

**REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, JUNE 14, 2018**

1. 5:30 p.m. Commencement.

Mayor Elizabeth Robbins; Mayor Pro Tempore Beach Kuhl; Council Member Elizabeth Brekhus; Council Member Julie McMillan; Council Member Rupert Russell; and Town Attorney Greg Stepanicich.

2. Posting of agenda.

Town Manager Joe Chinn reported that the agenda was posted according to government requirements.

3. Open time for matters pertaining to the closed session items in agenda item 4 - None

4. Closed Session.

Public Employee Performance Evaluation

Title: Town Attorney

5. 6:00 p.m. Open Session. Council will return to open session and announce actions taken, if any. No reportable action.

6. Minutes - April

Mayor Robbins asked for a motion.

Council Member Brekhus moved and Council Member McMillan seconded, to approve the Special Meeting Minutes of April 25, 2018 as submitted. Motion carried unanimously.

7. Demands.

The demands were met.

8. Open Time for Public Expression.

Charlie Goodman, Ross resident, submitted his presentation to the Council for their consideration. He received a document from the county prepared by Stetson Engineering. Measures one, two and three of the report, to which the Army Corps gave their blessing, which are slight variations. The county has never presented this document to the Council. This document meets the Corps requirements, no sewer removal, very few trees removed, and construction time greatly reduced. He wanted to get dialogue going on this project and wanted this document to be considered as an alternative to the county project.

Garil Page, San Anselmo resident, discussed the county effort to limit public participation by preventing access to the decision making process. She agreed to submit her comments to the Council after the meeting since there is no way to present all her information within three minutes. They have a voice and she will continue to fight the county project.

Ross Asselstine, San Anselmo resident, discussed an independent hydrologist reviewing the project and felt the rest of the story is not being told which is the main reason he continues to write to elected representatives and businesses. He recommended the Council receive independent advice as soon as possible.

9. Mayor's Report.

There has been a lot of interest recently in the Branson School, which has announced that it wants to significantly increase enrollment from 320 students to 400-440 students. Here is some background information about the school: In the 1970s the high school included a day school for boys and a boarding school for girls. In 1978 voters in Ross approved an ordinance allowing for a Use Permit for a day school with enrollment capped at 320 students. The Town adopted a number of conditions at the time to ensure that the impact of the school, located in a residential neighborhood, did not increase as the use changed from a boarding school to a day school. Among the conditions specified in the 1978 Use Permit were (1) limiting the number of students to 320, the enrollment in 1978; (2) limiting the use of the athletic facilities to the number of events in 1978; (3) limiting the use of the auditorium to school events, and prohibiting special events to which the public unassociated with the school was invited; (4) limiting the number of parking places on campus, and (5) limiting buildings on campus to those shown in the 1978 master plan for the school. These conditions were intended to allow Branson to continue as one of the top schools in the area without increasing its impact on the town, particularly in terms of traffic and parking. Over the years the Town Council has voted to allow several amendments to the Use Permit, including allowing the construction of additional buildings such as the student center, the gym, and classrooms; increasing parking; allowing the auditorium to be used for various Ross School events; and approving an artificial turf field.

Branson has said that increasing student enrollment will allow for more diversity, more sports programs, and more classes. Some residents have raised concerns about the significant increase in traffic throughout Ross as well as in the adjacent neighborhoods. Residents have also raised concerns about parking; cars and buses sometimes line both sides of the streets near the school. Branson has said they will be looking into improving traffic calming measures and parking. During the day, some parking is available at St. Anselm's church; vans shuttle students to the campus. A proposed traffic calming measure is to install signs with flashing lights to alert drivers when they are speeding. More information about the process Branson would follow to obtain any increase in its enrollment will be forthcoming.

10. Council Committee & Liaison Reports.

Council Member Brekhus, Ross Valley Fire Board, met last night and discussed a memorandum of understanding (MOU) for shared services.

11. Staff & Community Reports.

a. Town Manager

Town Manager Joe Chinn reported that PG&E would be providing LED lighting on a trial basis along Lagunitas near Ross School, and in the Winship neighborhood. A Town wide email will be sent out in that regard. Staff was notified the Army Corps project and environmental analysis draft EIR and EIS for the Corte Madera Creek flood project has been pushed back to September or October. Staff reminded everyone to come join the fun at the annual Town of Ross 4th of July celebration on Wednesday, July 4th. The celebration will begin with a parade at 11:00 a.m.

June 14, 2018 Minutes

followed by a picnic on Ross Common from 12:00-2:00 p.m. There will be live music, games, and much more! Hot dogs and sausages by Let's Be Frank will be available for purchase.

b. Ross Property Owners Association.

John Kieckhefer, RPOA representative, reported that the June newsletter has been mailed out. They are working internally along with help from Branson School to revise their website. Very honored that the State of California representative attended their meeting and discussed the changing laws for property taxes for those over 55 who move within the county. Resident and landscape designer Janelle Hobart and RPOA submitted preliminary plans for the renovation of the park. Formal planting plan will be submitted this summer. There is universal agreement that the fish ladder should go, but the most benefit is in removing the fish ladder, and removal of the concrete channel will forever change Frederick Allen Park.

c. Marin Art & Garden Center

Stacey Kamp, MAGC representative, reported that MAGC free summer concert series begins Thursday, June 28th and runs six additional Thursdays: July 12, 19, 26, August 2, 9 from 5:00-7:00 pm. This year's concert series will feature Old Time Classics, Indie Country & Folk, Soul/Pop/Rock, Americana, and New Orleans funk. Each concert offers picnic dinners, beer, and wine available for purchase. All proceeds benefit the Marin Art & Garden Center. MAGC will charge \$10 for parking and strongly encouraged carpooling.

12. Consent Agenda.

The following six items will be considered in a single motion, unless removed from the consent agenda: *Item f was pulled from the consent agenda.*

a. Town Council consideration of adoption of Resolution No. 2054 approving the Ross Valley Paramedic Authority tax levy for fiscal year 2018-19

b. Town Council response to Marin County Grand Jury Report dated May 2, 2018 entitled "Sexual Assault in Marin: Evidence Collection, Processing and Backlog."

c. Town Council consideration of adoption of Resolution No. 2055 approving the regular Council meeting dates and annual Special Council meeting dates for 2019.

d. Town Council approval of parking restrictions on Prospect Avenue.

e. Town Council approval of parking restrictions on Thomas Court.

Mayor Robbins asked for a motion.

Mayor Pro Tempore Kuhl moved and Council Member Brekhus seconded, to adopt the Consent Agenda Items "a-e" as submitted. Motion carried unanimously.

End of Consent Agenda.

Mayor Robbins and Council Member Russell recused themselves from item 12f to avoid the appearance of a conflict.

12f. Town Council consideration of adoption of Resolution No. 2063 on Appeal of Construction Penalties Assessment for 38 Fernhill Avenue.

Mayor Pro Tempore Kuhl 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 Pro Tempore Kuhl asked for a motion.

Council Member McMillian moved and Council Member Brekhus seconded, to adopt Resolution No. 2063 on Appeal of Construction Penalties Assessment for 38 Fernhill Avenue. Motion carried 3-0. (Robbins/Russell recused)

Mayor Robbins and Council Member Russell resumed their seats at the dais.

Mayor Pro Tempore Kuhl recused himself from item 13a to avoid the appearance of a conflict.

13. Public Hearings on Planning Projects - Part I.

a. 64 Bridge Road, Design Review No. 2018-010 DR, and Town Council consideration of adoption of Resolution No. 2056.

Lindsay and Chris Dunham, 64 Bridge Road, A.P. No. 073-302-07, R-1:B-20 (Single Family Residence, 20,000 square foot min. lot size), Low Density (3-6 Units/Acre). The applicant is requesting Design Review in order to allow the new construction of a new swimming pool, in addition to landscaping and hardscape. The swimming pool is designed to have conforming setbacks.

Project Summary:

Lot Area	28,000 square feet
Existing Floor Area/Ratio	4,981 sq. ft. 17.7% (15% permitted)
Proposed Floor Area/Ratio	No Change
Existing Lot Coverage	3,942 sq. ft. 14.8% (15% permitted)
Proposed Lot Coverage	No Change
Existing Impervious Surfaces	7,404 sq. ft. 26.4%
Proposed Impervious Surfaces	5,930 sq. ft. 21.1%

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution 2056 approving design review to allow the construction of a new swimming pool, in addition to landscaping and hardscape at 64 Bridge Road.

Mayor Robbins 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 Robbins asked for a motion.

Council Member Brekhus moved and Council Member McMillian seconded, to approve 64 Bridge Road, Design Review No. 2018-010 DR, and adopt Resolution No. 2056. Motion carried 4-0. (Kuhl recused)

Mayor Pro Tempore Kuhl resumed his seat at dais.

End of Public Hearings on Planning Projects – Part I.

Administrative Agenda.

14. Presentation by Transportation Authority of Marin (TAM), and Town Council consideration of adoption of Resolution No. 2064 approval of TAM's Final Transportation Sales Tax Renewal Expenditure Plan.

Dianne Steinhauser, TAM Executive Director, summarized the powerpoint presentation and requested that the Council adopt Resolution No. 2064 approving TAM's final ½ cent transportation sales tax renewal expenditure plan.

Mayor Robbins 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 Robbins asked for a motion.

Council Member Brekhus moved and Council Member Russell seconded, to adopt Resolution No. 2064, approving TAM's final ½ cent transportation sales tax renewal expenditure plan. Motion carried unanimously.

15. Discussion of and Staff response to the adequacy of the Draft EIR for the San Anselmo Flood Risk Reduction Project.

Public Works Director Rich Simonitch summarized the staff report and recommended that the Council review and discuss staff's draft response letter addressing the adequacy of the Draft EIR (DEIR) for the San Anselmo Flood Risk Reduction Project. The 45-day public review period closes at 4 p.m. on July 2, 2018.

Council Member Brekhus expressed concern that the DEIR in her opinion is not adequate in regard to finished floor elevation and asked why that was not addressed. There is one map that shows the increase to these parcels, the 25-year map. She has seen the 10-year and 100-year and wondered why the 25-year map is not included in the DEIR. It is not clear from the DEIR what kind of review will be done in terms of improvements such as retaining walls along the creek bed and wanted her comments included in their response. Public Works Director Simonitch stated under response 3B they have to shoot that elevation and once they know they are moving forward they will conduct a survey. Council Member Brekhus suggested that the Town include those comments as well. She wanted to make sure lowest adjacent grade includes the crawlspace. She agreed to send her comments to the public works director.

Council Member McMillan toured the bridges on Saturday and there were not many neighbors in attendance and understands that the Town is working to get better contact information for all the residents who are affected by this project. She also attended the Board of Supervisors meeting on May 22, 2018 and submitted comments along with written comments targeting the physical aspects of the floodwalls, design, landscaping, etc.

Mayor Robbins opened the public hearing on this item.

Ross Asselstine, San Anselmo resident, felt they should be able to discuss the financial impacts along with the DEIR. It does not make sense to spend \$7.5m. It is really a waste of money. They need to focus on common sense. There is conflicting information in regard to the Winship Bridge.

Garil Page, San Anselmo resident, has written some possible considerations and included the corresponding numbers of the EIR. The sediments that come down will be an environmental impact. The Town should outreach to those affected explaining that the sediment will be an impact.

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 Robbins asked for a motion.

Council Member Brekhus moved and Council Member McMillian seconded, to approve staff's response to the adequacy of the Draft EIR for the San Anselmo Flood Risk Reduction Project along with Council Member Brekhus' amendments that will be provided to staff. Motion carried unanimously.

- 16. Town Council consideration of introduction of Ordinance No. 691, an Ordinance of the Town amending Ross Municipal Code Chapters 14.04 (California Fire Code), 15.05 (California Building Code), 15.06 (California Residential Code), and 18.39 (Hillside Lot Regulations) to adopt a Wildland Urban Interface (WUI) Fire Area Map, clarify definitions, and add new regulations to required fire safe materials for development.**

Town Manager Joe Chinn summarized the staff report and recommended that the Council introduce first reading of Ordinance No. 691 to adopt a Wildland-Urban Interface (WUI) Map; amend the Chapters 14.04 (*California Fire Code*), 15.05 (*California Building Code*); 15.06 (*California Residential Code*) and 18.39 (*Hillside Lot Regulations*) of the Ross Municipal Code; and make findings of fact as to the need for modifications to the California Building and Residential Codes due to local conditions.

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

Council Member Brekhus desired a reminder of the prior Council discussion. Planning Manager Heidi Scoble stated that the proposed map would include the areas within the existing hillside lot ordinance, in addition to a portion to the west of Glenwood and east of Woodhaven. The map would also include Ivy and Walnut. Also included some portions of Winship Park, Baywood and parcels along Sir Francis Drake. The map is the same parcels as the option 2 map that was chosen by Council at the March Council meeting.

Mayor Robbins asked for a motion.

Council Member Brekhus moved and Council Member McMillian seconded, to waive further reading and introduce Ordinance No 691, an Ordinance of the Town amending Ross Municipal

Code Chapters 14.04 (California Fire Code), 15.05 (California Building Code), 15.06 (California Residential Code), and 18.39 (Hillside Lot Regulations) to adopt a Wildland Urban Interface (WUI) Fire Area Map, clarify definitions, and add new regulations to required fire safe materials for development. Motion carried unanimously.

- 17. Public hearing: Town Council consideration of adoption of Resolution No. 2058 adopting the Fiscal Year 2019 Budget, setting the Parcel Tax Assessment for FY 2019, and amending the Town's Salary Schedule; and Town Council consideration of adoption of Resolution No. 2059 making certain findings and determinations in compliance with Section XIII(B) of the GANN Initiative and setting the appropriation limit for FY ending June 30, 2019.**

Town Manager Joe Chinn presented the Fiscal Year 2018-2019 (*FYE19*) General Fund and Special Revenue Funds budget. The budget includes revenues and expenses related to Town operations and capital improvements. The budget was developed based on the continuing objectives of providing high quality services to the community in an efficient, effective, responsive, and financially responsible manner. The overall budget for all Town funds is approximately \$10.1m for FYE19.

Mayor Robbins 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 Robbins asked for a motion.

Council Member Brekhus moved and Mayor Pro Tempore Kuhl seconded, to adopt Resolution No. 2058, adopting the Fiscal Year 2019 Budget, setting the Parcel Tax Assessment for FY 2019, and amending the Town's Salary Schedule. Motion carried unanimously.

Council Member Brekhus moved and Mayor Pro Tempore Kuhl seconded, to adopt Resolution No. 2059, making certain findings and determinations in compliance with Section XIII(B) of the GANN Initiative and setting the appropriation limit for FY ending June 30, 2019. Motion carried unanimously.

- 18. Town Council consideration of adoption of Ordinance No. 690, an Ordinance of the Town of Ross amending Title 8, Chapter 8.04 Animal Control Law.**

Town Manager Joe Chinn summarized the staff report and recommended that the Council hold a public hearing and adopt Ordinance No. 690 to amend Ross Municipal Code Chapter 8.04 (*Animal Code*) to adopt by reference the Marin County Animal Services Ordinances.

Mayor Robbins 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 Robbins asked for a motion.

Mayor Pro Tempore Kuhl moved and Council Member McMillian seconded, to adopt Ordinance No. 690, an Ordinance of the Town of Ross amending Title 8, Chapter 8.04 Animal Control Law. Motion carried unanimously.

19. Town Council consideration of adoption of Resolution No. 2062 approving Animal Control Fees.

Town Manager Joe Chinn summarized the staff report and recommended that the Council adopt Resolution No. 2062 approving new Animal Control Fee rates.

Council Member Russell asked staff if they enforce these rules. They will charge \$60 basically for anyone to have a dog for a one-year license. Town Manager Chinn explained that Marin Humane Society collects the fees. Pets should be licensed, but in regard to compliance, he would need to ask the Marin Humane Society.

Council Member McMillan stated that being licensed is one way to find a lost dog. Council Member Russell wanted residents to be aware of the licensing fee because the expectation is that residents will be charged \$60. Mayor Robbins felt it is a value to have pets licensed. Town Manager Chinn agreed to work with Marin Humane Society to get the word out about having pets licensed.

Mayor Robbins 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 Robbins asked for a motion.

Mayor Pro Tempore Kuhl moved and Council Member Brekhus seconded, to adopt Resolution No. 2062, approving Animal Control Fees. Motion carried unanimously.

20. Discussion of Branson School Process to Increase Student Enrollment.

Town Manager Joe Chinn explained to the Council this is for information purposes to describe the process, if Branson seeks to increase the current student enrollment. Placing an ordinance on the ballot to increase the permitted maximum enrollment at Branson may be accomplished either by a voter petition or action of the Council. Approval of the Ballot Initiative does not automatically entitle Branson to increase its enrollment. It only authorized the Council to increase the enrollment with the approval of a new or amended use permit. A subsequent discretionary review process is required. Also, the Town may consider entering into a development agreement.

Town Attorney Greg Stephanich pointed out that the key to remember is 320-student limit, the ballot measure authorizes the Council to consider and has discretion to decide through the use permit process the amount of enrollment. The new cap would be established by a ballot measure. There is only a 10% requirement to qualify for the ballot.

Council Member Brekhus clarified that this cannot go to ballot until 2020. Town Attorney Stephanich responded in the affirmative.

Council Member McMillan asked staff who would draft the language. Town Attorney Stephanich stated that the proponent drafts the actual ordinance. He would draft the title of the measure along with a summary. Council Member McMillan asked if the normal recusal rules would apply. Town Attorney Stephanich responded in the affirmative that the normal rules of conflict of

interest would come to play. When the measure qualifies for the ballot, he will prepare a partial summary and the Council can decide to submit an argument for or against the measure.

Mayor Robbins asked staff if there have been any complaints about the use permit. Planning Manager Heidi Scoble stated that the most recent inquiry was related to Branson School parking related to the corporation yard and use of tennis courts and when staff received that comment, staff reached out to Branson and the reason that item was before the Council a few months ago.

Council Member Brekhus clarified that the Brown Act still applies. Town Attorney Stepanicich explained that the Council could take a political position as a Council and also individually. In terms of talking amongst themselves outside of Council that is not allowed. They can organize a committee in order not to violate the Brown Act.

Mayor Pro Tempore Kuhl asked staff could the proponents of the ballot measure request just the increase in enrollment. Town Attorney Stepanicich responded in the affirmative. They could add to the enrollment, other policy features and overall development guidelines. They could also establish parking standards for the property. If the measure changes development standards as it pertains to Branson amended by the voters, the Council would be subject to reviewing in the context of those reviewed zoning revisions. They would have to be consistent with the general plan. There is a challenge; the courts are very reluctant to rule on a measure. Most occur after the voters vote.

Mayor Robbins opened the public hearing on this item.

Kathy Wilsey, Fernhill resident, expressed significant concerns for increased enrollment with Branson School. She does not understand the ballot measure in terms of the use permit. She wanted to know what the Council is responsible for in terms of providing information to the residents. It must be clear to the residents what Branson is proposing.

Chris Snell, law firm representing Branson, disagreed in regard to the issue of timing and indicated that the Council has the discretion to place the measure on a special election.

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

- 21. Town Council consideration of adoption of Resolution No. 2060 calling a Special Municipal Election to be held in its jurisdiction on November 6, 2018 for the purpose of submitting to the Voters a Measure authorizing the continuation of a Special Tax for Paramedic Services; requesting the Marin County Board of Supervisors to consolidate with the General Election conducted on that date; and requesting election services of the County Elections Department; and Town Council discussion of proposed ballot argument.**

Town Manager Joe Chinn summarized the staff report and recommended that the Council adopt Resolution No. 2060 calling for a special municipal election for renewal of the Ross Valley Paramedic Authority (RVPA) four year tax for 2019-2023, and requesting the Marin County Board of Supervisors to consolidate with the general election on that date, and requesting election

June 14, 2018 Minutes

services of the County Elections Department. Also, staff requests the Council, should it agree to support renewal of the parcel tax, to decide on the propose ballot argument language and who should sign the argument.

Council Member McMillian asked staff if this could be longer or does it have to be four years. Town Manager Chinn explained the JPA Board approved the language for four years which is now going to each of the individual agencies, so it is too late to change the timeline for this round.

Mayor Robbins 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 Robbins asked for a motion.

Council Member Russell moved and Council Member Brekhus seconded, to adopt Resolution No. 2060, calling a Special Municipal Election to be held in its jurisdiction on November 6, 2018 for the purpose of submitting to the Voters a Measure authorizing the continuation of a Special Tax for Paramedic Services; requesting the Marin County Board of Supervisors to consolidate with the General Election conducted on that date; and requesting election services of the County Elections Department; and Town Council discussion of proposed ballot argument. Motion carried unanimously.

Town Manager Chinn desired direction from the Council as to who the signers in the community would be. All five council members agreed to sign the argument for the measure.

End of Administrative Agenda.

Public Hearings on Planning Projects – Part II.

The Council took a short break at 7:55 pm/resumed at 8:07 pm.

Mayor Robbins left the meeting at 8:00 pm. Council Member Russell recused himself from item 22 to avoid the appearance of a conflict.

Mayor Pro Tempore Kuhl announced that Mayor Robbins had left the meeting because she was not feeling well, and she was also going to be recused from the next three items on the agenda.

22. 11 Circle Drive, Demolition Permit, Design Review, Nonconformity Permit, and Tree Removal Permit No. 2017-038, and Town Council consideration of adoption of Resolution No. 2053.

11 Circle Drive LLC, 11 Circle Drive, A.P. No. 073-082-02, R-1:B-A (Single Family Residence, 1 Acre min. lot size), Low Density (.1-1 Unit/Acre). The applicant is requesting a Demolition Permit, Design Review, a Nonconformity Permit, and a Tree Permit to allow for the substantial remodel to the existing residence and detached accessory structures, in addition to modifications to the existing site landscape and hardscape, including relocating the driveway access from Circle Drive to Fernhill Avenue, relocating the swimming pool, and regrading/recontouring the site to accommodate the relocated swimming pool. Other project features would include the demolition of the existing detached pool house and the new construction of a detached pool house.

Project Summary:

Lot Area	84,600 square feet	
Existing Floor Area/Ratio*	13,361 sq. ft.	15.8% (15% Permitted)
Proposed Floor Area/Ratio*	11,703 sq. ft.	13.8%
Existing Lot Coverage*	7,241 sq. ft.	9% (15% Permitted)
Proposed Lot Coverage*	6,255 sq. ft.	7%
Existing Impervious Surfaces	22,558 sq. ft.	27%
Proposed Impervious Surfaces	18,125 sq. ft.	21%

**Cumulative calculation based on submitted project plans.*

Mayor Pro Tempore Kuhl indicated that Council had reviewed the staff report and asked Planning Manager Scoble to summarize any new information on this project.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2053 conditionally approving a demolition permit, design review, a nonconformity permit, and a tree permit to allow for the substantial remodel to the existing residence and detached accessory structures, in addition to modifications to the existing site landscape and hardscape, including relocation the driveway access from Circle Drive to Fernhill Avenue, removal of a giant sequoia tree, relocating the swimming pool, and regarding/recontouring the site to accommodate the relocated swimming pool at 11 Circle Drive.

Council Member Brekhus asked staff the last time they had right-of-way improvements in connection with a planning item. Public Works Director Simonitch noted that last week staff requested at 177 Lagunitas that the pathway be improved to an asphalt concrete path in conformance with sidewalk and pathway guidelines.

Council Member McMillian noted that an option is provided in the conditions and asked staff to briefly describe and asked staff approximately what would be the cost to prepare this 120 feet of improvements. Public Works Director Rich Simonitch responded that an applicant can get a traffic engineer to take into account all aspects and then staff would review to determine if it appropriate. The cost for design is nominal. He estimated less than \$10,000 to do the shoulder improvements.

Council Member Brekhus discussed liability for the pathway and asked staff if they have an opinion on liability. Public Works Director Simonitch responded that it is not a pathway, it is a shoulder improvement. The Town would maintain that shoulder. Town Attorney Greg Stepanicich responded that it would be treated as part of a roadway. Public Works Director Simonitch noted that if and when it became a pathway, it would be treated similar to the Sir Francis Drake/Shady Lane pathway.

Mayor Pro Tempore Kuhl asked staff if a vehicle leaving private property has a duty to stop before he/she enters the public roadway. He felt it is. Town Attorney Stepanicich did not know for sure. It sounds reasonable, but he could not speak on that matter for sure.

Council Member Brekhus clarified with staff that this pathway goes from the edge of the Branson property. Public Works Director Simonitch explained that it is 120 feet from the property line of

June 14, 2018 Minutes

Branson. It about one-third of the way. They can only request a portion of the street to be improved that is inline with the impact of the driveway. They would like to bring it all the way down, but as a concession end at this point where the impact of the driveway would come into play. It does not make total sense in the city improvement program, but this is all they can ask for from the applicant.

Mayor Pro Tempore Kuhl believed state law indicates that there is an unmarked crosswalk at every intersection of streets. Town Attorney Stepanicich is not sure. It sounds reasonable, but he is not certain. Mayor Pro Tempore Kuhl felt it is, which means they have an unmarked crosswalk at Norwood/Fernhill and Park/Fernhill, which is the entrance to Branson. At unmarked crosswalks, pedestrians have the right-of-way. Also, if it is an intersection, the Town could paint crosswalks.

Public Works Director Simonitch clarified that the Town would only maintain the pathway under normal wear and tear. It is not cut and dry, there are times when the Town comes through and fixes the irregularities and there are times when vegetation along the frontage of properties causes uplifting and they would require the homeowners to make repairs.

Council Member McMillan asked staff if the Town has liability if they ignore this recommendation and not make any improvements to the shoulder in conjunction with approving this project. Town Attorney Stepanicich stated there are existing conditions that exist without the driveway. With any discretionary project for the approval of the project itself there is discretion. The action by the Council tonight is subject to discretionary review.

Council Member Brekhus asked staff if they have any information in regard to student injuries along Fernhill. Planning Manager Scoble indicated that they have no information in that regard. Council Member Brekhus discussed attachment three and stated that it is not clear that this was presented without explaining the context. Planning Manager Scoble stated that is public correspondence provided by Resident Peter Nelson and is not information provided by Town staff.

Mayor Pro Tempore Kuhl asked staff if they did not impose any condition for the creation of a shoulder, would the homeowner then have to maintain the land at the side of the road. Public Works Director Simonitch responded in the affirmative.

Chris Skelton, on behalf of applicant, wanted to shed some light as to why this condition is unacceptable. He struggled to understand the diagram presented by staff and he is not sure anyone fully understands. He discussed common sense, equity and law. Staff's presentation while he appreciated the efforts seems to bounce around. He has confusion as to whether they are talking about shoulder or path. He understands it is intended to be a shoulder, yet they continue to discuss pathway. This is not the time or place to implement pathway improvements. This is a roadway improvement. 177 Lagunitas is distinguishable. They are being asked to bring an existing condition, an existing pathway that runs along Lagunitas into compliance with the objective standards that are already identified and defined by the policies adopted by Council. In this case, there are no policies as it applies to the condition being proposed. The common sense element is the notion of pedestrian traffic pattern. They all come to accept that pedestrians do not use this margin of the public right-of-way. When they are talking about pedestrian traffic

June 14, 2018 Minutes

patterns, if a vehicle is exiting, the vehicle will stop because there is a gate, so no vehicle will be traveling at excessive speeds. The vehicle exiting onto Fernhill has a 150-degree angle. The site lines are quite obvious. He asked the Council to put on their common sense hat as to how this improvement is creating a dangerous condition that warrants this type of condition. Public safety is important to consider. In regard to 38 Fernhill, that was an application heard back in May 2015, and this exact issue was raised by Mr. Nelson at the time and the majority of the Council identified that a sidewalk, pathway or shoulder improvement is a Town issue, not a private property issue. The condition is asking for a 120 feet from Branson and he continues to go back to the diagram to figure out where 120 feet comes from besides forming a triangle. He has tried to work with staff on this and there are several questions in regard to liability, maintenance, trees, eroding conditions, public right-of-way, etc. The owners at 11 Circle Drive have done everything they can to pull back the vegetation and maintaining that public right-of-way and with that he further asked the Council to approve the project without this singular condition.

Mayor Pro Tempore Kuhl opened the public hearing on this item.

Peter Nelson, Circle Drive resident, pointed out the importance of the 11 Circle Drive driveway. There are dangers on Fernhill at this section introduced from this driveway. This is a documented area where there is great danger to pedestrians. The introduction of the driveway is the nexus of safety in this area. The 4-foot shoulder is a place where pedestrians might walk onto or might not. The proposed roadway improvement will be an area one can easily step onto. There have been some communication from residents and the Council in regard to fair or unfair, but this road shoulder provides an easily affordable improvement that will improve safety.

Rupert Russell, Fernhill resident, stated in terms of traffic he wondered if there has been any discussion amongst staff and the Council as to why the new driveway has to be created. There is already an exit onto Norwood from this property. If the exit on Norwood is used that will eliminate the safety concerns.

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

Council Member Brekhus stated it is true that this property has two points of access and Norwood is such a different location. She understands staff's desire to create a safer situation but they are creating this little area that will not be used that much. She would approve without the Condition No. 10 in regard to the path or shoulder. Planning Manager Scoble noted that the Council could delete such condition.

Council Member McMillan agreed it is a band-aid on a bigger wound. As a Town, they must address the larger issue from Branson all the way up. They need to make improvements overall, not just a patch.

Mayor Pro Tempore Kuhl stated requiring the path of 120 feet does not solve the pedestrian problem. What will pedestrians do after the 120 feet. He suggested eliminating any condition having anything to do with the side of the road. That would leave the problem of an unsafe issue to the property owner. If someone got hurt they could claim the property owner failed to maintain the side of the road appropriately and that is a violation of State law. They could leave

June 14, 2018 Minutes

that decision to the property owner. Town Attorney Stepanicich stated that would put the burden back to the property owner as to what they do with their frontage. Council Member Brekhus suggesting modifying Condition No. 10 that the applicant maintain the right-of-way in a safe condition.

Mr. Skelton did not believe a condition is needed to accomplish what is being expressed. They will simply comply with Title 12 of the municipal code. All these issues and policies are outlined in Title 12, which is why the Council adopted that legislative act. To create a condition enunciated Title 12 in a more ambiguous way is unnecessary and potentially opens up dispute in the future. Town Attorney Stepanicich did not believe it is ambiguous. He stated simply indicating compliance with Title 12 is not going to work. Indicating that the applicant shall maintain their right-of-way along their frontage in a safe condition is straightforward. Council Member Brekhus agreed with the Town Attorney and if Branson maintained their foliage that would improve the line of sight as well.

Mayor Pro Tempore Kuhl asked for a motion.

Council Member Brekhus moved and Council Member McMillan seconded, to approve 11 Circle Drive, Demolition Permit, Design Review, Nonconformity Permit, and Tree Removal Permit No. 2017-038, and adopt Resolution No. 2053 with modification to Condition No. 10 to read, *“the applicant shall maintain the unimproved right-of-way along Fernhill Avenue in a safe condition.”* Motion carried 3-0 (Russell recused/Robbins absent/recused)

Council Member Russell resumed his seat at dais.

23. 10 Ames Avenue, Amendment to Design Review and Variance No. 1794, and Town Council consideration of adoption of Resolution No. 2061.

Nina Cohen, 10 Ames Avenue, A.P. No. 073-181-08, R-1: B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Low Density (1-3 units per acre), Zone X (outside of high risk flood area). The applicant is requesting to remove Condition of Approval No. 3 of the Town Council's September 16, 2010 approval of Variance and Design Review No. 1794 which states, "Unless otherwise agreed by the neighbors, the applicants shall maintain the hedge at the rear property line between 10 Ames and 9 Southwood at a height of approximately 15-18 feet tall, sufficient to provide screening between the two sites," and a condition of approval from the February 9, 2012 project amendment which requires "additional landscape screening along the length of the rear property line to screen the play structures from the neighbor views." The applicant and the property owner at 9 Southwood Avenue are both in agreement to remove the conditions.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2061 approving a design review and variance amendment to remove condition of approval No. 3 of the Town Council's September 16, 2010 approval of variance and design review No. 1794 and a condition of approval from the February 9, 2012 project amendment which requires *“additional landscape screening along the length of the rear property line to screen the play structures from the neighbor view”* for the property located at 10 Ames Avenue, APN 073-181-08.

June 14, 2018 Minutes

Mayor Pro Tempore Kuhl recalled when they dealt with this property before the owner of 9 and 7 Southwood were both involved and asked if they have any correspondence from 7 Southwood. Planning Manager Scoble noted the condition related to the hedge is related to 9 Southwood and that subsequent condition was specifically related to a play structure that has since been removed, so the condition of approval is moot.

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

Mayor Pro Tempore Kuhl asked for a motion.

Council Member Brekhus moved and Mayor Pro Tempore Kuhl seconded, to approve 10 Ames Avenue, Amendment to Design Review and Variance No. 1794, and adopt Resolution No. 2061. Motion carried 4-0. (Robbins absent/recused)

Council Member Brekhus recused herself from item 24 to avoid the appearance of a conflict.

24. 74 Shady Lane, Variance No. 2018-004, and Town Council consideration of adoption of Resolution No. 2051.

Thomas and Lindsey Abramo, 74 Shady Lane, A.P. No. 073-101-38, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Medium Low Density, Zone AE (1-percent annual chance floodplain). The applicant is requesting a Variance to allow for the new construction of a swimming pool that would be located approximately 24 feet from the rear property line and 10 feet from the right-side yard property line at 74 Shady Lane. The project would also include landscape and hardscape improvements.

Project Summary:

Lot Area	14,020 square feet	
Existing Floor Area/Ratio	3,892 sq. ft.	27.7% (15% Permitted)
Proposed Floor Area/Ratio	No Change	
Existing Lot Coverage	2,712 sq. ft.	19.3% (15% Permitted)
Proposed Lot Coverage	No Change	
Existing Impervious Surfaces	3,763 sq. ft.	26.8%
Proposed Impervious Surfaces	3,347 sq. ft.	23.5%

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2051 approving design review and a variance to allow for the new construction of a swimming pool that would be located approximately 24 feet from the rear property line and 10 feet from the right side yard property line at 74 Shade Lane.

Council Member Russell thanked staff for all their hard work in relation to this matter

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

Mayor Pro Tempore Kuhl asked for a motion.

Council Member McMillian moved and Mayor Pro Tempore Kuhl seconded, to approve 74 Shady Lane, Variance No. 2018-004, and adopt Resolution No. 2051. Motion carried 3-0. (Brekhus recused/Robbins absent/recused)

Council Member Brekhus resumed her seat at dais.

25. 29 Sir Francis Drake Boulevard, Design Review and Design Review Amendment.

*****This application has been withdrawn.*****

Sterling and Magdalena Sam, 29 Sir Francis Drake Boulevard, A.P. No. 073-242-10, R-1:B-10 (Single Family Residence, 10,000 square foot minimum parcel size), Medium-Low Density (.1-1 Unit/Acre), Zone AE (1-percent annual chance floodplain). The applicant is requesting Design Review to allow the construction of a six-foot tall fence to be constructed along the property line adjacent to Sir Francis Drake Boulevard. The applicant is also requesting to remove Condition of Approval No. 4 of the July 12, 2001 Town Council approval which requires the existing gate to be located "at least 18 feet back from the property line".

End of Public Hearings on Planning Projects – Part II.

26. Election of Mayor.

Council Member Brekhus moved and Council Member McMillian seconded, to nominate and appoint Mayor Pro Tempore Kuhl as Mayor of the Ross Town Council. Motion carried 4-0. (Robbins absent)

27. Election of Mayor Pro Tempore.

Mayor Kuhl moved and Council Member McMillian seconded, to nominate and appoint Council Member Brekhus as Mayor Pro Tempore of the Ross Town Council. Motion carried 4-0. (Robbins absent)

28. No Action Items:

a. Council correspondence - None

b. Future Council items

- Historic preservation

29. Adjournment.

Mayor Kuhl moved to adjourn the meeting at 9:13 p.m.



Elizabeth Robbins, Mayor

ATTEST:



Linda Lopez, Town Clerk