

**REGULAR MEETING of the ROSS TOWN COUNCIL  
THURSDAY, NOVEMBER 14, 2019**

**1. 6:02 p.m. Commencement.**

Mayor Elizabeth Brekhus (*arrived at 6:18pm*); Mayor Pro Tempore Julie McMillan; Council Member Beach Kuhl; Council Member Elizabeth Robbins; Council Member Rupert Russell; and Town Attorney Benjamin Stock.

**2. Posting of agenda.**

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

**3. Minutes - October**

Mayor Brekhus asked for a motion.

**Council Member McMillan moved and Council Member Kuhl seconded, to approve the October 10, 2019 Regular Meeting Minutes as submitted. Motion carried unanimously. (Brekhus absent/Russell recused)**

**4. Demands.**

The demands were met.

**5. Introduction and welcome to new employee Zachary Baker, Maintenance Worker.**

Public Works Director Rich Simonitch welcomed Zachary Baker to the Public Works Department as our new Maintenance Worker. Zack joined the Town staff on November 4th. He will be working alongside Anthony Alcozer taking care of the Town's streets, parks, trees, and grounds.

Zack grew up in the Shenandoah Valley in northern Virginia and moved to Marin as a teen. Zack worked for over three years with the Town of Corte Madera Parks and Recreation and brings extensive personal and on-the-job experience in building and landscape maintenance to the Public Works Department. Zack spends most of his personal time in the outdoors and enjoys camping, fishing, and hiking, and enjoys working hands-on to solve problems. His latest project is rebuilding a '72 Chevy truck, having an interest in all things mechanical.

**6. Open Time for Public Expression.**

Tony Ryan, Branson Soccer Coach, talked about the Branson School use permit in regard to using the school facilities for athletic purposes.

Courtney, Laurel Grove resident, also discussed the Branson School use permit and stated that CYO is an example of a community program that works well. It has been a huge success and it's a program that others aspire too. Ross has a reputation of being exclusive and CYO has changed that perception being able to use the facilities and viewing it as an open community, which happened because Branson allowed gym access at below market rate.

Diane Rudden, Ross resident, expressed concern for the phone service in Town not working during an emergency.

Billie Buck, Bolinas Ave resident, supported the Branson School use permit. There is a huge shortage of fields in Marin County and they are very fortunate to use Branson's fields.

#### **7. Mayor's Report.**

Mayor Pro Tempore McMillan reported on behalf of Mayor Brekhus stating on the forefront on our minds is the terrible power outage that they experienced at the end of last month. This is the kind of event that immediately has town and city elected officials and staff asking what could have prevented this, what did they do well, what do they need to improve and what other things can they do going forward. The Town will be looking at our ordinances that regulate noise and effect generator use in an effort to give residents direction on what is allowed and what generators would violate noise regulations. Town Hall was open and operating during the outage because it has a back-up generator. However, some people commented to her that whereas other towns and cities opened facilities such as libraries or community centers for residents to power up, the Town of Ross did not have facilities within the Town that were available to residents. This is a valid concern. But unfortunately, our Town buildings are small and cramped for Town staff and they do not have a lot of room. They may want to consider this fact when upgrading our civic center buildings or they may want to look into collaborating with Ross School, the Marin Art & Garden Center or other facilities in Town for these purposes. It is certainly a worthy discussion that they need to have. Another issue is the lack of cell phone coverage during the emergency that was very concerning and she thinks they need to look into that and see if a local solution to that problem is possible.

There has also been some discussion among Council members from different jurisdictions about whether the Marin County Council of Mayors and Council Members (MCCMC) which is made up of all Council members in the County, should be enacting resolutions that express our frustration with these power outages and urge the State to do more to prevent them. As the President of MCCMC, they are looking at whether or not a collective response from this group is appropriate and supported by the members. She thinks all of Council members would agree that if there is anything they could do as elected officials to improve this situation; it is incumbent upon us to take action. She believed Town staff could be commended for giving as much information as they were getting about the power outages and for providing information to residents about locations where they could power up in Marin County. She does believe that elected officials need to step up and take action on this issue because the more collective effort of all in problem-solving this terrible situation is needed. If you have any thoughts or concerns regarding the Town's response to the power outage, feel free to contact Mayor Brekhus.

*Mayor Brekhus joined the Town Council meeting.*

#### **8. Council Committee & Liaison Reports.**

Mayor Pro Tempore McMillan reported that FireSafe Marin is sponsoring two FREE Home Hardening workshops on Tuesday, November 19th at Embassy Suites in San Rafael:

- Home Hardening Workshop for Building Industry Professionals, Seminar 2:00-4:00 pm
- Home Hardening Workshop for Homeowners, Live Fire Demo 5:00 pm, Seminar 6:00-7:30 pm

**9. Staff & Community Reports.**

**a. Town Manager**

Town Manager Joe Chinn reported that the Transportation Authority of Marin (TAM) awarded the Town of Ross a \$400,000 grant for a Safe Pathway to School to be used for Laurel Grove.

**b. Ross Property Owners Association.**

John Kieckhefer, RPOA representative, announced that RPOA would hold a disaster response class this Saturday at Ross School. The light poles have been installed in the Common with RPOA contributing \$20,000. RPOA board members met with MWWWD in regard to installing a drinking fountain at Natalie Coffin Greene Park. The annual Christmas decorations will occur prior to the Town's tree lighting celebration.

**10. Consent Agenda.**

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

**a. Town Council acceptance of FY20 Q1 Financial Summary Report.**

**b. Town Council acceptance of FY20 Q1 Investment Report.**

**c. Town Council acceptance of the Pavement Rehabilitation Project (Project Number 9040-45) and authorizing staff to file a Notice of Completion.**

**d. Town Council acceptance of the Bolinas Avenue Storm Drain Improvement Project (Project Number 9205-65) and authorizing staff to file a Notice of Completion.**

Mayor Brekhus asked for a motion.

**Council Member Kuhl moved and Mayor Pro Tempore McMillan seconded, to adopt the Consent Agenda as submitted. Motion carried unanimously.**

**End of Consent Agenda.**

**11. Public Hearings on Planning Projects – Part I.**

*Public hearings are required for the following planning application. Staff anticipates that this item may be acted upon quickly with no oral staff report, Council discussion, or public comment. If discussion or public comment is requested, the Council may consider the item later in the agenda.*

**a. 19 Sir Francis Drake Boulevard, Extension of Nonconformity Permit No. 19-0001 EXT, and Town Council consideration of adoption of Resolution No. 2134.**

Elizabeth Foster and Paul Furusho, 19 Sir Francis Drake Boulevard, A.P. No. 073-273-41, R-1:B-10 (Single Family Residence, 10,000 square foot min. lot size), Medium Low Density (3-6 Units/Acre), Zone X (Outside 1-percent annual chance floodplain).

**Project Description**

The applicant requests a one-year time extension of a Nonconformity Permit to allow for structural alterations to a nonconforming structure that would result in a 134 square feet lot coverage reduction resulting from the demolition of an existing front porch as viewed from the north elevation. All project materials were approved to match the existing residence (e.g., cedar stained shingles, white door and windows, dark brown window and fascia trim, and asphalt shingle roofing). Lastly, no modifications to the existing landscaping or hardscape are proposed. The Nonconformity Permit was approved by Town Council Resolution No. 2024 on October 12, 2017.

**Project Summary:**

Lot Area	7,500 square feet	
Existing Floor Area/Ratio	2,130 sq. ft.	28.4% (20% FAR Permitted)
Proposed Floor Area/Ratio	1,996 sq. ft.	26.6%
Existing Lot Coverage	1,066 sq. ft.	30% (20% FAR Permitted)
Proposed Lot Coverage	932 sq. ft.	28%
Existing Impervious Surfaces	2,200 sq. ft.	29.3%
Proposed Impervious Surfaces	2,066 sq. ft.	27.5%

Planning and Building Director Heidi Scoble stated that staff will not providing a presentation and that staff is available to answer any questions.

Mayor Brekhus 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 Brekhus asked for a motion.

**Council Member Kuhl moved and Council Member Robbins seconded, to approve 19 Sir Francis Drake Boulevard, Extension of Nonconformity Permit No. 19-0001 EXT, and adopt Resolution No. 2134. Motion carried unanimously.**

**End of Public Hearings on Planning Projects – Part 1.**

**Administrative Agenda.**

- 12. Town Council consideration of adoption of Ordinance No. 700 which adopts and amends the 2019 California Building Code, the 2019 California Residential Code, the 2019 California Electrical Code, the 2019 California Mechanical Code, the 2019 California Plumbing Code, the 2019 Existing Building Code, the 2018 International Property Maintenance Code, the repeal of the 2016 California Administrative Code, the 2016 California Energy Code, the 2016 California Historical Building Code, the 2016 California Fire Code, the 2016 California Green Building Standards Code, the 2016 California Referenced Standards Code, the 1997 Uniform Code for the Abatement of Dangerous Buildings, the 1997 Uniform Housing Code, the 2015 International Property Maintenance Code, as codes applicable to all construction within the Town of Ross, with local modifications and other conforming changes to Title 15 of the Municipal Code as highlighted in the Ordinance.**

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Building Official Thomas Ahrens summarized the staff report and recommended that the Council adopt Ordinance No. 700, adopting certain parts of Title 24 Code of Regulations, with local amendments, and the International Property Maintenance Code, with amendments (Town Municipal, Title 15 – Buildings and Construction).

Council Member Robbins asked if a homeowner has a pool with a cover, but not a perimeter fence, do they need to apply for an exception from the parameter fence requirement. Building Official Ahrens explained the requirement for the pool safety cover and perimeter fence are two separate sections in the health and safety code. The perimeter fencing is required irrespective of whether or not owners have a safety pool cover. The perimeter fence is required for all pools, new or existing. If owner's do not have an existing perimeter fence, it should be installed as soon as possible or at least within 90 days.

Council Member Russell felt this is bizarre because every single person that owns a pool will be impacted. This will be overwhelming to residents. Building Official Ahrens stated that the provision has been in place for some time. Town Attorney Benjamin Stock explained that the Council is confused in regard to what constitutes a perimeter fence; it is not a fence around the pool, but a fence around the entire yard. Building Official Ahrens stated that a perimeter fence around the entire property would satisfy this condition, as would a fence constructed just around a pool. Council Member Russell recommended that staff clarify such language.

Council Member Kuhl clarified with staff that they are required to conform to State law. Building Official Ahrens responded in the affirmative and stated that the law applies to all new or substantially altered swimming pools and that the local amendment would require all existing pools to conform to the regulations as well.

Council Member Kuhl asked staff if a hedge, if tall enough, could constitute as a barrier around a pool. Building Official Ahrens stated that it is an interpretive matter and will be decided on a case-by-case basis. It is not in the code language.

Mayor Brekhus 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 Robbins agreed this could be a surprise to some residents, but it is a safety issue, children do drown, so she noted support.

Council Member Kuhl agreed to follow the recommendation of staff.

Council Member Russell desired the clarifying language to be included in regard to an enclosure around a property meets this requirement. Building Official Ahrens agreed to add clarifying language. Staff will develop a standard in regard to a property-lined fence as well as a hedge.

Mayor Brekhus asked for a motion.

**Council Member Russell moved and Council Member Kuhl seconded, to adopt Ordinance No. 700. Motion carried unanimously.**

- 13. Town Council consideration of adoption of Ordinance No. 701 which adopts the 2019 California Fire Code, portions of the 2018 International Fire Code, and Appendix A of the 2018 International Wildland-Urban Interface Code and amending Chapter 14.04 of the Ross Municipal Code as regulations governing conditions hazardous to life and property from fire or explosion in the Town of Ross.**

Fire Marshal Scot Alber summarized the staff report and recommended that the Council adopt Ordinance No. 701, which adopts the 2019 California Fire Code, portions of the 2018 International Fire Code, and Appendix A of the 2018 International Wildland-Urban Interface Code and amending Chapter 14.04 of the Ross Municipal Code as regulations governing conditions hazardous to life and property from fire or explosion in the Town of Ross.

Mayor Brekhus 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 Brekhus asked for a motion.

**Council Member Kuhl moved and Mayor Pro Tempore McMillan seconded, to adopt Ordinance No. 701. Motion carried unanimously.**

- 14. Town Council consideration of adoption of Resolution No. 2112 establishing a Town policy for formation of Utility Undergrounding Districts in the Town of Ross.**

Public Works Director Richard Simonitch summarized the staff report and recommended that the Council discuss and adopt Resolution No. 2112, establishing a Town policy for the formation of Underground Utility Districts by private property owners.

Town Manager Joe Chinn stated once the Town approves the resolution of intention an undergrounding project is a public project. Immunities, liabilities and protections are the same as any other normal Town infrastructure project. As a Town, the policy includes a release which releases the Town from all claims coming from the contributors. If there were a lawsuit against the Town, they would ask the contributors at that time to indemnify the Town.

Mayor Pro Tempore McMillan asked how the agreement as currently constructed protects the Town. Town Attorney Benjamin Stock stated if the Town wants to encourage these districts, the unknowns must be known before the district is officially adopted. In the very front end, it is not clear what would be requiring the property owners to indemnify. It is a public project and the Town always has control. If the Town decides not to proceed that is an option.

Council Member Kuhl clarified that staff is recommending against inclusion of an indemnity agreement in this document. Town Manager Chinn affirmed and responded that they revised by instead requesting a release agreement. Council Member Russell stated that a release is between the parties. As he understands it, if the vote is approved, and if someone turns around and says there was a lack of disclosure concerning specific costs on this project, he suspects that type of lawsuit and how would the Town in that situation ensure it was not caught in the middle. Town Attorney Stock noted that all lawsuits must be filed within 30 days of the vote. At that point in

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time, there are multiple types of challenges, and the Town must evaluate if they want to defend that challenge and what will it cost to defend that challenge and who will assist in paying for that cost. That is when cities look to proponents to help fund. Council Member Russell stated there is the cost of the lawsuit and the liability. Town Attorney Stock explained if somebody files a lawsuit challenging the district and the Town does not want to defend that lawsuit, the Town could unwind the district before the bonds are sold and there are no damages.

Town Manager Chinn discussed the addendum in regard to the new edits, which are outlined in blue for the Council's consideration. At the June meeting, the Council voted on the voting percentage and assessment district formation, and a few Council members wanted to revisit that discussion, so it is the Council's call to revisit that tonight or not. Staff is looking to get a policy adopted tonight.

Council Member Kuhl wanted to know the status of this policy. It is not an ordinance, it is simply a guidance for those in the future who want to create this kind of underground district to guide them in the steps they must go through and what the Town will expect them to do as they go through the process of seeking to have such a district created. Town Manager Chinn responded in the affirmative.

Council Member Russell discussed the boundary map and did not see anything in writing about providing a notice. Public Works Director Simonitch stated that it is the responsibility of the neighborhood committee to make sure everyone in the district is on board before they bring it to staff. When staff brings the petition and the boundary to the Council for a vote on moving forward with the district, at that time, anyone who was not informed would have a chance to speak.

Council Member Robbins felt the first steps for the current district does not apply. There is no sort of grandfathered clause, but for Section 2.8, there is at least one household that has no idea, so how does that work for the current district. Town Attorney Stock stated if there is an existing district moving forward, they will have a notice once it comes to the Town. Maybe not during the petition process, but once it comes to the Town they will be noticed. Council Member Robbins asked if end parcels have the right to opt-out. Town Attorney Stock responded that they do not have the right, but they can request. The goal of the policy is to have those issues addressed through the neighborhood committee before they come to Council, but the Council ultimately approves the boundary map. The boundary map must take into consideration neighborhood harmony, but also public utilities. Town Manager Chinn noted there is at least three or four months before they could come back with any district, so there is still time for that neighborhood committee to give notice to all property owners. Town Attorney Stock pointed out that under 218, it requires written notification before it comes to the Council. They will get noticed if it moved forward to a resolution of intention.

Council Member Russell stated there is no reference to Town staff in regard to the boundary map. Public Works Director Simonitch indicated when the boundary map is presented to Council it will include which lots signed the petition and which did not, so Council will have the tools to make a decision. Staff will also talk to PG&E in terms of what makes sense.

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Council Member Robbins discussed page 8 and asked if there is an appeal process if someone feels they are unfairly assessed. Town Attorney Stock explained that is the Prop 218 process. The Council must approve the engineer's report with all assessments, so there is no appeal after the engineer's report is approved.

Council Member Robbins expressed concern for the language on page 14 of the petition. Town Attorney Stock noted it is true, they do not waive their rights by signing the petition to later vote against the district.

Mayor Brekhus opened the public hearing on this item.

Ted Williams, 61 Glenwood, Ross resident, very much in favor of this proposal. He felt this should be put in the hands of the people to decide.

Mark Kruttschnitt, Ross resident, fully supportive of the underground initiative and hopes the ballot is kept to a simple majority vote.

Hadley Mullin, Glenwood resident, supports the underground initiative and keeping the voting threshold to a majority. She is sensitive to the cost on individual homeowners, but the cost pales in comparison to the cost associated with a catastrophic fire in Ross. This will preserve the beauty of the Town.

Diane Rudden, Willow Ave resident, expressed concern when they assess her house - is her property on Lagunitas or is it on Willow. She is more than happy to do the assessment on her frontage but felt this is becoming an issue.

Steve Anderson, Shady Lane resident, supported the underground initiative.

Jim Harding, Glenwood resident, wants to maintain a safe community and supports the underground initiative. If the 50% is raised they will kill the Town's ability in regard to such projects.

Liebe Patterson, Glenwood resident, wanted to find a process that does not effectively diminish the ability to take on these projects. This will enhance the Town to underground power and increase safety. She wanted to find a way to preserve the trees in Ross to maintain the natural beauty.

Billie Buck, Bolinas Ave resident, supported the underground initiative. Her primary concern is safety. They want to preserve the charm of the Town, but the trees need to be trimmed.

Stephanie DiMarco, Ross resident, undergrounding utilities is the right thing to do and the only way for this project to get done, is if residents pay for it. The time is now to underground utilities. An underground district is very different from a parcel tax. A parcel tax is administered town wide. For an underground district the numbers are very small. To achieve 65% on a petition they had to get 71% of the available parcels. When dealing with small numbers, percentages are very misleading. People will never commit real money when just a handful of parcels can swing the vote. The previously approved thresholds are fair and reasonable. The time is now, the risk has



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never been higher, interest rates are low, and she asked the Council to approve the policy with the thresholds approved in June.

Kim Kieckhefer, Shady Lane resident, very much in support of this project for all the reasons discussed. Shady Lane is forming their own district and they already engaged an engineer and they hope to move forward.

Clyde Ostler, Lagunitas Road resident, very pleased with how strongly residents feel about this initiative. Residents are supportive and want this done. This is a very rational process and it is crazy to slow this process down. The Council should be advocates of this process.

Zach McReynolds, Lagunitas Road resident, a few days without power is horrible, but this is not a joke. Fire from the power lines is real. His motivation for this project was cosmetic initially, but fire is a serious risk and it must be done before they regret it. The cost will pale in comparison if they have a fire. He further appreciated the Council's efforts.

Bob Berry, Ames Avenue, urged the Council to encourage other districts to do their undergrounding. Be careful about providing indemnity clauses with the volunteers. He urged the official vote to not be more than the State requires as put forth in June, otherwise it will be impossible to move forward. He objected to the fact that end parcels have the ability to opt-out because they still get the benefit of beautification while driving up the street and through Town.

Frank Doodha, Ross resident, explained that there is an option to use a short pole, but only the Council can grant such permission and consideration is not defined. This is extraordinary cost. District 1 is already grandfathered in and respectfully requested to be removed from District 1.

John Jones, Lagunitas resident, supported the underground initiative primarily for safety and fire factors, but this will preserve the aesthetics of this Town. He urged the Council to support the proposal as it is recommended.

Marilyn Green, Lagunitas resident, supported the initiative and encouraged the Council to please keep it to a simple majority and get it done.

Bob Dickinson, Glenwood resident, imagine the Town Council allowing the implementation of an initiative before formally approving policy that governs that initiative; imagine initiating underground wiring and not making all affected property owners aware; imagine not sharing information with all affected property owners; imagine including property owners in an assessment district and not notifying them up front; imagine not making all decisions up front that will have a direct impact on a property owners out-of-pocket costs; imagine conflicting facts circulated by the Town and sponsors about the initiative; well, they don't need to imagine since that has happened with the first formed underground utility district and what the yet approved policy will perpetuate. There has been lack of full disclosure; lack of transparency; and misrepresentation. The Town has made mistakes, which he believed without malice or bad intentions, nevertheless due process has not been followed. Therefore, owners at 21, 23, and 41 Glenwood Ave demand that their contiguous properties be removed from underground utility District 1 immediately.

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Kris Kelley, Ross resident, stated they have done their very best to talk to everyone involved in the district. They are trying to share the information and do the right thing. They want to make the Town safe and beautiful. She urged the Council to pass their proposal.

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 Robbins asked if the policy should include the location of streetlights. Also, page 11 mentions the utilities remove poles and residents install laterals and felt there should be a policy that the residents have a finite period of time to install their laterals. Seems like there could be some delay. Town Attorney Stock explained the timeframe is specified in the resolution adopted through the resolution of intention. Public Works Director Simonitch noted that the location and height of the light poles is determined by engineering. Council Member Robbins asked staff to add that information in the FAQ's so everyone understands it is determined during the engineering process.

Council Member Russell asked staff what other municipalities are doing in regard to the threshold. Public Works Director Simonitch has seen other agencies use the simple majority of parcels. Town Manager Chinn added that Belvedere and Tiburon use State law, so they match the 50% protest. Ross added the parcel vote. Majority is State law on the vote and for the petitions range from 60% to 70%

Mayor Pro Tempore McMillan asked staff to discuss an exemption for undergrounding their laterals. Town Manager Chinn noted it is on page 9 in regard to exemptions. If the cost is extraordinary there likely a special circumstance. Mayor Pro Tempore McMillan asked if it is possible for the three homes on Glenwood to opt-out. Public Works Director Simonitch explained that requires geographic analysis, but it causes a discontinuity, so it would be creating two separate districts. Town Manager Chinn stated that they want continuity when undergrounding utilities.

Council Member Kuhl expressed concerns about people who have inadequate funds being trapped into a district, but he strongly feels as a Council they are obliged to do what the citizens desire, so he is willing to go along with the 50/50 vote. He expressed concern for the opt-out provision. Town Manager Chinn stated Section 2.7 is to opt-out of the entire district. Page 9 is to leave the above ground service laterals on property, but they would still share the PG&E cost to run the lines underground in the public right of way. Council Member Kuhl added that the only way the three parcels could opt-out is to create two districts, so for that reason that is impractical.

Council Member Russell stated when the petition gets sent out, who decides who gets the petition and who does not. Public Works Director Simonitch explained the neighborhood committee decides. Mayor Pro Tempore McMillan noted that the policy was amended to certify in writing to Town staff that it was provided to all property owners.

Council Member Russell worries about forcing neighbors to come out-of-pocket. Council Member Robbins felt the money makes the vote a problem. When adding in the frontage and lateral it will be expensive. It is not correct to force neighbors to participate in the district. She wanted a higher

number than 50 for the parcel count itself. She is not comfortable with anything less than 60 percent at this point.

Mayor Pro Tempore McMillan felt they have safeguards with the high threshold and redundancy with parcel-by-parcel basis. There is confusion about characterizing this as a tax or bond, it is not, it is a special assessment. Wished there is a way to accommodate the three residents unhappy on Glenwood. She hopes with further work and communication they can bridge that gap with those homeowners. At this point, they must move forward and provide guidance. They need to move on and approve. She is uncomfortable revisiting a vote that was already made in June.

Council Member Kuhl expressed concern that it is totally not spelled out what this assessment engineer is supposed to consider. It is very vague language in regard to setting dollar amounts, but he will vote to support tonight.

Council Member Russell is all about disclosure and wanted to make sure residents understand what they are getting involved in and wanted staff to mention the average cost for installing laterals. Mayor Brekhus felt that is risky to provide an average cost because it is very dependent on variables. Council Member Russell stated they are talking serious money and felt bad to impose this on their residents. This will come as a surprise. Mayor Pro Tempore McMillan suggested consulting with an electrician in regard to the cost. Public Works Director Simonitch recommended adding language in regard to underground trenching and talk about scope, not price. Mayor Brekhus recommended that each resident must do their due diligence and consult with a professional.

Mayor Brekhus asked for a motion.

**Mayor Pro Tempore McMillan moved and Mayor Brekhus moved seconded, to adopt Resolution No. 2112, establishing a Town policy for the formation of Underground Utility Districts by private property owners and the Town of Ross, as amended with the attached blue lined addendum. Motion carried 4-1. (Robbins opposed)**  
**End of Administrative Agenda.**

*The Council took a short recess at 8:30pm and resumed at 8:44pm*

#### **Public Hearings on Planning Projects – Part II.**

**15. 39 Fernhill Avenue, Use Permit Amendment No. 19-0002 UP, and Town Council consideration of adoption of Resolution No. 2135.**

The Branson School; Owner, and Kent Middle School, Applicant, 39 Fernhill Avenue, A.P. Nos. 73-072-04, 73-082-01, 73-082-12, 73-141-03 and 73-151-05, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size), Limited Quasi-Public/Private Service, Zone X (outside the 1-percent annual chance floodplain).

#### **Project Description**

The applicant is requesting a Use Permit Amendment to the Branson School Use Permit to allow the Kent Middle School to host an educational retreat for the 8<sup>th</sup> Grade Class to be held at the Branson School campus on November 25, 2019 and November 26, 2019

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from 8:00AM to 3:30PM while the Branson School is closed for Thanksgiving break. All parking related to this event would occur on the campus.

Planning and Building Director Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2135, authorizing a use permit to the Branson School Use Permit to allow Kent Middle School 8<sup>th</sup> Grade Educational Retreat on November 25, 2019 and November 26, 2019 from 8am to 3:30pm.

Mayor Brekhus desired clarification in regard to the carpool expectation. Heidi Longo, applicant, stated it is very well organized. She greets the students at Branson. They come in pairs as well as staggered. Mayor Brekhus asked who organizes the carpools. Ms. Longo explained that a parent volunteer coordinates the carpools and the carpools are between 4 or 5 students depending on the size of the vehicle. They really enjoy being at the Branson campus and have a great relationship with the staff. It's been an arrangement that works very well. It has been a lovely way to have students experience the curriculum in a different setting.

Council Member Robbins asked if there are any fees associated with this event. Ms. Longo responded that they pay a facility fee, custodial fees and the food service. She believed it is around \$10,000 and the food cost is the greatest cost.

Council Member Russell asked how often this occurs. Ms. Longo responded that it is once per year.

Mayor Brekhus opened the public hearing on this item.

Peter Nelson, Circle Drive resident, felt the traffic organization is well organized with great attention to detail. There is absolutely no issue with traffic or how the event is managed. The staff is very attentive in regard to meetings or off-site presentations. He believed it works flawlessly.

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 Robbins believed it is misleading to indicate there is no increased traffic, when it is a day when there is no school and a day when there is no traffic, except for neighbors, so this does increase traffic. This is outside of the use permit, it is not Branson using it, it is an outside institution, and asked if Branson should be used for events for outside institutions. Council Member Robbins stated that this is not regular, and it is disappointing that this permit and request is being asked 11 days before the event. It is important to follow the use permits. She understands it is a request for an exception, which is more of an acknowledgment of not following the use permit. Mayor Brekhus echoed Council Member Robbins comments. Residents should have a break from traffic during the holidays. For 155 people to attend the event it is increased traffic. She expressed frustration in regard to this matter.

Mayor Brekhus asked for a motion.

**Council Member Robbins moved and Council Member Russell seconded, to approve 39 Fernhill Avenue and adopt Resolution No 2135. Motion carried unanimously.**

**16. 39 Fernhill Avenue, Use Permit Amendment No. 19-0004 UP, and Town Council consideration of adoption of Resolution No. 2136.**

The Branson School, Owner, and Ross School PTO, Applicant, 39 Fernhill Avenue, A.P. Nos. 73-072-04, 73-082-01, 73-082-12, 73-141-03 and 73-151-05, R-1:B-A (Single Family Residence, One Acre Minimum Lot Size), Limited Quasi-Public/Private Service, Zone X (outside the 1-percent annual chance floodplain).

**Project Description**

The applicant is requesting a Use Permit Amendment to the Branson School Use Permit to allow the Ross School PTO to host the "Wine Fest", a wine festival event fundraiser to benefit the Ross School, on February 28, 2020 from 6:30PM to 10:00PM. It is anticipated that approximately 200 people will attend the event. All parking related to this event would occur on the campus during non-school hours.

Planning and Building Director Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2136 authorizing a use permit to the Branson School use permit to allow the Ross School Parent Teacher Organization "Wine Fest" on February 28, 2020, from 6:30 to 10pm.

Mayor Pro Tempore McMillan asked staff if the school has asked for similar use permits in the past. Planning and Building Director Scoble responded in the affirmative. Minutes of similar use permits were attached to the Council's packet for consideration.

Mayor Brekhus opened the public hearing on this item.

Peter Nelson, Circle Drive resident, explained that the events are very well organized in his opinion.

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 Russell asked staff if this is an annual event as well. Planning and Building Director Scoble responded that the wine fest is a biannual event.

Mayor Brekhus asked for a motion.

**Council Member Russell moved and Mayor Pro Tempore McMillan seconded, to approve 39 Fernhill Ave and adopt Resolution No. 2136. Motion carried unanimously.**

**17. 39 Fernhill Avenue, Use Permit Amendment No. 19-0003, and Town Council consideration of adoption of Resolution No. 2137.**

The Branson School, Owner, and Town of Ross, Applicant, 39 Fernhill Avenue, A.P. Nos. 73-072-04, 73-082-01, 73-082-12, 73-141-03 and 73-151-05, R-1:B-A (Single Family

Residence, One Acre Minimum Lot Size), Limited Quasi-Public/Private Service, Zone X (outside the 1-percent annual chance floodplain).

### **Project Description**

Town of Ross staff recommended Use Permit Amendment pursuant to Section 18.60.080 of the Ross Municipal Code to allow a Use Permit Amendment to amend condition of approval number 5 of Town Council Resolution 1042 adopted on May 11, 1978, to include a requirement for the Branson School to provide a notarized affidavit under penalty and perjury that the full and part-time enrollment numbers are true and correct. The amended condition is recommended as follows:

“That by October 15<sup>th</sup> of each year, the School shall provide and file with the Town an affidavit under penalty and perjury that is true and correct ~~statement~~ indicating the number of students enrolled in the School and the number of said students who are residents of the Town, a schedule of the approximate dates of all special events planned for the School year, and for the summer, insofar as they are known, and a scholastic games schedule insofar as they are known, and a copy of the memorandum, letter, or directive to students, employees, and parents, advising them of the terms of the Use Permit, insofar as applicable, and requesting their compliance with each of the terms of said permit.”

Planning and Building Director Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2137, approving a Use Permit Amendment to modify condition of approval #5 of the Town Council Resolution No. 1042 adopted on May 11, 1978, to include a requirement for the Branson School to provide a signed affidavit under penalty and perjury that the full and part-time enrollment numbers are true and correct and does not exceed 320 students total.

Mayor Brekhus 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 Robbins thinks the Town's interest is to have honest accounting and respect and compliance with the use permit. She suggested adding if an enrollment exceeds the cap in one year, then it needs to be less than the cap the next year or correct the second year. If not corrected, then the cap is reduced. It would guarantee compliance. Her proposal is to work on the language a little bit more to provide a little more flexibility. She had no objection to the penalty of perjury language. Council Member Russell noted support but felt it must be agenized separately. Planning and Building Director Scoble responded that if that is the desire of the Council to consider that modification, then this matter must be continued to the December meeting in order to have such language considered.

Council Member Kuhl felt they are over legislating and over thinking this matter. He did not believe it is a big deal and had no objection to the penalty of perjury language. Mayor Brekhus did not agree and felt Branson must have a waiting list in order to comply with the Use Permit. Increased enrollment is wrong. There has to be some mechanism in place. Town Attorney

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Benjamin Stock stated that Council could continue to the December meeting in order for staff to modify the language. Council Member Russell would rather approve this matter tonight and discuss modifications at a later date.

Mayor Pro Tempore McMillan stated the issue is not about the number, but all the activities events and cost. If this is continued, they must discuss what activities were allowed in 1978 so they have a benchmark, so the activities are the same in number as the activities in 1978.

Council Member Russell stated assuming the community approves the 420 cap, a key issue will be to ensure enrollment and penalties.

Council Member Robbins felt it would make sense to address this in March or April then there will be direction before fall if there are to be changes. Council Member Russell recommended approving tonight.

Mayor Brekhus asked for a motion.

**Council Member Russell moved and Council Member Kuhl seconded, to approve 39 Fernhill Ave and adopt Resolution No. 2137. Motion carried unanimously.**

**End of Public Hearings on Planning Projects – Part II.**

**18. No Action Items:**

**a. Council correspondence**

- Get Shady Ladies to perform at Ross MCCMC hosted meeting in January 2020 CPUC.

**b. Future Council items**

- Winship Bridge Update
- Lessons learned from PSPS including communications – December Meeting
- Cell Tower Coverage in Power Shutdowns – December Meeting
- Branson Enrollment Use Permit – December Meeting
- Informational Item on Generators – Noise Ordinance

**19. Adjournment.**

Mayor Brekhus moved to adjourn the meeting at 9:25 p.m.

  
Elizabeth Brekhus, Mayor

**ATTEST:**

  
Linda Lopez, Town Clerk