

THE MORNING AFTER

*Highlights from the
Ross Town Council Meeting
of June 9, 2011*

Volume 5, No. 6

June 10, 2011

Council Discusses Loss of Ross School's Oak Tree

The Council discussed the events that led to the recent loss of a cherished, 200-year old Valley Oak tree located in the kindergarten playground at Ross School, and directed staff to spend up to \$3,500 on an independent arborist's study that would determine the cause of death of the tree. Council also directed staff to present the Street Tree Committee's recommendations for tree replacement to the Ross School for their consideration.

A number of Ross residents expressed their sadness and frustration over the loss of the tree, contending that the School's mismanaged construction project was responsible for the tree's death. Street Tree Committee members presented many photos of parked construction vehicles, heavy equipment, and building material under the tree canopy. Typically, this area would be fenced off to avoid compaction of the soil and damage to the tree's root zone, compromising its ability to thrive. Due to state regulations, the Town Council did not review the school's construction project. The Town tree protection plan requirements only apply to projects approved by the Town.

Arborist Becky Duckles, who was contracted by Ross School as a consultant on the project, said that a tree protection plan had been put in place and that the contractor followed the plan. She explained that some activity was permitted around the tree because a layer of mulch was installed, asphalt had been discovered under the ground level, and no roots were present above the asphalt. She also said the tree had been dying for five to seven years.



Several speakers refuted Ms. Duckles' opinion and asserted that poor drainage around the tree had resulted in root and crown rot. The Council agreed to order a dendrochronological analysis of the tree rings to help establish the exact cause of death.

Concerns were also raised about Ms. Duckles' professional role in this matter, as she also works as the Town Arborist. The Council agreed to review the Town's conflict of interest code to consider banning Town consultants from doing any business with other public or private interests in Town.

Council Discusses Joining the Marin Energy Authority

The Council heard a presentation from Dawn Weisz, Executive Officer, on the Marin Energy Authority's first year of operations. Ms. Weisz reported that the Marin Energy Authority (MEA) began providing energy to 8,000 customers in May 2010, and planned to enroll an additional 5,000 customers in 2011. MEA expects to add the remaining 70,000 customers in 2012.

Ms. Weisz said MEA had met or exceeded many of its first year goals. The carbon-free content of its power mix was 78% in 2010 and the state-certified renewable energy in its mix was 27%, exceeding the state requirement for 20% renewable energy. Ms. Weisz said the Authority has not had any difficulty in attracting bids for renewable energy supplies.

MEA has paid off its original loans and retired its loan guarantees by refinancing \$2 million of debt. Ms. Weisz said the Authority has built up \$2 million in reserves.

MEA provides two electricity options for its customers – a light green option that has 27% renewable energy content and a deep green option that is 100% renewable energy. Light green rates are competitive with PG&E rates, while the deep green option costs an additional one cent per kilowatt hour (kWh). The Authority also recently launched a “net metering” program that pays a property owner for any additional electricity his/her solar panels produce over the amount the house or building uses each month. MEA pays the retail rate plus one cent per kWh for excess solar energy.



The Town Council voted 3-2 in January 2010 to withdraw from MEA. Council member Scot Hunter recalled that the Council had two primary concerns with MEA at the time – one with the opt-out provision that requires ratepayers to actively opt-out to avoid being automatically enrolled in Marin Clean Energy, and a financial concern with the Authority’s viability and business plan.

Council member Hunter said that a majority of Ross residents testifying at earlier Council meetings were against staying in MEA at the time. For this reason, he supported putting the issue on the November ballot as an advisory vote, at an estimated cost of \$2,500 - \$4,000.

The Council desired more community input and agreed to further discuss the issue at its July Council meeting. The Council will consider at that time whether or not to join MEA or put an advisory vote on the ballot.



Mayor Chris Martin’s Report

As you are aware, the 4th of July is around the corner. The Town is planning to have the annual parade and picnic on the Ross Common on Monday, July 4th. Unfortunately, as of this date, Chief of Protocol Roseanna Lourdeaux has received only one entry for the parade. If more parade participants are not forthcoming, there will be no choice but to cancel it. Parade participants are encouraged to register by June 15, 2011, by contacting Cynthia Wollam at 672-1142 or CIWOLLAM@aol.com. Whether or not there is a parade this year, there will be picnicking and festive events on the Ross Common with hot dogs and other food, music by the Goat Island Griddlepoppers, and 4th of July games and races.

The Ross Valley Sanitary District is proposing to raise its sewer rate for all Ross Valley residents effective July 1, 2011. In 2008, your rates virtually doubled. This new rate increase will show up on your annual property tax. The Sanitary District is proposing a 34% increase for Ross residents, or an increase of \$177, thus making the total annual assessment for Ross taxpayers \$697. Unfortunately, the proposed increase, under California law, is very difficult to stop, since it requires opposition from over 50% of the owners of the affected properties within the 45-day period after the Sanitary District announces the proposed rate boost. Opposition must be filed on or before June 28, 2011. To effectively protest against the proposed rate change, a written notice must be sent to the Ross Valley Sanitary District at 2960 Kerner Blvd., San Rafael, CA 94901. Such notice must: 1) state opposition to the proposed rate change; 2) identify the affected owner(s) of the property for which the protest is being entered; 3) include the address and/or the assessor’s parcel number of the affected property; and 4) be signed by the affected property owner. Emails will not be accepted.

On behalf of this Council and the Town, I would like to extend a warm welcome to some new Ross residents. Lt. Gov. Gavin Newsom is moving to Ross with his wife, Jennifer, their daughter, Montana, and their soon-to-be-born son. Both Gavin and Jennifer grew up in Marin County and attended local schools. Lt. Gov. Newsom, a former member of the San Francisco Board of Supervisors and a two-term Mayor for the City of San Francisco, is probably aware that three seats on this Council will be up for election next year. Perhaps we can persuade him to represent the people of Ross. Welcome to the Newsom Family!

The Town Council and the Town of Ross also would like to congratulate the graduating class of Ross School. This is an important first step to your future. We are proud of you and wish you well with your endeavors and continuing education.

Municipal Services Tax to Remain at \$775

The Council voted to keep the Town's municipal services tax at \$775 per developed parcel, despite the fact that the Town is under increasing financial pressure from a combination of flat revenues and rising expenses. Town Manager Gary Broad reported that while the draft fiscal year 2011-2012 budget is still about \$150,000 in the red, the Finance Committee had agreed to sharpen its pencil rather than recommend a raise in the municipal services tax.

Ross voters first approved the municipal services tax in 1984 and have since renewed the tax every four years. The Council sets the tax each year, up to a permitted maximum of \$1,000. The tax has been at \$775 for the past four years.

New Regulations for Converting Attics and Basements Considered

The Council, sitting as a planning commission, discussed a proposed ordinance that would make it easier for homeowners to finish attics and basements and use the converted space for living area. Under the draft ordinance, the Town Council would be able to grant exceptions from development regulations, such as floor area limits, in order to allow improvement of existing attics and basements.

In order to qualify for an exception, a proposed attic improvement could not include any exterior changes to the house, including new windows or dormers. Basements could be finished if the existing ceiling height is at least 5½ feet, and the floor area is above the base flood elevation (the height of the 100-year flood). Basement improvements could involve exterior modifications that did not materially increase the visible mass of the building and were compatible with the existing design.

Council members expressed concern about the possibility of some property owners significantly increasing the size of their homes under the proposed ordinance. Senior Planner Elise Semonian explained that while the ordinance does not limit the size of the basement or attic area to be improved, it does limit grading and cutting to 50 cubic yards and requires the site to comply with the minimum parking required for the zoning district. These provisions would effectively limit the size of the improved area and the number of houses that could potentially qualify for an exception.



The Council asked staff to consider additional regulations that would limit the size of the improved area, especially on hillside lots. Council members suggested further reducing the amount of cutting and grading and capping the size of a proposed improvement to a reasonable percentage of the floor area. The Council agreed to bring the ordinance back for further consideration at their July 14, 2011, meeting.

Council member Rupert Russell's Council goal for the year was to consider modifications to the Town's regulations regarding attics and basements. He held three public workshops in 2011 to hear from residents and to develop the draft ordinance language.

New Regulations for Second Units Discussed

The Council, sitting as a planning commission, discussed an ordinance that would allow the Council greater flexibility to review and approve second units. The proposed ordinance establishes a new discretionary review process that would allow the Council to grant exceptions to the existing second unit development standards and allow units up to 1,200 square feet, newly constructed units on second stories, and two second units on a lot, subject to design review.

The ordinance also allows the Town Council to grant a 500 square foot floor area bonus to property owners who agree to deed restrict their newly constructed second unit to be affordable to a very low income household. Deed restrictions would be in effect for 20 years. Hillside property owners would only be eligible for the floor area bonus if their lot is at least 20,000 square feet, has adequate water supply for firefighting purposes, and has the minimum parking required for the zoning district.

The new ordinance would enact programs the Town committed to implementing when the Council adopted an updated housing element in November 2010. The Council will consider introduction of the ordinance at their July 14, 2011, meeting.

Council Opposes Ross Valley Sanitary District's Rate Increase

The Council adopted a resolution opposing the Ross Valley Sanitary District's proposed rate increase. The Council determined that the District needs to further clarify its operational needs and describe its long-term capital investment strategy to justify the proposed increase. Mayor Chris Martin said that many ratepayers have raised concerns about the District's excessive spending on legal fees and its continued expansion of staff.

Council Investigates Demolition of the Old Ross Schoolhouse – A Summary of the May 26th Special Council Meeting

At a special Council meeting on May 26, 2011, the Council discussed the Old Ross Schoolhouse and the events that led to the building's demolition in 2007. The meeting was called in response to a letter the Town had received from Ross resident Richard Hoertkorn, who had donated the schoolhouse to the Town in 1989 and had learned about the demolition of the schoolhouse just a few months ago. In his letter, Mr. Hoertkorn said he was "deeply shocked and saddened" by the lack of sound judgment that had led to the destruction of the turn-of-the-century schoolhouse.

The Council also discussed a \$5,000 donation the Ross Historical Society had made in 1993 for the maintenance of the schoolhouse. Mayor Chris Martin reported that the Moya Library-Ross Historical Society wanted an accounting of donated funds and had requested that any unused money be returned.

"We would like to have a clear understanding of the events to make sure that this regrettable tragedy will never happen again," Mayor Martin said. "Hopefully we will be able to learn from our past mistakes and put this behind us."

The historic one-room schoolhouse, built circa 1910, was located at Lagunitas Road on property currently owned by Richard Hoertkorn. In 1989, it was moved to the southwest corner of Ross Common at Mr. Hoertkorn's expense, next to the Town-owned house at 6 Redwood Drive. The Ross Historical Society reportedly contributed money for the construction of the foundation.

Town Council minutes from the May 11, 1989, meeting state that the "Town accepted the donation of a historic building to the Town of Ross," but the Council did not adopt a resolution, and there were no recorded provisions made for the maintenance and preservation of the building at that time.



The old Ross schoolhouse seen on a moving trailer in 1989, before it was moved to Ross Common. (Credit: Moya Library-Ross Historical Society)

In 1993, the Ross Historical Society donated \$5,000 for maintenance and repairs of the schoolhouse and requested that their donation not be merged with the Town's general fund. However, there is no record that the Council agreed to the Historical Society's request. Town Attorney Greg Stepanicich explained that without a legally binding agreement, the Town Council would have discretion to decide how the money was disbursed and transferred.

Town records show that the Town established a School House Fund in the 1993-94 fiscal year with the \$5,000 donation. The following year, the Town spent \$2,697 from the fund for planter boxes, irrigation and drainage improvements for the schoolhouse. In fiscal year 1996-97, the remaining balance of \$2,561 was transferred to the Ross Common Fund. All of the money in that fund was spent by June 30, 1998. At last night's Council meeting, Town Manager Gary Broad explained that \$16,500 of those funds – virtually all of the money in the Ross Common Fund – had been donated to the Ross School capital campaign.

Town Manager Gary Broad said that after 1997, the house required periodic maintenance, including repair of broken windows and a loose railing. He said that it would be difficult and time-consuming to try to determine exact repair and maintenance costs over the ten-year period.

The Council then reviewed Town documents related to the decision to demolish the schoolhouse. These established that in later years Ross Recreation used the schoolhouse for storage and that it had fallen into disrepair. Mr. Broad said the Town, Ross School, and Ross Recreation jointly took responsibility for maintenance of Ross Common and the schoolhouse.

According to the Council minutes of September 2004, Ross Mayor Jeanne Barr announced that the Town would take down the old schoolhouse. "If anyone wants it, come and get it," she said.

In a recent email, Ms. Barr said that the Council had had many requests to take down the old schoolhouse during her tenure.

Documentation showed that the decision to demolish the school house was never put on the Town Council's agenda or discussed in a public meeting after 2004. An October 2007 invoice from Nerviani Paving, Inc. shows that the building was removed at a cost of \$6,500. The invoice was signed by retired Public Works Director and Building Official Mel Jarjoura. A notation reads, "As discussed with Gary." The payment check was signed by former Council member Bill Cahill, who would have seen the invoice attached to the check.

Council member Scot Hunter, who was Ross Mayor at the time, quickly came to the defense of town staff. "I have worked with our staff for years, and I know staff would never have unilaterally taken down the schoolhouse. My guess is that the decision was made in the Public Works Committee and that staff was directed to take it down."

Mr. Broad said that staff takes its direction from the Council, subcommittees and individual Council members. He further noted that subcommittees set their own agenda and Council agendas are determined by the Mayor in consultation with the Town Manager.

The Public Works and Building Department report from October 2007 states, "We removed the old school house with the help of Nerviani's crew." Public Works reports are provided monthly to the Town Council.

If the decision had been made during a Public Works Committee meeting, the item was not noticed or agendized. In 2007, the Town of Ross was not conducting its standing committee meetings in compliance with the Ralph Brown Act, which requires open meetings, published agendas, meeting minutes, and an opportunity for public comment.

Council member Hunter explained that the old schoolhouse had deteriorated and was not being maintained.

"Over the years it had lost its charm and significance," he said. "The fact that it was taken down and no one noticed says something about the condition it was in."

Ross resident and Advisory Design Review Group member Dan Winey said he remembered when the schoolhouse was first put in place.

"We had something great to begin with," said Mr. Winey. "But it had lost its value to the community over the years. It was an orphan. No one did anything about it. It was dangerous, and it was in disrepair. I think it should have been taken down."

"The Town Council had responsibility to maintain the building," he continued. "It's really unfair to look for a scapegoat now."

"You don't tear down buildings because the windows are broken or there are weeds," said resident Barbara Call. "You can't use that as an excuse."

Resident David Peterson said that even if the decision was a good one, it was made improperly. "You can't be so arrogant that you bypass proper procedure," he said.

The Council agreed that demolition of the schoolhouse should have been agendized and discussed publicly before any action was taken. Mayor Martin noted that he wanted to implement the General Plan recommendations to develop an inventory of historical buildings and develop regulations to protect those resources. He said he found it a tragedy that the schoolhouse was demolished less than six months after the Town adopted a new General Plan that included protection of historic buildings as one of its goals.

At last night's Council meeting, the Council agreed to propose to the Ross Historical Society that any unused funds from their 1993 donation be used to restore a historic building in Natalie Coffin Greene Park.

Ross Common Roadway to be Closed for Annual Town Dinner

The Council voted to enact a temporary closure of the Ross Common for the annual Town Dinner on Friday, September 30, 2011. The roadway between Lagunitas Road and Redwood Drive will be closed to all vehicular traffic between 4 p.m. and 10 p.m. on that day.



Planning Application Scoreboard

The Town Council took the following action on planning applications considered at last night's Council meeting. For more information on each planning application, you can view staff reports [here](#). The minutes of this meeting will be available on the website at www.townofross.org after approval at the July Council meeting.

Senior Planner Elise Semonian

Address	Applicant	Approved	Denied	Continued
191 Lagunitas Road	Paris and Martha Royo	X		
18 Canyon Road	Douglas Abrams	X		
5 Fernhill Avenue	Albert and Kimberly Berger	X		

Upcoming Meetings

The Public Works Committee will meet on Tuesday, June 21, at 8:00 a.m. to discuss unfinished business from the June 7th Public Works Committee meeting. The regular July Public Works Committee meeting has been rescheduled for Tuesday, July 12, at 8:00 a.m.

The next regular Town Council meeting will be held on Thursday, July 14, at 6:30 p.m. Agendas and staff reports for all meetings are posted in advance of the meetings on the Town's website at www.townofross.org. All meetings are held at Town Hall unless indicated otherwise. You may email Town Council members by accessing the website [here](#).

The Morning After is published following each regular Council meeting by the Town of Ross and is written by Project Planner Christine O'Rourke with support from Administrative Manager Linda Lopez, and reviewed by the Ross Mayor prior to publication. The newsletter is not an official record of the meeting's proceedings and does not cover all agenda items. No portion of this newsletter may be copied, reproduced or reprinted without advance written permission from the Town of Ross.