

# REGULAR MEETING of the ROSS TOWN COUNCIL

THURSDAY, MARCH 9, 2023

*Held In-Person and Teleconference via Zoom*

**1. 6:00 p.m. Commencement.**

Mayor Beach Kuhl; Mayor Pro Tem Elizabeth Brekhus; Council Member Bill Kircher, Jr.; Council Member Julie McMillan, Elizabeth Robbins; Town Attorney Benjamin Stock (*via Zoom*).

**2. Posting of agenda.**

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

**3. Proclamation recognizing Robert Smithton, Ross Citizen Extraordinaire.**

This item was postponed to the April meeting.

**4. Open Time for Public Expression. (5 minutes)**

Doug Ryan, 74 Sir Francis Drake Boulevard, asked for transparency, consistency, and fairness on all agenda items.

**5. Mayor's Report**

Despite the National Weather Service's forecast for more cold and rainy weather through March, Spring does arrive this month--on the 20th-- and with it there are many signs already present. To start with, Daylight Savings time returns this weekend. The Girl Scouts are out in their brown uniforms selling their delicious cookies. On March 22, Ross Rec and the RPOA will present an Age Friendly breakfast at Crown and Crumpet with an expert on spring cleaning as the guest speaker!

For those who have returned to their offices --and no doubt those still working from home, too-- productivity will plummet as March Madness commences and men's and women's collegiate basketball teams begin competing for the NCAA national championships. Television viewers will be paying special attention to the Stanford women's and St. Mary's men's teams. And then, at the very end of this month, our San Francisco Giants open the baseball season getting acclimated to the new game-shortening rules. They open in perhaps the most iconic surroundings for that sport, playing the New York Yankees in Yankee Stadium.

But when you come right down to it, the best sign of spring is the swelling buds on the trees and shrubs in our own backyards, parks, and open spaces. By the end of the month we should have plenty of color. I hope you'll get out and enjoy it.

**6. Council Committee & Liaison Reports.**

Mayor Pro Tem Brekhus reported that at last night's Ross Valley Fire Board meeting, unanimous direction was given to staff to review what a JPA with Central Marin Fire Department would look like after having considered the added expenses for a stand-alone Fire Chief and efficiencies in administration.

**7. Staff & Community Reports.**

**a. Town Manager**

Town Manager Johnson provided the following report:

1. The National Weather Service has issued a Flood Watch in effect through 10:00AM Sunday, March 12.

Due to saturated soil from the previous series of storms, the storm will likely bring rising creeks and flooding in low-lying locations. Accompanying winds may result in downed trees and power outages. Storm drains may get clogged with debris. Residents should expect these hazards/inconveniences and take steps to prepare.

- Stay home and off the roads as much as possible.
- Be prepared for possible flooding impacts. Ross residents can pick up sand and sandbags at the entrance of Natalie Coffin Greene Park.
- Secure outdoor objects that could be picked up by the wind.
- Clean your gutters and drainage ways.

2. In compliance with Branson's Use Permit a letter was received from Branson's head of school, Chris Mazzola, requesting that the annual enrollment for the school be increased to a maximum of 370 students for the 2023-2024 school year.

Condition of Approval number 1 states, "The Town Manager, with the assistance of a transportation consultant retained by the Town, shall review the Annual Monitoring Report and either approve or modify the Annual Enrollment Maximum for the upcoming academic calendar year."

The Town's review has been completed and the findings indicate that Branson is in compliance with the conditions of approval, specifically that the "School properly counted vehicle trips and the resulting average daily weekday trip count of 484 was significantly less than the condition of approval limit of 912 daily vehicle trips."

Based on the assessment, the Town of Ross is in agreement that the enrollment maximum for Branson school year 2023-2024 is 370 students.

Earlier this week, Branson had their spring neighborhood meeting. Town staff attended the meeting along with about 12 residents and Branson staff. The meeting included an update on how Branson is managing the TDMP as well as a time for resident input. All the residents complimented Branson on their management of traffic during drop off, pick up and sporting events. The residents were also very happy with the speed in which Branson replied to any traffic related issue or question.

3. The Town continues its program to revitalize the Ross Common landscape features and add new amenities. A new 3-way drinking fountain and bottle filling station is nearly completed along the new pathway, and a newly refurbished backstop is ready just in time for Ross little league to start. Over the next few weeks, the Town will begin replacing the two older benches within the grove area with three new low-maintenance, age-friendly benches nearby along the pathway.

Other projects planned for this summer include removing and replacing the old boxwood hedges along the perimeter of the field with a new low hedge, and a new mini-plaza entry feature to the field located in line with the crosswalk from the Post Office.

4. And finally, I will hand this update over to Police Chief Pata to briefly talk about the E-Bike / E-Scooter Collaboration with Ross School students and administrators.

Police Chief Pata spoke about the Police Department's work with Ross School over the last year to find a solution to calm e-bike/e-scooter driving on the Common as well as other types of scooters and bikes. Messaging was sent home to families, and they received modest results. He met with school officials to come up with a plan and invited a group of students to come to the PD to film a PSA and show it in their homerooms. Police will reward those following rules through a drawing that will occur in May to correspond with Ride and Scoot to School Day.

**b. Ross Property Owners Association.**

Elena Batalla reported that RPOA replaced their lock, installed security cameras, and retrained Post Office staff on how to use the security cameras after recent break-ins. The next Live on the Common event is on May 12<sup>th</sup> from 5-8 p.m., the Ross Auxiliary's Spring Fling will be on Sunday April 2<sup>nd</sup>, and an Age-Friendly Breakfast meeting will be held on March 22<sup>nd</sup>. Work is being done to plan a wine tasting event, add a shade structure to the tennis courts, and plan for an ice-skating rink at Marin Art and Garden Center. Lastly, Age-Friendly Task Force planned and held a Valentine's Day Luncheon where those 80 years and older were honored, with Mayor Kuhl serving as MC.

**8. Consent Agenda.**

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

- a. **Minutes: 2/9/23**
- b. **Demands.**
- c. **Recommendation for Town Council to approve the Town of Ross Draft Annual Financial Report for the Year Ended June 30, 2022 with no findings.**
- d. **Recommendation for Town Council to rescind Resolution 2249 and adopt Resolution 2295 approving moving the August 2023 Council meeting from August 10 to August 24, 2023.**
- e. **Proclamation celebrating National Fair Housing Month, April 2023.**
- f. **Recommendation for Town Council to consider requested donation in the amount of \$500 to "Redwood High School Grad Night" and provide direction to the Town Manager.**

Mayor Pro Tem Brekhus moved and Council Member McMillan seconded, to approve Consent Calendar Items a, b, c, d, e, and f. Motion carried unanimously (5-0).

**End of Consent Agenda.**

**9. Public Hearings on Planning Projects - Part 1.**

**a. 10 Southwood Avenue, Demolition, Design Review and Variance and Town Council consideration of Resolution No. 2292.**

Julie Johnson/JMJ Studios, 10 Southwood Avenue, A.P. No. 073-151-23, Zoning R-1:B-20, General Plan: L (Low Density), Flood Zone: X (Moderate Risk).

**Project Summary:** The applicant requests approval for Design Review, and a Variance. The project includes demolishing the existing carport between the main house and the cottage and construction of a new pergola style carport, as well as relocating the driveway, and adding a new dormer. The project also proposes new landscaping and hardscape throughout the property.

Recused:

Council Member Robbins recused herself from participating in the item due to the proximity of her residence, and she left the dais.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for demolition, design review and variance, and new landscaping and hardscape throughout the property.

Council Members had no questions for staff or the applicant.

Mayor Kuhl opened the public hearing. There were no public comments, and he closed the public hearing.

**Council Member McMillan moved and Mayor Pro Tem Brekhus seconded, to adopt Resolution No. 2292 approving 10 Southwood Avenue Demolition, Design Review, and Variance. Motion carried unanimously (4-0; Robbins recused).**

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

Noted as Present:

Council Member Robbins returned to the dais and was noted as present.

**Administrative Agenda:**

**10. Receive Marin County Flood Control District's presentation of the SAFRR project and provide direction to staff as needed.**

Town Manager Johnson provided background information on the item and introduced Marin County Flood District representatives, Director of Public Works Rosemarie Gaglione, Assistant Director Berenice Davidson, and Acting Division Head Tracy Clay who will be presenting the San Anselmo Flood Risk Reduction (SAFRR) project and the "Ross" project which includes removal of the fish ladder.

Ms. Clay gave a PowerPoint presentation regarding the SAFRR Project, current projects underway, and Building Bridge 2 (BB2). She spoke about projects in response to the 2005-2006 severe flooding and winter storm with fees funding flood protection in the Ross Valley. A work plan was developed in 2012 which included many projects to reduce flood risk such as multiple retention basins, channel improvements, removal of obstructions, and habitat restoration projects. She spoke about controversial deletion of retention basins which resulted in the need for additional mitigations and then identified and provided a description of current projects and their current status.

Assistant Director Berenice Davidson then reviewed FEMA processes, flood insurance rate maps and the one-dimensional model used, and said the District used a much better model to conduct these studies. The consultant ran a new model which she described as 2-dimensional. She serves as the designated Flood Plain Administrator and spoke about the process of sharing better data with FEMA through a Letter of Map Revision which is reviewed by FEMA engineers. The other process is a Conditional Letter of Map Revision, where additional projects can be proposed to further reduce flood risk. She will go to FEMA to indicate they are doing these projects which benefits 480 parcels; however, she needs mitigation for 20 parcels.

Ms. Davidson said her next step is to talk with FEMA, finalize the Conditional Letter of Map Revision and discuss mitigations proposed parcel by parcel. The mitigation measures are identified in the EIR and in the Flood Plain ordinances, and she emphasized that she would do nothing to jeopardize the County's good standing with the National Flood Insurance Program with FEMA.

Regarding next steps, the District is recommending to engage FEMA because their engineers will have to agree with the model, check that they use the topography that exists in the valley, check that she mapped the storm drain systems the way they exist underground, and review mitigation measures proposed. They most likely will need to revise their existing permits with the agencies because the model was run in 2018 to certify the EIR. There have been revisions to the scope of work, mainly with the removal of BB2 and the work to be done on the embankments.

Next, they will meet with every property owner and their home elevation will be the bottom of the door which will have the base flood elevation before and after the bridge removal. Based upon how this changes, it will dictate the type of mitigation they would be proposing.

The reason they have a baffle design is because one of their grants was due to expire at the end of 2022 and they also became aware of structural integrity compromises with a sense of urgency to remove it. In order to buy more time and do appropriate mitigations, the baffle would have to be installed before removing the bridge because it causes no rise. They received an extension of the grant to the end of 2024 and, therefore, they believe they can take down the bridge after doing mitigations without having to spend funds.

Mayor Kuhl questioned the SAFRR project and whether an EIR is needed. Ms. Davidson confirmed it has two components; the basin which is already built and in operation in Fairfax and removal of the bridge which is considered an obstruction to the flow.

Public Works Director Rich Simonitch stated in 2020 they certified the MND for the Winship Bridge. The San Anselmo project was treated as a cumulative impact within their study, so they already addressed it whether or not that project happens, and the Town's EIR will not be impacted. The Corte Madera Flood Risk Management Project has been approved and certified.

Mayor Kuhl then described the partnership with the Corps of Engineers wherein they were to build two tunnels that would run from the creek out to Sir Francis Drake and down Sir Francis Drake downstream below the Lagunitas Bridge and then let that water back into the Corte Madera Creek Channel. Mr. Simonitch said that was an element of the first EIR that was presented by the Corps of Engineers which is no longer in place.

Mayor Kuhl asked if there is any planning now to protect the area of the creek that runs parallel to Sylvan Lane.

Joanna Dixon, Marin County Flood Control District, pointed out that there are elements within the Corte Madera Creek Flood Risk Management project that benefit the properties along Sylvan Lane, the primary one being the removal of the wooden fish ladder structure which will allow more water within the natural channel to be able to flow in an unobstructed way downstream into the concrete channel. This will be a benefit to Sylvan Lane properties.

The other benefit is immediately downstream of the Lagunitas Road Bridge where they will be installing a rock grade control structure in the bed of the channel which will give assurance that the bed of the creek will not continue to erode in a downward manner causing excessive erosion to those properties upstream of the Lagunitas Road Bridge.

Mayor Kuhl asked and confirmed with Ms. Dixon there were no current plans to enlarge the channel upstream of the Lagunitas Road Bridge. The only work that was initially proposed by the EIR was some grading in the stream bed and the bottom of the creek to adjust the stream bed to a smooth slope down to where the existing fish ladder structure is. They minimized the necessity of that by adding the grade control structure.

Ms. Dixon added that the original U.S. Army Corps of Engineers EIR was what included the alternatives that would have sent bypass water through tunnels under Sir Francis Drake Boulevard, and that project did not move forward and was terminated.

At that point, the project shifted to the Flood Control District's leadership at which time a new EIR was done. This is what happened between 2019 and 2021, so this new EIR addressed all components they are looking at on the screen. It considered the trees in Frederick Allen Park even though they are not doing that portion of the project either. So, it was more encompassing of everything considered now which is planning to move ahead.

Mayor Kuhl said therefore, other things being done in the SAFFR project, and the Ross project will take care of mitigating the Sylvan Lane area. Ms. Dixon said yes, this is her understanding.

Council Member McMillan said the Council is supposed to receive a Marin County Flood Control District's presentation on the SAFFR project and provide direction to Town staff, as needed, so she questioned why they were discussing the Corte Madera Creek issues. She suggested the Council hear the report and take public comment.

Mayor Pro Tem Brekhus asked if the Council could receive a copy of the new modeling done, and Ms. Davidson stated yes. She confirmed the engineering company is Stetson Engineers who also did the previous modeling for the EIR.

Ms. Clay explained they will be changing the modeling to show minor modifications and design features which have occurred from the project description to what is actually designed now. For example, BB2 originally envisioned having concrete walls removed from both channel banks, and both laid back to form a trapezoidal channel. The new design has one concrete wall and one earthen channel laid back.

Mayor Pro Tem Brekhus said separate from design changes there was a modeling change that modeled how the water goes down the channel and what the impact is downstream. Additional information has been added to include stormwater and the 100-year high mark location. Therefore, the County updated what the impact is of the downstream. She asked if this is what is called the 2D versus the 1D modeling.

Ms. Davidson said the modeling is available but there are only two models; the FEMA model which is effective now and the updated or new model the County used. They can change features that go into the model and when they did the EIR, they used the model. Before they do mitigations, they must reflect what is now the current design.

Mayor Pro Tem Brekhus said it seems the point is to determine how much water stays in the channel, is coming down, its velocity, and how much is not going in the banks in San Anselmo and impacting properties there. Per the EIR, those were the properties benefitting. By tinkering with the design, the County is changing the amount of water flowing down which changes properties impacted.

Ms. Clay said the model in the EIR is the same model and they will change the design from sloped wall and a vertical wall. This is a significant impact and because of that they need to review this. Most likely, they will prepare an Addendum to look at any changes in surface elevation which will result in changed findings. This is the nature of the changes they will do to the EIR.

Mayor Pro Tem Brekhus asked and confirmed the one thing not being done is the baffle because the grant was to expire in 2022, and now they have funding through 2024. She asked how soon they will be able to tell the property owners affected what mitigation looks like for them.

Ms. Davidson said she has not gotten an exact date of when she will be able to discuss this model with FEMA, but they are targeting the next 2 months to be able to talk to the property owners. She confirmed there are 20 properties, and they will talk with all of them.

Mayor Pro Brekhus said in addition to flooding in a home, she questioned what the Flood District will be doing with the very old retaining walls that have never been touched, given the velocity and amount of water will increase. Ms. Clay stated this was evaluated in the EIR and it was not identified as having a significant impact. Ms. Davidson added it is not in the scope of work to modify additional retaining walls other than what is there.

Mayor Kuhl asked if the District has determined the order by which they will complete the projects. Ms. Davidson said there are aspects of the Corte Madera projects that are in various phases and the 5 components of the Ross Area are in various stages as displayed. They hope to remove the bridge by the next construction season in 2024.

Mayor Kuhl said once the bridge is removed, he asked if the District will construct the portions in Ross. Ms. Davidson said the pump station was constructed last year. They have construction in 2025 for the fish resting pool enhancements and the Stadium Way to earthen channel restoration is also slated for 2025, depending on acquisition of more grants.

Council Member Robbins asked for the date for removal of the fish ladder. Ms. Dixon stated it will be in 2024. There is funding for this, and they are going to use the same process for the FEMA approval for BB2.

Ms. Davidson stated she can return to the Council and have a more detailed explanation of all components in this area.

Council Member McMillan and Mayor Pro Tem Brekhus had an exchange as to why the Council is hearing a presentation about the modeling for the SAFRR project, discussed potential impacts to 20 or more homes many of which are in Ross, the Town's jurisdiction over the modeling, mitigations, and confirmed with Town Attorney Stock that the Council can talk and ask questions of staff and are not approving the modeling. He noted it is not a Town project and the intent of making the modeling available is for the public and not necessarily to the Town of Ross. It is fair to ask that question and have the information be made available, but not for it to be made available for the Town to analyze, approve or deny.

Mayor Kuhl confirmed there were no other Council questions, and he opened the public hearing.

Charles Goodman, Ross resident on Sylvan Lane, referred to the interior drainage they have discussed going back 40 years with the Army Corps of Engineers. When Stetson did their report in 2000, they never came up with the number for interior drainage, so he is very interested in hearing now that the county has new information and how the FEMA map might change when they have never studied the interior drainage. Secondly, the District is now changing the finished floor level, and he voiced concerns that mitigation is now needed because many people have their mechanical, electrical, ductwork all under that finished floor.



The District has also completely left out homes from the Winship Bridge to the Lagunitas Road Bridge, on Sir Francis Drake, Sylvan Lane, and Shady Lane. The 20 homes referred to are not included and no one has ever come to his house to talk about mitigation. He then described water coming out in San Anselmo and finding its way down and then back into Corte Madera Creek. Storms fill up the creek immediately and he is very concerned about the statement in the staff report that says, "The consequences of reducing overbank flooding from the SAFFR project is that more water stays within the bank of the Corte Madera Creek, thus increasing the water flow surface elevation within Corte Madera Creek between downtown San Anselmo and the Sir Francis Drake Bridge, potentially causing residential homes in both San Anselmo and Ross to flood." Therefore, this will put more water in.

Samantha Hobart, 78 Sir Francis Drake, asked why the County would ever consider doing work upstream without doing the mitigation measures downstream first, and questioned who would be willing to accept accountability for any risk or damage that happens prior to doing that mitigation. She also asked exactly what the mitigation measure is for her 100-year-old home which has never had water underneath it. She echoed the speaker about the finished floor change, said none of this is acceptable to her, and said she would like herself and the Town to be able to approve the mitigation prior to any work being done upstream.

Doug Ryan, 74 Sir Francis Drake, said his house will flood as a result of this project. They have documented, and the County has acknowledged, that the water at his house goes up 2" although the former project manager stated it is not a significant impact and he does not need mitigation and said he should just live with it. He finds it reprehensible that the District is going through this, believes the Flood Plain Administrator of the Town of Ross would need to approve any project that impacts any residents in Ross, and any property impacted should be mitigated. He likened the idea of the baffles as a joke. If a baffle is put in the creek, whichever side floods, they will get sued. It has been 5 years and if he sells his home at a loss, he will look for compensation from someone who is affecting the value of his house, which will be the County of Marin.

Jeff Krute said he is an architect and 44-year resident of San Anselmo, former Mayor of San Anselmo, but a resident of Ross Valley. He has listened to the presentation and thinks if the District lessens the restrictions, it will increase flooding. It does not include Sylvan Lane, Shady Lane, Redwood, and all properties will have an inch or two of which will result in lawsuits. He also said residents of Ross tend to use downtown San Anselmo as their commercial district. Over the last couple of years the Town has closed San Anselmo Avenue on Friday and Saturday nights. The BB2 has been wonderful for the community and the new restaurant owner will be upset if the plaza is demolished. There will be construction vehicles in the street all summer long, the cost to demolish the project is enormous, and it just seems preposterous, so he and others ask to support retention of the plaza.

Ross Asselsteine, San Anselmo, said this project affects everyone. He was on the San Anselmo Flood Committee from 2010 to 2012 and is one of the few that have read all reports. In 2011, they were told by District staff that this would cost \$100 million to fix floods and the basic premise was detention at the top of the valley. The rule was that one could only increase flow if they started at the bottom, and this loophole is unfortunate. The Council is likely aware that property owners have been ignored and all of the 20+ homes will defend their properties.

Dianna Davis introduced her husband, David Bohn. She is a 36-year San Anselmo resident and has experience with the 1982 and 1983 floods. Regarding demolition of BB2 (Plaza), she and her husband have grown increasingly concerned that Flood District Supervisor Katie Rice and the majority of the Town Council are committed to demolishing the Plaza which will not solve flooding. Instead, demolition could cause flooding downstream and include Ross which would be a significant Town liability. Since 2008, over \$40 million of the property tax flood control fees have been spent on studies and reports without any effective flood control. This is shocking fiscal mismanagement combined with a local government that is not listening to the community.

Engineers who have examined the Plaza say it can be repaired for \$300,000. Demolishing it costs \$4.2 million or more, so there is no urgency or emergency requiring demolition. Because they have lost confidence in the leadership and judgement of the Flood District, Katie Rice, and Town Council Members on this issue, they have joined a concerned citizens group and are organizing to fight the demolition of BB2. They see it as a face-saving effort to justify the money that has already been spent, and at worst, a move to avoid repayment of the Department of Water Resources grant if the plaza is not demolished.

Ann Politzer, San Anselmo resident, said she has closely followed this issue, removal of the bridge, flood zone expenditures for the last 5 years, and she is more confused than ever. This entire project has been buried in obfuscation, misinformation, and partial truths, and what happens with San Anselmo water will totally affect Ross. She described the project schedule and grant funding, asked if there will be funds for mitigation, and noted that FEMA requires that plans and money for mitigation be in place before the bridge structure comes out. If the County wants to apply political pressure to get around the FEMA requirements residents should know that, given increased atmospheric river events, rising sea level, and underdrawn FEMA flood maps. She asked that mitigation be provided and asked the Council to research this.

Jennifer Mota, 82 Sir Francis Drake Boulevard, Ross, said in 2018 when the EIR was finalized and approved, she was told and sent a flyer in the mail saying she and her home were going to receive mitigation, but 2 years later in 2020, a February memo was posted on the Flood District's website stating that her home would not be receiving mitigation because her whole first finished floor was not going to be affected. There was a Zoom meeting where other neighbors were present and when she asked the Flood District what FEMA had to say about this news, Liz Lewis said they had not yet talked with FEMA about it. She shared her concerns of risks of flooding with Michael Hornick from FEMA and he told her she should look up the flood plain ordinances and would see there is a rule that says there can be no rise or zero-inch rise in base flood elevations if anyone is doing any work in the floodway, which removing BB2 does.

Now she is being told mitigation is going to be provided. She also noted that Hugh Davis came to her home long ago and spoke about mitigation but did not provide any solutions or plans. She is extremely concerned and has no faith in what Marin County is doing to protect her home and there are no plans for mitigation. Lastly, she pointed to the second slide in the presentation which states the County is working on plans to remove BB2 and it is at 90% completion. Underneath it, it states "mitigation on hold."

Fran Farmer, 5 Laurel Avenue, expressed her concerns regarding the County's plans for flood mitigation at Creek Park and BB2 in San Anselmo which will directly affect some Ross residents. To date and as earlier stated, the County has already collected over \$40 million from taxpayers in the towns along the creek and has spent \$35 million on ineffective ideas and numerous engineering reports with minimal results. The point of the County Flood Zone staff was to come up with ways to mitigate flooding that follow FEMA guidelines. Now, in an attempt to have something to show for the money they have collected, they want to remove Creek Park Plaza platform and demolish BB2 and replace them with baffles. Removing the platform and BB2 will increase the flow of water downstream resulting in a higher likelihood of flooding numerous residents of Ross.

Some Ross residents are still vulnerable to flooding if the creek overflows its banks. The platform at Creek Park has turned out to be a boom for San Anselmo businesses and residents. It is family-friendly, especially for small children and elders, a place of community, and undoubtedly Ross residents have enjoyed the platform over the last 2 years. The county, led by Katie Ross, is claiming BB2 is unsafe and must be torn down, leaving the gaping ravine in the center of San Anselmo. However, repairing the bridge costs a fraction of what it will cost to tear it down and retain the current flow of the creek.

Garril Page referred to her letter regarding comments about FEMA and said one question the Council should be asking is that the blue slide put up from the County listing the elements to be completed, i.e., the fish ladder, the resting pools, and the lower Corte Madera Creek are all pending FEMA approval. A lot depends on FEMA, and it is not decided, so the Council should not be thinking it is decided. Another misapprehension she would not like the County to be laboring under is that the Engineer Watkins that the County thought BB2 was such a disaster is the engineer who has done the most work on the bridge and feels it could be repaired for approximately \$328,000. Also, the natural channel in Ross is left unstudied, unreported, and it is going to be facing increases from San Anselmo and pressure from downstream from tidal increase which everyone knows is coming.

She next reminded the Council that the County is looking at doing work on Phoenix Lake for flood control. She referred to 1982 when all hell broke loose in the town because there was a release from the lake at the height of flooding and asked the Council to watch what is going on with Phoenix Lake. Lastly, the finished floor is absurd, unfair, inadequate, and you can clearly hear Ross and San Anselmo residents telling the Council that the County has not engaged in mitigation talks with them at all. She asked that these questions be asked in the next round.

Roseann, San Anselmo, echoed comments and said it seems like it does not benefit Ross or San Anselmo to remove BB2 at this time. Based on her construction experience, demolition is a part of future construction. So, you demolish something when you know when or what you are going to build, so she thinks the presentation was very confusing and quoted Ben Franklin, "By failing to prepare you are preparing to fail."

John Crane, 86 Sir Francis Drake Boulevard, said thank goodness for FEMA because FEMA protects people from harm and misguided actions by public officials. With the storms they have had this year, he asked to imagine how many people would have been left holding the bag were it not for FEMA coming to the rescue. The County has a long history of trying to avoid mitigation and he knows this because he is one of the impacted homeowners. The County has not spoken to him in any meaningful way about mitigation in the past 5 years.

He thanked Mayor Pro Tem Brekhus for asking about the modeling which has been kept away. The reason it is so significant is that in 2020 they did a revision of the modeling. There is one model and many outputs. When they revised it in 2020, they tried to reduce mitigation down to 3. It will be interesting to see what the new modeling shows and whether or not they will attempt to cut the number of homes that need mitigation. He also agreed the presentation was disappointing. It is full of confusion with a lot not being said. That said, he praised Richard Simonitch who has done an excellent job reassuring impacted homeowners that the FEMA certification process will be adhered to. The basic premise to remember is that in order for the County to do anything that raises the base flood elevation through Ross, FEMA requires the Town of Ross provide certification that no structures are located in areas which would be impacted by the increase in base flood elevation, and he thanked the Council and staff for protecting their homes.

Mayor Kuhl closed the public hearing and returned the discussion to the Council.

Council Member McMillan said her heart goes out to anyone who has been living under a cloud of potential mitigation. She knows it is very difficult to have neighbor or home problems and asked if the Town has any role in approving the mitigation.

Mr. Simonitch said ultimately yes; the Council would have to authorize certification that the rise in the channel caused by the SAFFR project is basically not impacting any properties in Ross. This question and item will come up sometime this year, and they will have to see what the mitigation looks like after the County, himself, and San Anselmo meet with FEMA and figure it out. The Town has its own flood plain ordinances and its own position in the National Flood Insurance Program they need to maintain. They cannot jeopardize that as well as their Community Rating Service (CRS).

Mayor Pro Tem Brekhus said she does have concerns that these projects are going so far out. Her concern would be that the tax is not renewed, and money was not available to complete the project. They want to be sure that if a project is started it gets completed along with mitigation and related projects which were assumed.

Council Member Kircher said a lot depends on mitigation and what is being proposed. He is hearing that funds are not available for appropriate and adequate mitigation. He thinks not addressed is what funds are available, and perhaps this is going to be a major issue moving forward, as they have a grant that will expire in 2024.

Mayor Kuhl closed the item.

**BREAK**

Mayor Kuhl called for a brief break at 8:00 p.m. and thereafter reconvened the meeting at 8:08 p.m.

Mayor Kuhl moved up Items 14 and 15 on the agenda.

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

**14. 22 and 26 Ross Common, Request Use Permit to Serve Beer and Wine at Crown and Crumpet, and Town Council consideration of Resolution No. 2294.**

Christopher Dean, 22 and 26 Ross Common, A.P. No. 073-272-10, Zoning: C-L (Local Commercial), Flood Zone: AE (Moderate Risk).

**Project Summary:** The applicant is requesting a Use Permit approval to serve beer and wine at Crown and Crumpet Café. The hours of operation would remain the same, 10 AM-4 PM, Tuesday-Sunday and there would be no increase to staffing.

Planning and Building Director Rebecca Markwick gave the staff report and overview of the request for a use permit amendment to serve beer and wine at Crown and Crumpet Café during normal business hours, 11:00 a.m. to 4:00 p.m., Tuesday through Sunday.

Council Member Robbins asked and confirmed this was similar to Tony Tutto's request for a beer and wine license which the Council had approved.

Mayor Kuhl asked if the applicant wished to provide comments.

Amy Dean, Owner of Crown and Crumpet Café, said they appreciate the Council and community support and hoped for approval.

Mayor Kuhl opened the public hearing. There were no speakers, and he closed the public hearing.

**Mayor Pro Tem Brekhus moved and Council Member Robbins seconded, to adopt Resolution No. 2294 approving a Use Permit Amendment to serve beer and wine at Crown and Crumpet at 22 and 26 Ross Common. Motion carried unanimously (5-0).**

**15. 41 Poplar Avenue, Design Review and Variance, and Town Council consideration of Resolution No. 2293.**

Eric M. Spletzer, 41 Poplar Avenue, A.P. No. 073-273-04, Zoning: R-1:B7\_5, General Plan: ML (Medium Low Density), Flood Zone: AE (Floodway).

**Project Summary:** The applicant requests approval of Design Review and a Variance. The project includes lifting the existing two-story single-family residence 3'8" above its existing elevation in its current location in order to raise the habitable space out of the floodplain. The project includes expanding the second story deck and removing the existing stairs. A new first story porch is proposed below the new second story deck which will encroach into the side yard setback.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for design review and variance for a project that proposes lifting an existing two-story residence 3'8" above its existing elevation to raise the living space out of the floodplain. The ground floor of the home currently floods, and the project includes expansion of the second story deck and removing the existing stairs. A new rear porch is proposed below the deck which will encroach into the side yard setback, requiring a variance.

The ADR reviewed the project on February 15, 2023, and 3 ADR members could not support expansion of the second-story deck; however, 2 members did support this. Before the Council are plans for the deck. The ADR members also provided architectural advice for the applicant, and changes included lifting the entire house an additional 7" which will result in the home being 22'9" in height. The ADR also suggested the downstairs window be higher in proportion to the new height and to provide additional screening like plantings on the second story deck. The applicant revised the plans and chose to leave the second story deck as is.

Staff received a couple of emails from the neighbor adjacent to the second story deck and another neighbor who lives on the same block. Staff requests the Town Council adopt Resolution No. 2293 approving the design review and variance request.

Council Member McMillan asked how large the existing deck is versus the expanded deck. Mr. Lopez-Vega deferred to the applicant.

Mayor Kuhl opened the public hearing.

Eric Spletzer, Owner, stated the deck measurements are as shown on page A-143, noting that the existing deck is 109.65 square feet, and 75.46 square feet is proposed to be added.

Michael Bruce, Ross resident, stated he thinks the project looks excellent. It would be a great addition to the community, and he voiced support.

Mayor Kuhl closed the public hearing.

**Mayor Pro Tem Brekhus moved and Councilmember McMillan seconded, to adopt Resolution No. 2292 approving 41 Poplar Avenue Design Review and Variance. Motion carried unanimously (5-0).**

**Administrative Agenda – (Continued):**

- 11. Receive presentation regarding the progress report for Ross Recreation, with specific review of the Kids Club Extended Care Program (Kids Club) and provide direction to staff regarding the future of the Kids Club program.**

Town Manager Johnson introduced the item.

Recreation Manager Maureen Borthwick gave a presentation regarding the progress report for Ross Recreation with specific review of the Kids club Extended Care Program (Kids Club). She highlighted recreation programs for kids and adults, Ross Age-Friendly, field rentals, Town events, Town court key sales, court maintenance, a brief update on the intermittent community use of Ross School exterior restrooms, gave a status update of the After School Extended Childcare Program (Kids Club), the status of the department's revenue and expenditures, and goals for the remainder of the 2022/23 fiscal year.

Council Member Robbins asked if the Kids Club participants are mostly K-4. Ms. Borthwick replied participants are mostly grades 1-5; however, there are some kindergarteners.

Council Member McMillan stated the chart indicates the Town is paying \$24,500 in credit card fees which would pay for the Kids Club. She asked how the public would respond if they were asked to use Venmo or send a check versus accepting credit cards.

Ms. Borthwick stated the Town does not have to accept credit cards, and staff is looking into charging the associated fees. Town Manager Johnson commented that most City recreation departments charge a credit card fee which in this case is almost the same amount of money as the Town's subsidy.

Mayor Pro Tem Brekhus spoke about after school coverage with enrichment programs and its spottiness, gender orientation of classes, and age group per week, and noted it does not provide non-stop coverage which aftercare provides.

Ms. Borthwick concurred, described space available to offer programs, instructors, sports programs, and said they could provide enrichment programs for all aged kids, but it would not be gender-specific.

Mayor Pro Tem Brekhus said historically, it has been cooking, chess, soccer, golf, and she asked if this is what they would like to revert to so there would be coverage for K-5 for the hours for Kids Club. Ms. Borthwick explained classes are very specific so they would have to investigate a more general enrichment program which does not have to be every day. There will not be the same class every day, but different instructors each day. Most instructors will offer a class 2 days a week.

Mayor Pro Tem Brekhus said historically the programs have been much more expensive than aftercare and it was focused on just a couple of grades, so she was not sure it would fill that need. Regarding the lunch program and MOU, she asked if Ross Rec was running an aftercare program at Kentfield. Ms. Borthwick said they run after-school enrichment classes at Basich. She spoke with the facility supervisor and HR Manager at the school district and said Basich is looking for an organization to come in and run their middle school lunch program. Teachers are currently running it and they are open to the idea of Ross Rec working on an MOU, so they are providing staff to run a program at Kent Middle School as a partnership. Ross Rec could potentially get free or very low-cost classroom space at Basich which would reduce or eliminate the expenditures for the rent budget line item for rent.

Mayor Kuhl opened the public hearing. There were no speakers, and he closed the public hearing.

Council Member Robbins said she loves the idea of afterschool childcare and would subsidize it but does not believe Ross has the number of students to make it work.

Mayor Pro Tem Brekhus said she supports the program, noting it was wildly successful in the past, cited potential impacts of COVID and stopping it and restarting it, and thinks it is a worthy exercise to continue to support it for another year and then re-evaluate it.

Council Member McMillan thanked Ms. Borthwick for her presentation and looks forward to receiving more presentations on a quarterly basis. She wondered if staff had more insights and a recommendation for the Council.

Ms. Borthwick said she does not necessarily have historical background knowledge of this program, as she has been with the Town for 2 months. However, the morale of the office staff is down when there are very few kids in the program. Kids also question why there are no other children in the program and honestly it is disheartening to see. Her recommendation would be to provide a broader program schedule for the Town and its residents and parents. They have a lot of data of what parents want in the community and programs could be specific to those needs so her recommendation would be to go back and re-establish the fall of 2022 enrichment classes in lieu of the Kids Club Extended Care Program.

Mayor Kuhl said he is disappointed more community support cannot be generated for this program given they are providing a service to families in the community, voiced concerns with subsidizing these programs and not others, and voiced concerns with getting into problems with the State by not charging enough for providing the service. Town Manager Johnson replied that many cities subsidize programs for a variety of reasons, such as those on fixed incomes.

Town Manager Johnson said staff is looking for direction regarding the Afterschool program, as it is important for families to be able to plan and for staff to plan the programming.



Council discussion ensued regarding support to continue for one more semester, the effects on staff and kids from low class attendance, the previously successful track record, post-COVID conditions and parents still working from home, opportunities for enrichment classes, research by staff on the credit card fees, and differences between enrichment classes and daycare.

Town Manager Johnson said because the department has a lack of space, they are trying to do both things without sufficient classroom size. There is a high demand for enrichment classes, but they do not have the space and this could be the reason there are not many kids in extended care. However, there is no guarantee with childcare because enrichment classes have minimums. If they do not meet the independent contractor/instructor attendance, the classes are not held. This is the risk for the working parents, as they may need Monday through Friday afterschool care everyday school is open.

Mayor Pro Tem Brekhus said this was the same space that happened during the years the aftercare program went on. Marin Art and Garden Center got used, St. John's got used, the Green Room got used, and outdoor space got used. Town Manager Johnson said they have been trying those same venues and they are not available or affordable now.

Mayor Kuhl said he thinks most of the Council would prefer not to run the Kids Club again.

Council Member McMillan suggested being careful in messaging as to what will happen in the fall and recommended indicating that every effort was made to have this program succeed. She was not sure they wanted to indicate the Town has been subsidizing but recommended indicating the very low attendance.

Town Manager Johnson confirmed the consensus of the Council is to close the program at the end of the academic school year and for staff to focus on having a robust enrichment program that serves all kids and both genders as much as possible.

12. **Recommendation that the Town Council consider whether to direct staff to:**
  1. **Analyze and prepare options for local building code amendments to adopt enhanced requirements promoting building and vehicle electrification; and promoting automatic gate safety; and**
  2. **Proceed with the introduction of the Marin Model Reusable Foodware Ordinance.**

Planning and Building Director Rebecca Markwick gave the staff report and overview of staff's work with other Marin jurisdictions and the County relating to code amendments the County has spearheaded and jurisdictions have adopted or brought to their Councils for direction. She gave a presentation and background on options relating to three items: 1) Building and vehicle electrification; 2) Automatic gate safety; and 3) The Marin Model Reusable Foodware ordinance.

Regarding the building and vehicle electrification or Reach code, the Council could:

1. Direct staff to prepare the draft code amendments for Town Council consideration that would preclude installation of gas infrastructure in newly constructed single-family homes, as well as EV charging upgrade/requirements for newly constructed buildings; or
2. Direct staff to participate with other Marin jurisdictions in analyzing and possibly refining a proposed Reach code addressing electrification requirements for larger remodels or single-family homes, or
3. Choose to take no action in amending the Town's code.

In terms of the automatic gate safety options, the Council could:

1. Direct staff to return with language amending the Municipal Code for gate safety;
2. Choose to take no action.

Lastly, she reached out to all restaurant owners in downtown Ross. Crown and Crumpet indicated they are the only restaurant it would affect. Tony Tutto's already uses all compostable and recyclable to-go items and containers. Crown and Crumpet investigated to-go coffee lids that would fit into the ordinance and communicated it would be very expensive to provide. She also spoke with the owner of the trattoria who already uses all bio-degradable to-go containers, and she did not hear from Marche'.

Therefore, relating to the Marin model reusable foodware ordinance options, the Council could:

1. Direct staff to return with the Marin model reusable foodware ordinance, as written or with modifications; or
2. Direct staff to take no action on the ordinance.

Mayor Pro Tem Brekhus asked and confirmed with the Town Attorney that this would not apply to Door Dash and picking up food in other restaurants where that jurisdiction is not regulated. It would apply to the restaurants in Ross and not the delivery services.

Ms. Markwick stated also on Zoom is Dana Armanino from the County of Marin regarding the reusable foodware ordinance and Reach code, should the Council have additional questions.

Council Member Robbins asked and confirmed the gate safety code is a non-controversial and a safety issue the Town would want to implement.

Mayor Kuhl asked what the impetus was for gates tipping over. Town Attorney Ben Stock spoke about a child death in 2019 at Mark Day School in San Rafael from a gate falling on him. The father has led a charge to have Marin County jurisdictions adopt this code amendment. Thus far, San Rafael, Larkspur and Belvedere adopted the code and San Anselmo and Mill Valley will hear it next month. The father is also talking to the State and trying to get the State Building Code amended for every city. The fix is \$50 so the direction tonight is to bring an ordinance similar to those cities that have adopted it to require the fix on gates.

Council Member Robbins asked and confirmed staff has not reached out to the community regarding the Reach codes, and the Town has varied options in their adoption.

Council Member Kircher asked if the Reach code proposed and adopted by some jurisdictions applies to swimming pools.

Dana Armanino, County of Marin, stated for new construction the model Reach code states there will be no natural gas infrastructure going onto the parcel. For a swimming pool, it would need to be an electric heat pump or solar hot water.

Council Member Kircher said he sees with new construction there is an exception for emergency backup generators for essential services buildings and multi-family buildings but no exception for residential construction. Generators generally are powered by natural gas or propane. He thinks the electric grid is very unreliable and he could not support not being able to have a backup generator. He supported having a backup generator for residents with a gas infrastructure for that backup generator but asked to remove the word "emergency".

Secondly, when getting to alterations and additions, he questioned what qualifies as an alteration and did not understand how the 750 square foot figures into that. Theoretically, someone could move into a house and not have a big budget, but make alterations such as crown moldings, reface kitchen cabinets, or paint and the rooms they are doing this in exceeds 750 square feet.

Ms. Markwick and Ms. Armanino confirmed this applies to work requiring building permits, such as for more extensive remodels necessitating permits.

Council Member Kircher said before voting on any ordinance, he would want to see the language of the ordinance and would hope these terms are all defined in clear words. Otherwise, people would have to go through layer upon layer of regulations. He also voiced concerns about requiring installation of an EV charging station where there was a change in electrical service, which on some properties could be extremely cumbersome.

Mayor Pro Tem Brekhus asked about the reusable foodware ordinance costs. Ms. Armanino prefaced her response by stating their main focus is first educating businesses. The ordinance is structured so if an alternative compliant to-go product is not commercially available it would be exempt until such a time it becomes available. Right now, hot cups and hot cup lids are on the exempt list.

Council Member Robbins asked and confirmed that if Ross adopted the reusable foodware ordinance, the County would visit businesses to regulate the requirement twice a year as part of the business's health inspections.

Mayor Kuhl opened the public hearing.

David Moller, Ross resident, said he has spoken in the past to encourage the Council to take common sense actions to reduce GHG emissions and this is what the Reach codes are about. He described those GHG emissions from buildings, mostly for space and water heating which are responsible for 1/3 of the Town's GHG emissions, with transportation responsible for most of the rest of the Town's emissions. The 3 model Reach codes developed by the County address new buildings and major remodels. It will avoid increasing GHG emissions, will increase EV charging infrastructure which promotes electric vehicles, and is in response to the Civil Grand Jury's report relating to climate change. He urged the Council to direct staff to analyze and prepare options for local amendments to adopt enhanced requirements promoting building and vehicle electrification and also recommended Ross update its 2010 Climate Action Plan.

Mayor Kuhl closed the public hearing.

Mayor Pro Tem Brekhus agreed with Council Member Kircher's comments regarding the 750 square foot alteration as too small, thinks a lot of materials go into the landfill because of regulations during remodels and questioned if this is environmentally beneficial, as well as EV charging, noting there is not enough electricity to power the number of EVs created in such a short timeframe. She supported revisiting this in the future but also thinks the Council should be smart about how it is done. She asked for elimination of the 750 square feet and EV trigger and voiced support for the gate safety ordinance or food container ordinance.

Council Member Robbins suggested it is premature to require all-electric wiring for new homes and remodels, given the grid is not ready or stable enough, asked that this be revisited in the future with the ability for residents to weigh in. She supported reusable food packaging and voiced support for the gate safety ordinance.

Council Member McMillan said she is on the MCCMC Climate Action Committee. This is something very important for the County, voiced her support, but said she would want to get more feedback from residents before requiring new construction be built as all-electric. Council Member Kircher concurred.

Council discussion ensued and Mayor Kuhl recognized that a majority of Council Members were supportive of applying the electrification mandate for new construction only. The Council asked staff to bring back specific information on all 3 items, supported education for the public, sample ordinances, and all Council Members voiced support of the gate safety and food ware ordinance.

Town Manager Johnson referred to the timing of bringing the items back. She will work with the Mayor and Mayor Pro Tem and staff in bringing a staff report and first reading of an ordinance on the food ware item.

She confirmed the Town Attorney has a draft staff report and ordinance for the gate safety item which can be brought back as soon as staff is able to agendaize it. Regarding bringing back the reach code, Town Manager Johnson stated staff will have to consider this further as to timing for a future meeting.

- 13. Recommendation that the Town Council consider appointing two Town Council members to a subcommittee that will discuss the public safety parcel tax and its potential renewal.**

Council Members discussed appointments for the subcommittee, and Council Members Robbins and McMillan were nominated, and accepted the nomination to serve on the subcommittee that will discuss the public safety parcel tax.

Mayor Kuhl opened the public hearing. There were no speakers, and he closed the public hearing.

**Mayor Pro Tem Brekhus moved and Council Member Kircher seconded, to nominate Council Members McMillan and Robbins to serve on a subcommittee that will discuss the public safety parcel tax and its potential renewal. Motion carried unanimously (5-0).**

**End of Administrative Agenda.**

- 16. No Action Items:**
- a. Council correspondence – None**
  - b. Future Council items – None.**

- 17. Adjournment.**

Mayor Kuhl adjourned the meeting at 9:55 p.m.

**ATTEST:**

  
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Cyndie Martel, Town Clerk

  
\_\_\_\_\_  
Beach Kuhl, Mayor