

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, FEBRUARY 10, 2022
Held by Teleconference

1. 6:00 p.m. Commencement.

Mayor Elizabeth Robbins; Mayor Pro Tem Beach Kuhl; Council Member Elizabeth Brekhus, Council Member Bill Kircher, Jr., and Council Member Julie McMillan; Town Attorney Benjamin Stock

2. Posting of agenda.

Town Clerk Lopez reported that the agenda was posted according to government requirements.

3. Minutes – Regular Meetings of January 13, 2022

Council Member McMillan moved and Council Member Kircher seconded, to approve the January 13, 2022 Regular Meeting Minutes, as submitted. Motion carried (5-0).

4. Employee appreciation and recognition of Town employee Recreation Manager Gretchen Castets (5 years).

Town Manager Christa Johnson provided an overview of Recreation Manager Gretchen Castets' role and responsibilities and recognized Ms. Castets for her five years of service.

Mayor Robbins and Council Members thanked and recognized Ms. Castets for her 5 years with the Town and accomplishments, and Ms. Castets provided brief comments.

5. Open Time for Public Expression

Hadley Mullin, Branson School, 20 Glenwood, Treasurer of the Board of Trustees and Chair of the Finance Committee, thanked the Council for all the time and careful consideration put into the use permit matter, expressed her serious concerns with one proposed condition which is the immediate student enrollment rollback penalty if there is a traffic count violation. She believes it is out of proportion to the traffic impact it seeks to remedy, and she provided hypothetical examples of significant revenue and scholarship impacts to the school. She asked the Council to reconsider the rollback penalty which is unprecedented in the school arena and very burdensome to the school and students.

6. Mayor's Report.

The Ross Town Council is on track to approve Branson's application to amend its existing use permit to increase student enrollment.

The Town requires use permits for non-residential use of property in residential neighborhoods. Last March, Branson filed an application to amend condition #1 of its use permit to increase the school's enrollment from 320 to 420 students. This followed voter approval of Measure F in March 2020, which allowed a total student enrollment of up to 420 students, subject to the

approval of a use permit by the Town Council. A key element of Branson's campaign was its promise to keep traffic net-neutral with any enrollment increase.

Branson's current use permit dates from 1978, when Branson, which started as a small girls' boarding school, transitioned to a larger school with an enrollment of 320 students. The use permit established conditions to ensure that the school's impact on the neighbors and the Town did not increase as Branson grew.

At its January meeting and at a special meeting February 8 the Council indicated that the enrollment increase could be 100 students (25 students/year over 4 years), as requested by Branson, and that the enrollment increase was exempt from CEQA, based on no net increase in traffic. The Council discussed whether existing conditions in the use permit needed to be updated. The most important conditions of approval relate to Branson's promise to keep traffic net neutral. The school has developed a comprehensive plan to achieve this. Much of the discussion has focused on how to monitor and enforce the plan to ensure that traffic is maintained at current levels.

The Council is expected to consider whether to approve Branson's application at its continued special meeting February 15 (starting at 8:30am), bringing this process to a close. This will allow Branson to send out offers of admission next month consistent with the approved use permit.

8. Council Committee & Liaison Reports - None

9. Staff & Community Reports

a. Town Manager

Town Manager Johnson announced at the urging of residents and due to the extraordinary amount of sunshine and warmth in January, the Town was able to open most of the Common field to recreational use yesterday. She thanked Public Works Director Rich Simonitch and Public Works Maintenance Anthony Alcozer and the RPOA and the Ross Auxiliary for their donations to open up the fields.

Regarding the three new EV charging stations at the Post Office parking lot, over half of the cost of the purchase and installations will be funded by grants from TAM Measure B and MCE EV Station Rebate programs, and the stations will be available for public use this spring.

b. Ross Property Owners Association – No report.

10. Consent Agenda.

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

a. Demands.

b. Recommendation to accept the Town of Ross Annual Financial Audit Report for the Year Ended June 30, 2021.

- c. **Town Council acceptance of FYE22 Q2 Investment Report.**
- d. **Town Council acceptance of FYE22 Q2 Financial Summary Report.**
- e. **Town Council consideration of adoption of Resolution No. 2234 Assembly Bill 361 Immediately Amends Open Meeting Laws to Expand Teleconference Meeting Options During Proclaimed State of Emergencies.**
- f. **Town Council consideration of amending CalPERS Resolution Delegation of Authority to request employer disbursements from the CalPERS California Employers Benefit Trust Fund.**
- g. **Town Council consideration of adoption of Resolution No. 2235 ratifying an Employment Agreement retaining David Woltering to serve as Interim Planning and Building Director.**
- h. **Town Council consideration and approval of an amendment to a Deed Restriction to allow the construction of an accessory structure at 92 Shady Lane, APN 073-052-38.**
- i. **Town Council consideration of adoption of Resolution No. 2239 authorizing submittal of applications for all CalRecycle grants and payment programs the Town is eligible for.**

Mayor Robbins asked if any Council Members or public members wished to remove any item from the Consent Agenda or had public comments. There were no public comments or items for removal.

Council Member Brekhus moved and Council Member Kircher seconded, to approve the Consent Agenda Items a, b, c, d, e, f, g, h and i. Motion carried unanimously (5-0).

End of Consent Agenda.

Public Hearings on Planning Projects

10. Public Hearings on Planning Projects – Part I.

Public hearings are required for the following planning applications. Staff anticipates that these items 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. 36 Glenwood Avenue, Design Review, and Town Council consideration of adoption of Resolution No. 2236.

36 Glenwood LLC, 36 Glenwood Avenue, A.P. No. 073-131-30, Zoning: R-1: B-A;
General Plan: VL (Very Low Density), Flood Zone: X (Minimal risk area).

Project Summary: The applicant is requesting approval of Design Review to construct a new detached accessory building (“art studio”) and to construct new landscape structures including pond, bridge, deck, in the rear yard of the existing single-family residence.

Matthew Weintraub, Planner, provided an overview of the request for design review to construct a new detached accessory building and new landscape structures. The ADR group recommends approval and written comments were received regarding concerns about construction activity. Staff has reviewed comments and is recommending the issues raised that are in the purview of permit regulation can be addressed by the Municipal Code regulations and by standard Condition of Approval No. 9 (a-w) and by monitoring by Town staff. No additional conditions are required and staff recommends approval.

Mayor Robbins opened the public comment period.

Bob Dickinson, 41 Glenwood Avenue, said he supports the construction project but said they have endured major construction projects on nearby properties for 14 years. He described the photos submitted of inconveniences, disruptions and damage to his property from other projects on Glenwood. He asked for a condition that requires development of a construction management plan before construction begins and noted he met with the contractor and is reviewing a construction management plan.

Lastly, he cited the lack of enforcement regarding compliance with the Municipal Code and construction plans, due process for expanding projects and minimization of allowable project timeframes. The Town allowed additional major changes to scope in the front of the house without public noticing or hearings which is a violation, and he asked not to be adversely affected.

Eric Soifer stated he is in the process of scheduling a meeting with Mr. Dickinson and looks forward to working with him to come up with a solid agreement for a smooth project. He did not expect any impacts to Mr. Dickinson or surrounding neighbors and they will be in constant contact throughout the project.

Council Member McMillan asked that approval be made contingent upon agreement between Mr. Dickinson and the owner at 36 Glenwood Avenue.

Town Attorney Ben Stock recommends against making it contingent on a third party approval. Right now Condition No. 9 (h) covers this. The Council can give direction to staff to reach out to neighbors to ensure the construction plan is adequate.

Mayor Robbins asked and confirmed this is adequate with Council Member McMillan and Mr. Weintraub. Mr. Weintraub stated it does not require revision of the condition.

Council Member Brekhus said there is law that states you cannot make neighbor consent a condition of approval so it could be direction for staff.

Mayor Robbins suggested a motion.

Council Member Brekhus moved and Mayor Pro Tem Kuhl seconded, to adopt Resolution No. 2236 approving 36 Glenwood Avenue Design Review. Motion carried unanimously (5-0).

b. 21 Fernhill Avenue, Design Review and Variance, and Town Council consideration of adoption of Resolution No. 2237.

Stephanie and Russ Haswell, 21 Fernhill Avenue, A.P. No. 073-091-37, Zoning: R-1: B-20; General Plan: L (Low Density), Flood Zone: X (Minimal risk area).

Project Summary: The applicant is requesting approval of Design Review to renovate the exterior materials, features, and appearance of the existing single-family residence, including additions and alterations; and to construct a new pool and associated landscape in the rear yard. Variance is requested to allow for the construction of a new pool within the minimum required rear yard setback. A separate application has been submitted for ministerial review of Accessory Dwelling Unit (ADU) Permit to construct a new detached accessory dwelling unit.

Recused: Mayor Robbins recused herself from participating in Item 10.b. due to her residence within 500 feet of 21 Fernhill Avenue, and she left the meeting.

Matthew Weintraub, Planner, gave an overview of the request for design review to renovate an existing residence, construct a new pool and new rear yard landscaping, and a variance to allow construction of the new pool within the minimum required rear yard setback, which is supported by neighbors. There is also a separate application for a detached ADU which is subject to administrative approval.

The ADR group has reviewed the project and recommends approval. They support the pool location and variance request and have also reviewed the potential ADU location. While this is not in their purview they believe it is also located correctly, and staff recommends approval.

Mayor Pro Tem Kuhl opened the public comment period, and there were no speakers. He then asked for deliberation and/or a motion.

Council Member McMillan moved and Council Member Brekhus seconded, to adopt Resolution No. 2237 approving 21 Fernhill Avenue Design Review and Variance. Motion carried unanimously (5-0).

End of Public Hearings on Planning Projects – Part I.

Noted as Present: Mayor Robbins rejoined the meeting.

Administrative Agenda

11. Town Council consideration of adoption of Resolution No. 2240 approving the First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Service.

Town Manager Johnson gave the staff report and brief overview of the matter.

Council Member McMillan questioned the waiver, stating it looks as though the Town decides whether someone receives a waiver, but the rules for the waiver will be developed by Marin Sanitary Services. She asked what would allow someone to get a waiver.

Patty Garbarino, Marin Sanitary Service, deferred to her colleagues to explain the waiver.

Justin Wilcock, Marin Sanitary Service, General Manager of Operations, explained that the allowance for the waiver is set by CalRecycle. Two factors are considered when allowing a waiver: 1) if they do not have space for extra containers; and 2) if their business produces a diminimous amount of organic materials, which he described. They are developing a waiver form consistent for all jurisdictions, will be working with businesses they believe may qualify for the waiver or who request to be evaluated, they will make a recommendation to the Town, and ultimately, approval of the waiver rests with the jurisdiction.

Council Member McMillan asked and confirmed with Mr. Wilcock that waivers will largely be for commercial and multi-family entities.

Ruben Hernandez, Marin Sanitary Service, Legislative Analyst, clarified that for MFDs the waiver will only apply for physical space restrictions.

Mayor Robbins opened the public comment period, and there were no speakers.

Mayor Robbins asked for a motion.

Council Member Brekhus moved and Council Member McMillan seconded, to adopt Resolution No. 2240 approving the First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Service. Motion carried unanimously (5-0).

12. Town Council consideration of the formation of a Town/County Services Subcommittee under the Marin County Council of Mayors and Councilmembers (MCCMC), and consideration of Council representation on the Subcommittee.

Mayor Robbins gave an overview of the matter and consideration of whether the Council supports formation of a Town/County Services Subcommittee under MCCMC, on behalf of the Town Manager. She voiced her support, provided a brief explanation of why and volunteered to serve on the subcommittee.

Mayor Pro Tem Kuhl stated he and Council Member McMillan have served on the MCCMC Homeless Committee. The major crimes activities has been disbanded but there are still a

number of areas where the County is asking the cities to contribute to what are arguably Countywide problems. It has been the Council's position that the County should not be doing this and should pay for this.

This subcommittee is a short-term committee to look at the process and fairness of the County coming to the cities and towns and asking them for contributions. He then described watching Channel 27 and the Novato City Council addressing this issue where the City questioned why a separate committee is needed. He agrees it is worthwhile having this subcommittee, agrees Mayor Robbins is the appropriate member to serve but, otherwise, he would be happy to serve.

Mayor Robbins commented that up to two people can be on the subcommittee from each town.

Council Member Brekhus said the Council discussed this in the past as to being cautious as a small Council that does Planning Commission work as well about creating, participating in, and joining subcommittees. She agrees with Council comments, voiced her support of its importance and of its limited timeframe, and recommended one Council Member serve.

Town Attorney Ben Stock suggested opening up the public comment period.

Mayor Robbins opened the public comment period, and there were no speakers.

Council Member Brekhus moved and Mayor Pro Tem Kuhl seconded, to appoint Mayor Robbins to serve on the Town/County Services Subcommittee under the MCCMC. Motion carried unanimously (5-0).

Council Member McMillan recommended the Council suggest to MCCMC representatives they should not be forming subcommittees prior to the time Councils have time to discuss what their positions are, and Council Members concurred.

13. Town Manager update and Council discussion on Town activities in response to COVID.

Town Manager Johnson provided an update, stating the State mask order expires February 16th and following February 16th masks will be required indoors for unvaccinated or not fully vaccinated individuals. But, masks will still be required for all people on public transit, school and medical settings which Marin County is following.

She reported Marin first responders will have to be fully vaccinated and boosted for COVID-19 to continue working with the public beginning April 15th. This order was issued by Marin County Public Health Office and applies to law enforcement officers, firefighters, medics and probation officers. First responders will no longer be allowed to avoid vaccinations by getting tested regularly. The only exception will be for those who qualify for a medical or religious exemption. This mandate will not affect the Town's current Police Department employees and Chief Weber is looking into how much it will affect firefighters in the Ross Valley Fire Department.

Earlier this week, the Governor signed legislation extending supplemental paid sick leave for workers. It ensures employees continue to have access up to 80 hours of COVID-19 supplemental paid sick leave through September 30, 2022 and it can be used by employees who have been advised to quarantine, those caring for impacted family members, and attending vaccination appointments, etc.

The County provided the Town with some rapid COVID home test kits and each Town employee has been offered to bring a few of those back to their homes. The Town continues to encourage employees to stay home if they feel ill or have been exposed to the virus.

Council Member McMillan said with the mask mandate being lifted she asked if people will still need to wear masks in the Post Office which has been a controversial issue. The Post Mistress characterizes the Post Office property as federal property and when the mask mandate was lifted in the past, she imposed it at the Post Office. Town Manager Johnson said she can ask the County Health Officer.

Mayor Pro Tem Kuhl asked if the Town is authorized yet to renew holding in-person meetings of the Council. Town Manager Johnson said she believes they can be held in-person. At the point the Council is ready to restart in-person meetings, it is recommended the Council adopt a policy that outlines what that will look like for those entering the Council Chambers, exemptions, implementation, etc.

Mayor Pro Tem Kuhl said keeping in mind what might or might not happen next month, he moved that consideration of returning to in-person Council meetings be agendized for the March meeting, and Council Member McMillan seconded the motion.

Mayor Pro Tem Kuhl moved and Council Member McMillan seconded, to agendize discussion of returning to in-person meetings in March. Motion carried unanimously (5-0).

End of Administrative Agenda.

Public Hearings on Planning Projects – Part II.

14. Corte Madera Creek Flood Risk Management Project, Design Review, and Town Council consideration of adoption of Resolution No. 2238.

Marin County Flood Control and Water Conservation District, A.P. No. 073-242-27; 073-242-06; 073-242-10; 073-242-13; 073-242-14; 073-242- 19; 073-273-39; 073-273-40; 073-273-49; 073-273-50; 073-273-51; 073- 273-52; 073-273-53; 073-273-54; 073-273-55; 073-273-56; 074-011-82; Zoning: Civic (C-D); Floodway (F); Single Family Residence (R-1: B-10); General Plan: Open Space (OS); Medium Low Density (ML), Flood Zone: AE Floodway (Area subject to inundation by 1-percent-annual chance flood event).

Project Summary: The applicant is requesting approval of Design Review to make channel improvements consistent with Alternative 1 of the Final Environmental Impact Report (FEIR) for the Corte Madera Creek Flood Risk Management Project Phase 1, as recommended by the Ross Town Council on May 13, 2021, and as adopted by the Marin

County Board of Supervisors on August 17, 2021. The project includes: remove the existing wood fish ladder; regrade, stabilize, and revegetate the creek bed and banks at existing constriction points; remove existing wood retaining walls; extend concrete wingwalls no higher than existing grade at tops of banks; and construct new fish resting pools within the channel.

Matthew Weintraub, Planner, gave the staff report and background of the design review application and project elements for the Corte Madera Creek Flood Risk Management Project for the Council to review. The ADR group reviewed this project and recommended approval on January 18, 2022. They asked that when the portion of the chain link fence is replaced with a black vinyl finish and at a 6 foot height in order to match the existing stretch of fencing there, which was agreed upon by the applicant.

Staff provided public notice to 300 foot surrounding property owners and the owner of 29 Sir Francis Drake Boulevard submitted comments expressing concerns with respect to the area required for the project on his property. The Flood District can provide an update on their communications with the owner.

Key issues for the Council to consider include preservation of Frederick Allen Park, revegetation of all stabilized banks and any areas disturbed during construction, planting of 79 new native, riparian and fire-resistant trees, 200 new willow cuttings and 164 shrubs, and only remove 11 existing trees that grow in the water course, none being oaks. Fences and walls would match existing and the only visible feature of this project would be replacement of the existing chain link fence with new fencing with a black vinyl coating, and the extended channel walls would match the existing concrete channel walls, including the decorative relief band for a continuation of what is seen today.

Mr. Weintraub then described reduced flood hazards as a result of the project, assurance there are no impacts to properties adjacent to the project, conditions requiring demonstration of such, submittal of a no-rise certification, conditions requiring construction agreements, an MOU to be approved by the Council relating to liability and maintenance responsibilities, recordation of an encroachment agreement, CEQA review, a mitigation measure of the Town relates to adequate replacement of any native trees removed as part of the project and design review approval. Staff recommends adoption of the resolution approving design review.

Joanna Dixon, Marin County Flood Control, thanked Mr. Weintraub for his thorough presentation, noted the project is grant-funded from the California Department of Water Resources which expires in March of 2023, and the District has requested an extension. They plan to move forward with the natural creek segment of components this summer, and clarified the project will start in Ross after July 1st outside of bird nesting season. She introduced their design consultants from GHD, Raymond Wong and Gerhard Epke.

Gerhard Epke, GHD, provided a presentation showing images of where design features are located and areas documenting the survey markings for the project. He described and displayed images of specific project components, retaining walls, restoration work, the concrete channel

and channel bank to allow more flow to get through, grade control structures, proposed plants and trees, the proposed change to the fence and views from the Lagunitas Road Bridge and from behind the Post Office.

Council Member McMillan referred to the fire resistant trees and said she has been taught as a master gardener that there is no such thing as a fire resistant tree. She has also seen on the Firewise website a list of trees that are more prone to burning more quickly, and she asked what is classified as a fire resistant tree.

Ms. Dixon agreed there are no fire resistant trees but these specific species being proposed along the creek are all riparian native trees that do occur within creek areas. They are used to drying up lots of water from adjacent wetted creek. She would classify them as a less wildfire susceptible species, but she is welcome to compare them on the list of the Firewise recommendations.

Mr. Epke stated he did not create that plan but he did compare the list with the Fire Smart Marin website and confirmed none of the bad plants are on the list. This is what he meant by “fire resistant”.

Council Member McMillan asked if any member of the Town of Ross participated in the design or engineering of this project.

Ms. Dixon said she could not think of any specific feature that was identified or modified to meet the request of a local resident. She knows they had modified the Frederick Allen Park area quite considerably to meet concerns of local neighbors, but this is no longer part of the proposed project.

Council Member McMillan said her question is really whether any member of Ross Town staff participated in the design or engineering of this specific project. Her understanding is the answer is “no” and wants to confirm that.

Richard Simonitch, Public Works Director, stated staff has had no design input on this project at all. It has all been the County and they run things by staff and staff offers suggestions insofar as it relates to design review at this stage.

Council Member Kircher referred to the chain link fence and asked if there was a way to come up with a better solution for an alternative material or fence type. Or, he asked if there were reasons it must be a chain link fence.

Mr. Simonitch replied the fence needs to be chain link and cannot be a split rail or something similar. The Town needs to keep people from going down into the creek as there is no safe access along the banks. The Town owns the fencing behind the Post Office and maintains it up to the location of the fish ladder area and then that becomes the County’s fence. He confirmed a split rail fence would allow access.

Council Member Kircher asked if it is possible to put something in front of the chain link fence as long as it does not interfere with access to the channel for maintenance. Mr. Simonitch said something like this could be proposed and Council Member Kircher suggested vegetation or a more attractive fence.

Ms. Dixon added that the Flood District's concern would be that where they are adding newer, taller fencing, the drop to the existing natural creekbank slope would be more significant. It is in the District's interest if they are the responsible party for maintaining the fence to have something longer lasting, and chain link fencing lasts the longest and requires the fewest repairs and upkeep. However, where the fence occurs on Town property, the Town is able to have any fencing it prefers.

Mayor Robbins asked and confirmed that the fencing behind the Post Office would remain as a 4 foot fence.

Council Member McMillan asked if there would be any money in the budget to have a fence that is similar to the wrought iron fence that goes along the Lagunitas Bridge.

Ms. Dixon said this is a costly fence upgrade so she is inclined to say "no".

Mayor Robbins opened the public comment period, and there were no speakers.

Council Member Kircher recognized wrought iron much more attractive and much more expensive. Council Member McMillan said she had four panels of her wood fence that run into a structure replaced with wrought iron for fire prevention, and for those four panels it cost \$4,000.

Mayor Pro Tem Kuhl said he thinks there is no reason the Town could at some later time replace the black fence with something better if they chose to, and Mayor Robbins agreed.

Council Member Brekhus moved and Mayor Pro Tem Kuhl seconded, to adopt Resolution No. 2238 approving Design Review to make channel improvements consistent with Alternative 1 of the Final Environmental Impact Report (FEIR) for the Corte Madera Creek Flood Risk Management Project Phase 1, as recommended by the Ross Town Council on May 13, 2021, and as adopted by the Marin County Board of Supervisors on August 17, 2021. Motion carried unanimously (5-0).

End of Public Hearings on Planning Projects – Part II.

15. No Action Items: (Mayor, 5 minutes)

- a. Council correspondence** – Council Member Brekhus referred to fire insurance cancellations which is a big problem. She suggested people talk about it as a Morning After report to make people more aware of it.

Mayor Pro Tem Kuhl stated today the Fire Chief sent out a report done by staff of the department some years ago which offers some comments on what is happening and what to do if it happens to people. Council Member Brekhus suggested providing a link of this to residents.

Council Member McMillan stated there have been several articles in the Wall Street Journal about cancellation and escalation of premiums which is a huge issue in California. It is something the Marin Wildfire Prevention Authority will be working on in terms of connecting work of defensible space improvements to try to get insurance companies not to cancel policies. There is also a lot of information on www.firesafemarin.com website people can refer to.

- b. Future Council items** - Mayor Robbins stated parameters for in-person meetings will be considered in March.

16. Adjournment.

Mayor Robbins adjourned the meeting at 7:40 p.m.

Elizabeth Robbins, Mayor

ATTEST:

Linda Lopez, Town Clerk