill asked for a motion.

Council Member Martin moved and Council Member Skall seconded, to adopt Resolution No. 1656, opposing fiscally irresponsible State budget decisions that would “*borrow*” local government, redevelopment and transportation funds. Motion carried unanimously.

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

Mayor Cahill discussed implementation of the five goals for the 2008-2009 fiscal year as follows:

**Goal A - Staff job description updates and performance reviews**

Mayor Cahill reported that he had interviewed two potential consultants to review the Town’s organizational structural and job functions. He also presented a draft customer feedback brochure that will be used to gather information from residents and others who use Town services.

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

Council Member Skall will continue working with emergency preparedness, with special emphasis on preparing seniors for disasters and ensuring aid reaches them in the event of an emergency. They discussed methods on how to gather names of seniors and Loraine Berry might be a great focal point. All seniors are encouraged to provide their contact information to the Fire Department. Also, they want to train a block captain to assist seniors during disasters.

**Goal C - Town and Ross Valley flood control**

Council Member Martin stated that the possibility of flooding is a continuing problem in Ross Valley. Public Works will take action on the recommendation tonight and hire additional help to clear the creek. During the special meeting, they discussed working with San Anselmo and Fairfax to review land use policies and possibly jointly taking tougher procedures as far as potential rain water running off property. Also, he continues to work with the Army Corps of Engineers on the Unit 4 project involving the replacement of the fish ladder that will lead to an EIR, which will most likely be completed in 2011. Progress is occurring in Flood Zone 9 despite the lawsuits. He will be approaching other Marin jurisdictions to develop additional stormwater regulations in the Ross Valley. A thorough

study is being conducted to possibly divert water to the Lefty Gomez Field in Fairfax and to Phoenix Lake. All options are being explored. He further noted that this is the highest priority and welcomed any ideas from the community.

**Goal D - Downtown plan**

Mayor Pro Tempore Strauss reported that a consultant is preparing a proposal and it will be reviewed. They are receiving data on curb and gutters and looking on how to enhance the downtown. They are working with the school on the Common area. There have been several suggestions and all options are being reviewed.

**Goal E - Police and Fire Department reorganization**

Council Member Hunter will continue to work with the new chief on fire consolidation. His goal this year is to study and provide recommendations for remodeling and reconstruction of the firehouse and public safety offices.

Mayor Cahill opened the public comment on this item.

Carla Small, Duff Lane resident, asked if the traffic engineer would understand the scope of the new Ross School entrance in terms of the downtown. Mayor Pro Tempore Strauss responded in the affirmative. The one on Ross Common could be improved. Between the school and committee they will relay that message. Also, the public will have an opportunity to provide feedback. He further noted that traffic and parking will be discussed.

Ms. Small understands that Larkspur backed out of fire consolidation and asked for an explanation. Council Member Hunter responded that they have not backed out, Ross has just put that on hold for the time being. He further noted that it will be done in a public forum.

There being no further public testimony on this matter, the Mayor closed the public portion and moved onto the next agenda item.

**18. Planning Application Consent Agenda.**

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

- a. **104 Laurel Grove, Variance, Design Review and Demolition Permit No. 1693**  
Hank and Beth Holland, 104 Laurel Grove Avenue, A.P. No. 72-211-30, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). Demolition permit and design review for modifications to an existing residence and accessory structures, including the following: 1.) addition of 1,459 square feet to the first and second story of the residence and 438 square feet to the garage; 2.) addition of new covered porch areas at the rear of the residence; 3.) demolition of the existing pool and pool house and construction of a new pool and 2,002 square foot pool house, with grey board and batten siding, grey trim and a grey standing seam metal roof; 4.) new grey shingle siding, darker grey trim and standing seam metal roofing for the main residence; 5.) retaining walls ranging from .5 to 4.5 feet tall associated with a new paved play area.

Lot area	97,573 square feet*
Existing Floor Area Ratio	7.9%

Proposed Floor Area Ratio	9.3%**	(15% permitted)
Existing Lot Coverage	9.3%	
Proposed Lot Coverage	11.0%	(15% permitted)

\* Includes area of roadway easement.

\*\* Does not include areas of porches that are over 10 feet deep.

Mayor Cahill asked for a motion.

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

#### **104 Laurel Grove, Holland Conditions**

1. All exterior lighting shall be low wattage, shielded and downcast. No lighting of exterior walls or fences is permitted.
2. The applicant shall comply with Marin Municipal Water District requirements as for the pool house and landscaping in accordance with MMWD rules and regulations as outlined in the attached letter from MMWD dated August 21, 2008.
3. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
4. Failure to secure required building permits and/or begin construction by September 11, 2009 will cause the approval to lapse without further notice.
5. No additional tree removal is permitted without a tree removal permit. Before the start of any clearing, excavation, construction, or other work associated with the road realignment, every significant and/or protected tree shall be securely fenced-off or otherwise protected. Such fences or protection shall remain continuously in place for the duration of the work undertaken in connection with the development.
6. Best management practices should be implemented to prevent stormwater pollution.
7. A final landscape plan shall be submitted for Planning Department approval prior to project final
8. 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.
9. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Prior to the issuance of a building permit, the owner or general contractor shall submit a complete list of contractors, subcontractors, architects, engineers and any other people providing project services within the Town, including names, addresses and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
10. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) Sprinklers are required in the house and pool house; 2.) Access roadway shall be 14 feet to provide adequate fire or rescue operations; 3.) Clear all brush impinging on access roadway; 4.) A street number must be posted {minimum 4 inches on contrasting background}; 5.) All dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; 6.) A 24 hour monitored alarm is required.
11. Any portable toilets shall be placed off of the street and out of public view.

Project development shall comply with the requirements of the Ross Valley Sanitary District.

12. This project is subject to the conditions of the Town of Ross Construction Completion Ordinance. If construction is not completed by the construction completion date provided for in that ordinance, the owner will be subject to automatic penalties with no further notice.
13. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits and prior to any modifications.
14. 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.
15. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**b. 45 Willow Avenue, After-the-Fact Variance No. 1702**

Brandon and Genevieve Broll, 45 Willow Avenue, A.P. No. 073-261-26, R-1:B-7.5 (Single Family Residence, 7,500 square foot minimum lot size). After-the-fact variance to allow a laundry area consisting of a washer and dryer in an attic storage area, adding a total of 40 square feet of floor area to the existing residence.

Lot area	11,250 square feet	
Existing Floor Area Ratio*	27%	
Proposed Floor Area Ratio	27.4%	(20% permitted)
Existing Lot Coverage*	23%	
Proposed Lot Coverage	23%	(20% permitted)

*The existing residence and garage are nonconforming in side yard setbacks.*

\*Based on floor area and lot coverage numbers in 1987 variance application.

Mayor Cahill asked for a motion.

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

**45 Willow, Broll Conditions**

1. This approval shall allow the use of 40 square feet only of the existing attic area as a laundry area. No additional finishing or use of the attic area for living space is permitted.
2. After-the-fact building permit and fees are required.
3. NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes shall be submitted to the Town Planner prior to the issuance of any building permits and prior to any modifications.
4. Failure to secure required building permits and/or begin construction by September 11, 2009 will cause the approval to lapse without further notice.
5. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.

**End of Planning Consent agenda.**

*Council Member Martin recused himself from the next agenda item in order to avoid the appearance of a conflict.*

19. **3 Upper Ames, Variance and Design Review No. 1689**  
Lionel Conacher and Joan Dea, 3 Upper Ames Avenue, A.P. No. 73-201-02, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). A significant demolition and remodel of the existing residence, designed by Joseph Esherick, architect, in 1957-1958. Demolition permit to allow modifications to each elevation of the residence, including demolition of walls, the roof and garage. Design review for the following: 1.) addition of 2,481 square feet of floor area on the first and second story of the residence to create a 7,540 square foot residence and 712 square foot garage; 2.) landscape improvements that include construction of a new pool, 860 square foot pool house, pool patio area and sports court; and 3.) steel, lattice design, driveway gates up to 6 feet in height between new stone columns. Variances to allow the following: 1) parking/turnaround areas partially within the west side (25 feet required, 15 feet proposed) and south rear (40 feet required, 8 feet proposed) setback areas; and 2) fence height variance to permit a 7 foot tall side yard fence between 3 and 7 Upper Ames (6 feet permitted); 4) over 100 linear feet of new landscape retaining walls up to 4.5 feet in height. A tree removal permit is also requested to allow removal of 26 trees between 8 and 54 inches in diameter. The Town Council will determine if the existing residence is a historical resource and, if so, if further review is warranted under the California Environmental Quality Act.

Lot area	96,407 square feet	
Existing Floor Area Ratio	6.1%	
Proposed Floor Area Ratio	9.5%	(15% permitted)
Existing Lot Coverage	6.1%	
Proposed Lot Coverage	8.7%	(15% permitted)

Town Manager Broad summarized the staff report and recommended that the Council decide whether or not the residence is a historic resource. If Council concludes, based on the materials presented and any public testimony, that the structure is not historic, staff recommends that the Council approve the project subject to the findings and conditions outlined in the staff report.

Jared Polsky, architect, is very heartened by neighbors support of the design. Residents of this Town are welcoming the Conacher family to the Town of Ross. He thanked the Town Council because it is a difficult application to review and appreciated the extra effort to understand the project. It seems clear that the proposed design has been very well received. The ADR process has worked very well. This application requires a bifurcated process. In terms of historic, there are two reports prepared by two different consultants. They are very technical and spelled out in their reports. It is not in the State or federal historic report. According to law, it must meet certain criteria laid out in State and federal codes. Criteria C under federal code or Criteria C/3 under State code is criteria that could apply. It must be demonstrated that a master architect designed it and that this house is significantly within the architect's body of work. They have great regard for Joseph Esherick and the issue is not Mr. Esherick, but this specific house. The decision to designate a house historic cannot be based on sentimental aspects. There are many works of master architects that have not passed the test to be deemed historic. He has worked with Carey & Co. on several projects. Dr. McNeil is an award winning PhD historian who prepared the report and responses. He further noted that this is not a significant part of Esherick's body of work. He then provided several drawings and noted that he has a digital model, if so desired.

Dr. Karen McNeil, Carey & Co. Inc Architecture, wrote the original evaluation and responded to the peer review of her original report. There is no question that Joseph Esherick is considered a master architect, but for historic resource the project must express a particular phase of the architect's career or theme of craft. Not every Frank Lloyd Wright can be considered a historic resource. Just because a building is designed by a master architect it has to be shown significant within the body of work. There are many reasons why a building can be considered important by a master. Parallel example of a building that Carey & Co. tried to nominate under the register under Criteria C is the Colombo Building in San Francisco. The State Historic Preservation Office has the final power in the case of national register nomination and they are the experts. Their response was while Reid Brothers' were important San Francisco architects in the early twentieth century, the nomination does not adequately demonstrate why the Colombo Building is important within their body of work. The Reid Brothers' were well known master architects, but the Colombo Building does not represent a particular aspect, theme or idea of their work. In terms of the Martin House, it stands as an example of a pervasive type that Esherick built in the 40s and 50s. It is not enough to be an example of pervasive type to be considered historic. This building was designed in an important period in Esherick career and experimented more with form and windows as individual units. If a building is going to embody the transitional period and express that period they must see some inkling of that

transition. It does not show where he was going, so it does not express that transitional moment. Martin House can be understood as a packed box, but not a late box. Esherick was designing buildings in a box form as late as the 1990s. Esherick played far more liberal with form, exemplified most notable by houses like those at Sea Ranch. The Martin House does not embody or express the important moment in Esherick's career and it is not a late box. It is another perfectly fine house, but not a historically significant house.

Lionel Conacher, applicant, stated that he has done all that has been asked of him by responding in short notice and providing the Council with the appropriate documents. There is a lot at stake. He has learned that Esherick was a great architect, but this particular house is not a great example of his work, nor a historic example of his work. Future neighbors and many Council members have said not to take it personally, but it is personal. It is about his family and it is hard not to take it personally. He further urged the Council to make the right decision and allow him to build his new home in the Town of Ross.

Mayor Cahill opened the public hearing on this matter.

Mark McLaughlin, real estate agent in Marin County, believed it is important for Council to understand the implications of what appears to be a relatively subjective process as to whether a property was historic or not. There must be more than one Esherick home in this Town and they must disclose to the buyer that this process will occur. If historic, the property will lose its value. The citizens and the Council must raise the bar and think through these issues. He asked the Council how would someone know in the Town of Ross whether or not they own a historic property?

Jessica Hart, Thomas Court resident, stated in fairness to those that live in Ross, the Council should appoint a committee to designate all historic homes in Ross to avoid this issue. She further believed a home should be deemed historic before the fact.

Noreen Slivon, Ross resident, would hate to see a precedent set on a matter that should have been done before the fact. She added that consultants would provide new opinions, so it is subjective.

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 stated that the house is not historic in his opinion.

Council Member Hunter agreed it is not a transitional building, so it is not historic.

Mayor Pro Tempore Strauss believed Esherick was a great architect and he is for preservation of their heritage, but since they do not have a current local historic code that was identified in the General Plan it cannot be imposed now. In this case, he agreed that it is not an historic structure.

Mayor Cahill agreed that it is not historical, so it is unanimous. There is quite a bit of support in the Carey & Company report that the Council is relying upon without going through the whole report, so there is enough basis to support the decision including the follow-up report by Carey & Co.

Mayor Cahill asked for a motion.

**Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to determine that 3 Upper Ames Avenue is not a historic structure and recommended approval based on the Carey & Co report. Motion carried unanimously.**

Architect Polsky explained to the Council that they are introducing a second driveway and the garage will be rebuilt and continue to face away from the street. In terms of the existing house, they are adding to that form to the east side, south side and west side. The house will now have a flat roof and the tallest part will be at the height of the existing ridge, not higher. The two major materials are wood and stucco. There is a third material in a garage, which is a stone cladding. ADR had great suggestions and they have a condition of approval to come back to staff with final colors for the stucco. He then provided a color and materials board and also proposed a pool house and pool. They are proposing new gates and two new openings and a gate at the stone columns. They will use stained wood windows. There is a water feature at the entrance. With the new driveway, they are creating a sculptured entry court, with a reflecting pond. The floor plan is very similar to what it is now with some additions for a modern home such as a bigger master bedroom, but the flow is essentially the same.

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

Mayor Pro Tempore Strauss found it to be a great design and could recommend approval per findings outlined in the staff report. The Council agreed.

Mayor Cahill appreciated the ADR process because it worked very well. He agreed it is a terrific design.

Mayor Cahill asked for a motion.

**Council Member Hunter moved and Mayor Pro Tempore Strauss seconded, to approve the demolition and rebuild of 3 Upper Ames Avenue in accordance with the staff report including the findings and conditions. Motion carried unanimously.**

### **3 Upper Ames Conditions**

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

1. The exterior materials are approved in concept. Actual samples of the materials and colors shall be reviewed and approved by staff, in consultation with two members of the Advisory Design Review group, prior to installation.
2. Five 36-inch box cedar trees shall be planted between the pool house and the property line shared with 4 DeWitt Drive.
3. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.

4. Prior to issuance of a building permit, the applicant shall document the existing structure using photographic documentation per HABS Standards as recommended by the Carey & Co. Inc. Architecture Historic Resource Evaluation.
5. The project shall comply with the approved plans. A licensed land surveyor shall string the location of the foundation and the location of any new fencing. The applicant shall provide written evidence, prepared by a licensed land surveyor that the roof height complies with the approved plans after framing.
6. The applicants shall submit an arborist report that details the health of the trees proposed to be maintained and measures that must be taken before, during and after construction to protect and preserve the tree(s). The project arborist shall review construction level drawings and the landscape plan (including foundation plans, any proposed trenching for utilities, etc.) to prepare the tree protection plan. The plans shall be revised as necessary to illustrate and include the tree protection measures. An arborist shall be retained to monitor the trees during construction. Tree protection fencing shall be installed at the site prior to issuance of the building permit. Prior to final inspection, the arborist shall provide a written report to the Town that details the compliance with the tree protection measures and the health of the protected trees.
7. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
8. Applicants shall recycle at least 50% of construction and demolition debris. If mixed debris boxes are used, the applicants shall inform the waste hauler of this condition prior to debris box pick up to ensure the box will be brought to the recycling area. Receipts that demonstrate the material was recycled must be submitted to the planning department prior to project final.
9. All construction vehicles shall park on site and not on Ames or Upper Ames Avenues.
10. The applicants shall submit appropriate air quality permits to the building department prior to demolition of the existing structure.
11. A drainage plan shall be submitted with the building permit application for review and approval by staff. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The drainage from the residence shall be dispersed on site.
12. Except as otherwise noted in these conditions, landscaping shall be installed in conformance with the approved landscape plan prior to project final. Prior to project final, the applicants shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
13. Any exterior lighting not shown on the approved plans shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
14. 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.
15. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) Sprinklers are required; 2.) Access roadway shall be 14 feet to provide adequate fire or rescue operations; 3.) Clear all brush impinging on access roadway; 4.) A street number must be posted {minimum 4 inches on contrasting background}; 5.) All dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; 6.) A 24 hour monitored alarm is required.
  16. 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.
  17. 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.
  18. Failure to secure required building permits and/or begin construction by September 11, 2009 will cause the approval to lapse without further notice.
  19. 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.
  20. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
  21. 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 Martin resumed his position on the Town Council.*

20. **Appeal of 7 Woodhaven Demolition Permit, Variance, Design Review, Hillside Lot Approval/ No. 1680**  
Patty and Richard Treadwell have filed an appeal of the July 10, 2008 Town Council approval, sitting as a Planning Commission, of the following application: Steve Bode, 7 Woodhaven Road, A.P. No. 73-021-04, R-1:B-5A (Single Family Residence, 5 Acre Minimum Lot Size). 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.

Lot area	76,746 square feet
Present Floor Area Ratio	2.7%
Proposed Floor Area Ratio	7.8% (15% permitted)
Present Lot Coverage	2.7%
Proposed Lot Coverage	5.8% (15% permitted)

Town Manager Broad summarized the staff report and recommended that Council uphold the decision and deny the appeal.

Council Member Hunter desired a brief description of the slope calculations. Steve Bode, owner, noted that the old methodology is highest to lowest divided by distance. In this case, there is a flag portion on his property, so it shows a slope of an area of the property that is not through the development area. There was another project brought before Council that there was a new determination that slope should be calculated perpendicular where the house or building area would be, which came up with a slope of 33%. The other slope was 36%, so they jump over the 35% line, which makes a huge difference.

Mayor Cahill asked staff if the recommended guideline is based on the 33%. Town Manager Broad responded in the affirmative. Mayor Cahill noted that the idea of the amount over the guideline was only 170 feet, so there was a difference based on how it was measured. Mr. Bode stated that there is an easement on the property and they decided to subtract the area of the easement from the total differential of the property.

Council Member Martin asked staff if they keep a work file on how calculations were made in terms of hillside slope. Town Manager Broad would expect that information is included in the file that showed where the accepted line was drawn. Staff felt Council thoroughly vetted this issue. They had significant discussions on two meetings and staff feels that Council made a decision consistent with staff's interpretation on what the lot slope should be and encouraged the Council to be accepting of the lot slope calculation.

Mayor Cahill opened the public hearing on this item.

Dick Treadwell, appellant, stated that he and his wife, Patty, have lived at 9 Woodhaven Road since 1962. They have filed an appeal with the Ross Town Council regarding its approval of a building permit to develop the lot at number 7 Woodhaven Road, their next-door neighbor. They have submitted several letters to the Council objecting to the certain aspects of this proposed development prior to and in support of their appeal, which are in the record. Letters have also been sent by other neighbors and members of the community in opposition to this project, which along with these remarks, are for the record. He then asked the Council to refer to their letter of August 24 as follows:

**Slope Calculation:**

Early in this process, the then Town Engineer, Dave Bracken, calculated the slope of the lot to be 36.8%, which would allow the building of 4801 square feet of structure on the lot in accordance with the hillside lot ordinance. The application asks for a permit for 5,699 square feet or an 18% overage. In addition, in his memo to the Council of September 2, 2005, Chris Cahill, Associate Planner, expressed many concerns about the suitability of this site for residential development.

**As to the Second Residential Units:**

Which is the main focus of our objection, Building A second unit is not advisable on this particular site, which epitomizes the need to comply with the hillside lot ordinance.

Alternatives to the proposed plan include:

- 1) Reducing the total square-footage to comply with the hillside ordinance as interpreted and defined by planning staff
- 2) Eliminating the second unit from the plan
- 3) Including the second unit in the main house
- 4) Moving the second unit to the footprint of the existing garage/studio inside the setback
- 5) Removing the garage under the second unit and dropping the second story down

Mr. Treadwell added that it has long been the practice and policy of the Ross Town Council to require that any application for a building permit, along with full, complete and final plans, be submitted to the Town for public and Council scrutiny several days before the Council meeting at which the application is to be discussed and possibly acted upon. As to the case at hand, the 7 Woodhaven Road application, changes were made to the plans on the very day of that Council meeting, an action at odds with and against past policy, practice and precedent of the Ross Town Council.

Mr. Treadwell then referred to the Town of Ross variance/design review/demolition fact sheet, page 3 entitled "submittal requirements," specifically to paragraph 5, which read as follows: "*written acknowledgement of the proposed development is required from the owners, lessees and occupants of all abutting property, including property across any street, roadway or highway. Names and addresses may be obtained from the clerk's office. If written acknowledgements are not obtained, a statement stating the reason or reasons therefore must be submitted. The Planning Department will mail notice of the proposed variance to the property owners within 300 feet of the subject property. If required neighbor acknowledgements are not submitted, the application may be deemed incomplete and removed from the Council agenda.*" He and the other abutting property owners have not provided, nor were ever asked to provide written acknowledgments of this proposed plan and development. The applicant has provided a document called, "*a neighbor participation plan*" signed by him which is not a substitute for written acknowledgements from the defined property owners. This omission alone should require the removal of this project from the Council agenda until the defects in the application are corrected.

Further, the excellent of design argument used to justify this project is nullified by its overbuilding of this site caused by the existence of the second unit. They have no intent or desire to prevent the applicant from building a house on his property, which is his right, but only to scale back the project to a level of compatible with the site. In view of the obviously very controversial nature of this application and proposed project and the incomplete and

untimely filing of the application, and the failure of the applicant to submit the required written acknowledgements, they respectfully request that the Council declare null and void its action taken on this application at its meeting of July 10, 2008. He believed this matter should be continued to a future Council meeting, not only to allow the applicant to follow proper procedure in filing his application, but more importantly, to allow for a more thorough discussion and consideration of the issues involved.

In summation, this controversial application and proposal involves many significant issues, which the Council should carefully consider in coming to a decision. Not only the adjoining property owners who would be the most affected, but also the Town as a whole depends upon the Council to apply the Ross Town code, in this specific case the hillside lot ordinance fairly and impartially. Putting this matter over to a future Council meeting in order to address all of the issues involved would be in the best interest of Ross.

Steve Bode, property owner, relied on staff to deem the application complete. He asked staff if a signed notice was needed and staff indicated that it was not necessary. There have been several acquisitions made that are not true. He met and presented the neighbors with final plans. There is one minor issue where there was not an elevation, or a picture of the back of the building included in the plans that was requested by Council, which he provided immediately. That was the one missing piece, but it did not seem material at the time. He has gone over all the plans several times with the neighbors who felt the further pushed down the better. Story poles were erected 4 months before a decision was made. On two separate occasions he had neighbors over to look at the story poles and there was no objection at that time, so he leaves the discretion to Council to make the proper decisions.

Jessica Hart, Thomas Court resident, has lived in Ross for 59 years and the Council has been strict to maintain all building codes and protect the Town from developers and over building. The Council is not protecting the rights of the Treadwell's by allowing Mr. Bode to overbuild on his property. Citizens of this Town feel the Council is betraying their trust.

Marilyn MacGregor, Woodhaven Road resident, in 50 years she has seen a few items happen to her regret. She tried to stop a house from being built in a pit and another is a home built on one-third of an acre that required extensive engineering. It is a very fragile and private road. She wrote a letter on July 22<sup>nd</sup> in regard to this project and the letter outlines her comments. In her opinion, to replace this one-story carport with a room on the side with a two-car garage and an apartment over it is inappropriate for that area.

Nora Laherty, Upper West Road resident, agreed with Mr. Treadwell's comments. The hillside lot regulations were created exactly for this reason. She asked for consistency of interpreting and enforcing the Town code and ordinances. She asked the Council to consider the sensitive nature of the hillside. She further believed this approval will set dangerous precedent for the Town of Ross.

Carla Small, Duff Lane resident, asked Council to consider having neighbors sign plans so they are well aware of these issues. She has listened for years, so the Council must review how the ordinance is written. Several are forced, such as Don Santa, forced to build a much smaller house. If not written clearly enough, then all these different subjective decisions must be made, so it must be rewritten so that it is very clear. She further stated that this sounds very muddled in her opinion.

Buffie Ballard, Woodhaven Road resident, finds it absurd to consider a second unit on this road affordable housing. It is a mile from public transit and a road that requires extensive repair. It is not appropriate to have two separate residences on this lot. Affordable housing should be placed closer to public transit.

Mr. Treadwell reiterated that this is an incomplete application and should be removed from the agenda until defects of the application are corrected. Town Manager Broad stated that it is not a codified requirement in terms of the submittal requirements. It clearly allows the applicant to submit acknowledgements or explanation in-lieu of the acknowledgements. Staff noted that the Treadwell's were at the last meeting and the applicant was not lacking in being aware of the application.

Council Member Martin asked if staff uses a checklist on items required and what is the timeline and the intent. He also asked staff if they are allowing the public the ability to review the record. Town Manager Broad stated that the intent of neighbor submittal acknowledgements is to provide direct contact to discuss issues in advance of the Council meeting. It is a rather difficult requirement in terms of completeness because the applicant has up to 10 days before the meeting to submit acknowledgements. Staff must bring in an application well before 10 days of the meeting. Staff is in the process of verifying that acknowledgments have been submitted, and if not, staff contacts the applicant. In terms of timing of submission of applications and accessibility of those to the public that is different. The Town does their own notification of up to 500 feet of the perimeter of the property and neighbors are always allowed to review the plans. Staff realized neighbors were forced to talk to staff instead of the applicant, so they tried to create a better process to have dialogue outside of the Council meeting.

Council Member Martin stated that when an application is complete, when all required submittals are present with the exception of acknowledgements, the record is available and neighbors can review. Town Manager Broad responded that as soon as an application is filed, neighbors have the ability to review even before any sort of determination is made. Staff processes applications in a very short time frame. Once an application comes in, staff reviews the information provided and then verifies that all the necessary materials have been submitted to take to the Council.

Council Member Martin is concerned about the 10-day period and what happens if the record was not complete and if a submission was made afterwards. He then asked staff what the Town does if there is a breach in that 10-day period. Town Manager Broad stated that typically, staff does a pretty accurate assessment in advance of the 10-day period. Staff writes detailed notices of what a project includes and it is rare that they would miss something substantial. If minor, staff could contact the applicant or professional working for the applicant, and they would very quickly provide that piece of information. In this case, it was not discovered until later, and staff reviewed and Council made a decision to be able to approve or not. It is really Council's discretion. Calculations for slope were part of the noticing, so that was done well before the 10 days because staff had to make a determination to get that information into the notice.

Constance Treadwell, Woodhaven Road resident, stated that the questions about elevations were not submitted in a timely fashion that face their house and it is a major part of the

project. Also, regarding slope calculations, as far as she can tell from reviewing the material, slope calculation was taken through the building site and there is a certain rationale for that. When considering the second unit, it is in a separate area that the calculation becomes more questionable, which would bring into question the FAR calculation and where it passed the 35% mark.

Patty Treadwell, appellant, believed Mr. Bode wants to maximize his property and wants to flip this house. Also, the Town wants second units and is willing to be flexible. They are the third party that wishes Mr. Bode stayed within the guidelines. The three groups should come to some compromise. Currently, they are very unhappy. The project is being overbuilt. She would like the matter continued so they can all discuss the matter and compromise.

Tom Fano, Upper Road West resident, heard a lot of testimony about the slope. When visiting the site, it appears to be a monster coming between him and the Treadwell's. It is a massive piece of construction in a narrow lot on a very steep hill. In practical terms, it might be worthwhile for Council to visit the site to better understand. This project will not sit well on the property.

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 Cahill noted that they have all visited the site and some on numerous occasions.

Council Member Martin voted against this project which was his first day sitting on Council and he had the opportunity to review previous findings and understands that it is a property that has been modified. Streams have been changed by previous owners. The issue of the second unit is over and requires a variance. He is concerned about the General Plan in regard to limiting the amount of development on steep sites and the Council applies the hillside ordinance and FAR guidelines to all development proposals on slopes over 30 feet. He regards this as a very important ordinance and policy. When they give a variance it should be given for a good reason and in this case there was a solution that the neighbors recommended that the applicant could have achieved and still can. He is also concerned about the public record. Regardless of how they vote on this issue, they must spell out proper procedures. If late submittal, the process must start over to review the public record. He would vote in favor of the appeal on this issue.

Mayor Pro Tempore Strauss believed the project area is 6,055 feet and guidelines allow 5,561 sq. ft that is a difference of 440 feet, which is the area of the garage and the Council thought hiding the cars was an improvement. He is respectful of Mr. Bode building within setbacks. The delta difference ended up being only 54 feet, which was de minimis. He is in favor of the appeal if the community and everyone at large is not in favor of putting in a garage, which he felt was a good solution. He would support reviewing again or direct Mr. Bode to take 54 feet out of the project.

Council Member Skall asked if this project went through ADR. The Council responded in the affirmative. Council Member Skall is confused as to why no one attended the ADR meetings, so he does not know whether it is a communication issue or notification issue. Current procedures allow neighbors the opportunity to discuss projects prior to coming before the Council. Town Manager Broad noted that notification is not required for the ADR

process. Some neighbors attended and discussions occurred over slope and the ADR looked at the proposal and design issues. They deferred the policy issue of floor area on a hillside lot to the Council.

Council Member Hunter asked the Town Attorney if there is an issue of proper documentation. Town Attorney Hadden Roth did not believe, legally. Basically, they have been notified and have been part of the discussion. Signed acknowledgments in and of itself are enough to overturn.

Council Member Hunter stated that based on slope calculation that the Council accepted is allowed under the lot ordinance. They allowed 6,055 that gave a 440-foot delta to get a garage into the hill and remove two cars from the street. The 54 sq. ft differential was deminimis as discussed at their last meeting. He believed they made a good decision, but it tears him up to be placed in this kind of a situation. He is lost as to what direction to move forward. He felt they made a good decision, but the appellant does make good points about the process. In this case, the design is very good and it is nestled into the same building pad.

Mayor Cahill believed the Treadwell's requested that in the bedroom and bathroom the windows be placed at a certain height for privacy and that the elevation provided is from the plans submitted back in July and it is not the revised calculation because it does not comply with the conditions of approval. Town Manager Broad stated that it is appropriate that the Council look at the same plans approved from the July meeting because what is appealed are the plans approved in July. These are not plans submitted for a building permit, so the Council must review what was approved back in July.

Mayor Pro Tempore Strauss asked Council how they feel about garages. He felt it is a good idea. Mayor Cahill stated that it is consistent policy to encourage applicants to include garages and provide off street parking and allow flexibility in the guideline. The purpose of the garages is to the benefit of the community, but if they do not want that then maybe they must revisit this application. In this circumstance, given the fact that they received input from the neighbors, perhaps they should approve the appeal or at least recommend a continuance and allow the neighbors and applicant an opportunity to work this matter out.

Mr. Bode felt this is incredibly unfair. The appeal hinges on the concept that he had not adequately presented, shared and discussed these plans with the neighbors. He has been in close communication throughout this process, a two year long process. The carriage house was presented at a Council meeting that occurred in June. It was presented to the neighbors one month before. Plans were presented and shown to the neighbors. He did not receive any objection and staff did not receive any objection that the building is too close, just in the general size of the house. On June 10<sup>th</sup>, the Council understood the issues, story poles were erected all matters were well known. The Council made a decision based on that information. Tonight there is no new information and does not understand what would cause this appeal.

Mayor Cahill stated that there is new information that Council was not aware of and that is the sense of the community towards parking. The Council made an assumption that people in this area would prefer to have off street parking in a garage and that was a benefit to the community, so the Council was willing to provide that additional square-footage to allow

that garage. They have heard different information tonight and now have a different opinion as a result.

Council Member Hunter asked if they removed the garage and 54 feet can this matter be acted upon tonight because other than that it fits every criteria in Town. Mr. Bode stated that he would remove 500 sq. ft. from the house and keep the garage. Ms. Treadwell stated that it boils down to slope calculation, which is the heart of the matter. Mayor Cahill noted that issues were discussed in great detail and it was concluded that they would accept the figure before the Town Council tonight. Also, they have been very responsive to letters and comments.

Mayor Pro Tempore Strauss understands that ADR recommended that the Council approve the project in this forum presented to the Council. Town Manager Broad agreed they were supportive of the design. Ms. Laherty stated that it was their first meeting and overall they were not looking for variances and going over FAR's. It was a Town issue in terms of a second unit and that was Council's issue, but ADR preferred to stay within the ordinance.

Council Member Hunter asked staff procedurally can Council indicate that they heard the appeal, but offer up that if the applicant must remove 494 sq. ft. out of the house. Town Manager Broad noted that the Council could uphold the appeal and state that the overall project square-footage needs to be reduced by 494 sq. ft. and revised plans must be submitted for staff or the Council approval or with staff review with approval by neighbors.

Council Member Skall stated that if this much opposition occurred in July they would have made some changes. This is a whole new meeting and he is troubled because they have a right to change their minds, but as the Council they are not present to review appeals after appeals. They took a lot of time and believed the neighbors had a chance to review the project.

Mayor Pro Tempore Strauss suggested a continuance to allow the owner of the property to decide. He would have the option to review all the input. Council Member Hunter stated that if they were to approve the appeal then it comes down to 494 sq. ft. so at least this way if they are inclined to support the appeal at least it can be expedited for Mr. Bode.

Mayor Cahill asked for a motion.

Council Member Hunter moved and Council Member Martin seconded, to support the appeal with the additional condition that the applicant must remove 494 sq. ft. from the overall square-footage and consult with staff and neighbors and before final decision, consult with Mayor Cahill. Motion carried 4-1. Skall opposed

*Town Council took a short recess at 10:14pm.*

21. **8 Sir Francis Drake, Variance, Design Review and Hillside Lot No. 1694**  
David and Andrea Millstein, 8 Sir Francis Drake Boulevard, A.P. No. 72-241-23, R-1:B-A (Single Family Residence, 1 Acre Minimum Lot Size). Design review, variance and hillside lot approval for modifications to an existing residence and landscape improvements to allow the following: 1.) addition of 1,712 square feet to the existing residence to create a two-car garage and guest suite at the lower level, kitchen and family room at the main level, and master bedroom at the upper level (4,209 square

feet of total floor area are proposed); 2.) new covered porch on the south elevation; 3.) setback variance to permit a portion of the proposed addition, outdoor terrace, and outdoor barbeque to be located within the north side yard setback (25 feet required, 16 feet proposed); 4.) 70 linear feet of new landscape retaining walls up to 4 feet in height; and 5.) 6 foot tall, open design, wood fence with partially solid wood gate and 6.5-foot stone columns at the front property line; and 6.) 6-foot tall wood sound wall approximately 35 feet from the front property line. The addition materials would match the existing residence.

Lot area	51,401 square feet	
Existing Floor Area Ratio	4.9%	
Proposed Floor Area Ratio	8.2%	(15% permitted*)
Existing Lot Coverage	3.3%	
Proposed Lot Coverage	5.3%	(15% permitted)

*The existing residence is nonconforming in setbacks, covered parking and number of stories.*

\*The slope of this lot is 33%. The hillside lot ordinance would recommend a maximum floor area of 4,034 square feet.

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

Michael Yandle, architect, stated that the house had a few deficiencies in regard to the kitchen area and master suite. The oddity was the top floor of the house had an enormous middle space that was not defined very well and it did not lend itself to any functional use of the house. They wanted to work within the vocabulary of the existing home. It has farm like character, so they worked within that existing character and improved the parking situation. They are so close to achieving their goals within the volume of the existing building, so they incorporated another garage space at the lowest level and developed a small guest suite. All changes occurred within the volume of the building. The additions all occur to the rear of the house with a slight change to the side of the garden. The small veranda, which was an entry porch, led itself to improvement or embellishment and they created a lower scale element in the foreground providing a more gracious character. They are asking for slight variance to the side yard. The house is quite close to that property line and there is a driveway that creates another margin of separation from other adjacent homes. Starting from the street, they incorporated the mixed stonewalls and open fencing to a more conventional deer fence. There is a closed gate due to security for children. They improved the appearance of the entire driveway all the way up to parking area. ADR provided positive input. Drainage was a concern, so they reduced the paving in the parking area and incorporated a number of catchment drains to collect driveway water and distribute water on the property itself before heading to the street. The entire parking area can be a pervious surface to control water. They are developing the lawn area as a play area. There propose additional terraces to the back. On the exterior, they maintained all the same detail. They kept it fairly simple for a farmhouse. On the side that faces the garden, there are deep green details and they intend to utilize that same detailing such as the dark green frame on all windows and entry porch to the front door. They intend to carry that character around the entire house and keep that color scheme consistent on all sides. He then provided a rendering showing the new entry gate with open trellis. They had positive response from

ADR and they did get some input on issues and responded well. With their input and some minor modifications, they feel they have a positive project that meets the goals for the Millstein's and believe it is a complimentary addition to the home. The modifications had to do with site improvements. For the most part, ADR understood the improvements such as the family room, kitchen and master bedroom on the top floor.

Council Member Hunter discussed the hillside lot guideline at 175 feet over and asked if they attempted to pull it back to the recommended FAR. Architect Yandle responded that their original assumption was for a guest garage and suite, but with the encouragement by staff to consider a second unit that helps with the Millstein's extended family and meets housing goals of the Town. They reviewed other programs for FAR requirement, but in considering the slope of the property it occurs on a gradually sloped section because they incorporated a very steep section that exceeded the formula. Overall circumstances, support of neighbors and good input from ADR, they felt under these circumstances for this house on this property they came up with a good solution.

Mayor Pro Tempore Strauss anticipated a sidewalk in the area of the gate in regard to the street frontage and suggested working with staff to make sure there is enough clearance in terms of the gate opening. Architect Yandle believed foot traffic and car traffic would be almost nonexistent.

Mayor Pro Tempore Strauss asked the location of the gas barbeque. Architect Yandle pointed out that location and noted that it faces away from the neighbors.

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

Mayor Cahill asked for a motion.

**Mayor Pro Tempore Strauss moved and Council Member Hunter seconded, to approve 8 Sir Francis Drake subject to the findings and conditions. Motion carried unanimously.**

#### **Millstein Conditions**

1. The project shall comply with the following conditions of approval, which shall be reproduced on the first page of the building permit plans:
2. The exterior materials are approved in concept. Actual samples of the materials and colors shall be reviewed and approved by staff in consultation with two members of the Advisory Design Review group.
3. All costs for town consultant review of the project shall be paid prior to building permit issuance. Any additional costs incurred to inspect or review the project shall be paid as incurred and prior to project final.
4. The applicants shall submit an arborist report that details the health of the trees proposed to be maintained proximate to project construction and measures that must be taken before, during and after construction to protect and preserve existing trees at the site. The project arborist shall review construction level drawings and the landscape plan (including foundation plans, any proposed trenching for utilities, etc.) to prepare the tree protection plan. The plans shall be revised as necessary to illustrate and include the tree protection measures. An arborist shall be retained to monitor the trees during construction. Tree protection fencing shall be installed at

- the site prior to issuance of the building permit. Prior to final inspection, the arborist shall provide a written report to the Town that details the compliance with the tree protection measures and the health of the protected trees.
5. EXCEPT AS OTHERWISE STATED IN THESE CONDITIONS, NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. Red-lined plans showing any proposed changes, including changes to materials or colors, shall be submitted to the Town Planner for review and approval prior to making any modifications.
  6. All construction vehicles shall park on site and not on Sir Francis Drake Boulevard.
  7. A drainage plan shall be submitted with the building permit application for review and approval by staff. All site drainage shall be dissipated in a manner that prevents erosion and conforms to current storm water discharge practices in Marin County. The drainage from the structures shall be dispersed on site.
  8. The applicant shall comply with Marin Municipal Water District requirements as for the new construction and landscaping in accordance with MMWD rules and regulations as outlined in the attached letter from MMWD dated August 21, 2008.
  9. Except as otherwise noted in these conditions, landscaping shall be installed in conformance with the approved landscape plan prior to project final. Prior to project final, the applicants shall submit written evidence to planning department staff that confirms the landscaping complies with Marin Municipal Water District Ordinance 385, or is exempt from their requirements.
  10. Any exterior lighting not shown on the approved plans shall be submitted for the review and approval of planning department staff. Lighting shall be shielded and directed downward. Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited.
  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. This project shall comply with the following requirements to the satisfaction of the Department of Public Safety: 1.) Sprinklers are required; 2.) Access roadway shall be 14 feet to provide adequate fire or rescue operations; 3.) Clear all brush impinging on access roadway; 4.) A street number must be posted {minimum 4 inches on contrasting background}; 5.) All dead or dying flammable material must be removed as per R.M.C. Chapter 12.12; 6.) A 24 hour monitored alarm is required.
  13. A final landscape plan shall be submitted for planning department review prior to project final.
  14. Any portable toilets shall be placed off of the street and out of public view.
  15. Project development shall comply with the requirements of the Ross Valley Sanitary District.
  16. 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.

September 11, 2008 Minutes

17. Failure to secure required building permits and/or begin construction by September 11, 2009 will cause the approval to lapse without further notice.
18. 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.
19. The Town Council reserves the right to require additional landscape screening for up to three (3) years from project final.
20. 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. Open time for matters pertaining to the closed session in agenda item 23.

There was no public input on the closed session.

23. Council will adjourn to closed session for the following: Labor Relations — Government Code Section 54957.6 related to negotiations between the Town of Ross (Gary Broad, Town Manager as Town Representatives) and the Ross Professional Firefighters Association, Local 1775.
24. OPEN SESSION. Council will return to open session and announce action taken, if any.

Mayor Cahill indicated that there was “no reportable action” in the closed session.

25. Correspondence – The Council discussed a letter from Tenki Davis. It was decided that the Council, beginning with the Public Works Committee, should look at a townwide approach to the problem of vehicle parking.
26. Other Business - None
27. Adjournment.  
By order of Mayor Cahill, the meeting adjourned at 11:15 pm.

---

William R. Cahill, Mayor

ATTEST:

---

Gary Broad, Town Manager