

REGULAR MEETING of the ROSS TOWN COUNCIL

THURSDAY, MAY 11, 2023

Held In-Person and Teleconference via Zoom

1. 6:00 p.m. Commencement.

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

2. Posting of agenda.

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

3. Open Time for Public Expression.

Madeline Wigginton said she is a parent of 3 children and requested the renewal of Kid's Club be discussed as an item on a future Town Council agenda as quickly as possible. She knows the Council discussed this program in March and voted to cancel the Kid's Club. She thinks if the Council heard directly from parents, they may have changed their minds. Families are planning for next year and have hired nannies because they heard it was canceled. Parents are willing to work with the Town to make Kid's Club a success because it is the best solution for childcare for after school programming. She thinks the enrichment programs are wonderful, but they leave a lot of holes in childcare, such as a half-hour window, so it is essential to fill these gaps.

4. Recognition of Christine Adams by Chief Pata for 12 years of extraordinary service to the Ross community.

Mayor Kuhl read the plaque into the record, recognizing Christine Adams for 12 years of extraordinary services to the Ross community.

Chief Pata then presented the plaque to Christine Adams and spoke of her work in assisting with Town events. He also reminded everyone that next week is the recognition of National Police Memorial Week. In 1962, President Kennedy proclaimed this day on May 15th and it pays special recognition to law enforcement officers who lost their lives in the line of duty. There are 800,000 sworn officers in the U.S. and it is sad that 39 officers have been killed this year; 4 alone in the month of May; however, this statistic is down by 70% from last year.

5. Proclamation in support of National Gun Violence Awareness Day.

Mayor Kuhl introduced, and Council Member Robbins read the proclamation into the record which was requested by Moms Demand Action for Gun Sense in America, in support of National Gun Violence Awareness Day. The first Friday in June, June 2nd, is declared National Gun Violence Awareness Day and she asked that orange be worn to recognize this day.

6. Mayor's Report

The Ross Town Council frequently deals with routine matters by considering them on our consent calendar, where they can be passed without discussion. They are placed on this calendar when it appears they are not at all controversial. For example, on this month's consent calendar we will approve the minutes of our previous month's meeting, authorizations of certain payments or acceptance of routine reports. These matters are quickly handled because they are simple and uncontroversial. However, one item we face this month is not on the consent agenda although it is difficult to imagine any opposition. Indeed, it has drawn a greater volume of supportive correspondence from our residents than any other matter I can recall in my time on the Council. It deserves further comment.

The resolution arises from the discovery on the morning of April 22, on the lawns and driveways of a substantial number of the residents of our and neighboring communities, a very offensive anti-Semitic hate speech paper in a sandwich bag. The identity of the person or persons responsible for creating and distributing this despicable document remains unknown and, because of free speech rights granted under the First Amendment of our Constitution, its distribution may not even be a crime. Nonetheless, it is a very disturbing event which cannot be condemned strongly enough, and the volume of correspondence we have received about it supports our Council making clear just where Ross stands on this issue as something far more than merely a consent item, passed by quickly on our consent calendar. We condemn such behavior and regret the mental suffering it has caused us and our neighbors.

7. Council Committee & Liaison Reports.

Mayor Pro Tem Brekhus reported on the Fire Board meeting, stating an item proposed that \$800,000 in Ross Valley Fire Department reserves be spent on 3 stations outside of Ross--Sleepy Hollow, Fairfax, and San Anselmo, all of which support Ross. Under the JPA, the fire stations are to be maintained by specific jurisdictions. Although given the decision to eliminate the fire station in Ross, the Town will be responsible for 27% of expenses going forward for the San Anselmo Fire Station 19.

The reserve was bolstered by contributions because the Fire Department helped Cal Fire, although they normally receive this as a revenue source. She was not sure this is appropriate because it would not normally be provided and is not consistent with the JPA, as currently written. The item was continued, will be taken up in June, and she will raise this as a future agenda item for the next Council meeting. If the funding is not spent and the Town had to pay 27% for Station 19 in the future, their amount would have been \$54,000 for the one station.

Mayor Kuhl reported on the Transportation Agency of Marin (TAM) meeting, stating one item discussed was planning for the crossing guard plan which TAM supports every year. This year they presented paying for the cost of having 97 crossing guards. All 97 guards were approved and Ross will lose the 98th guard. There was considerable dissent raised from Kentfield residents, where 2 guards were proposed to be cut. Agreement was reached that the items from 98 to 103 would be reconsidered so Ross and Kentfield's intersection at Sir Francis Drake and Bon Air and at Bon Air and Eliseo will be reconsidered.

Council Member McMillan reported that the Marin Wildfire Prevention Authority is doing a shaded fuel break around the City of Novato which will be 60 miles long and 300 feet wide. The MWPA and Fire Safe Marin are sponsoring Ember Stomp on May 20th from 11AM to 5PM. It is a free event with music, food trucks, and education to help people prepare for home hardening and vegetation management.

8. Staff & Community Reports.

a. Town Manager

Town Manager Johnson provided the following report:

Earlier this week, technicians finished installing hard-wired microphones in the Council Chambers, as the wireless ones have not been performing well. The technician also moved the timer box so the Town Clerk can manage it instead of the Mayor. Big thanks to the Town Clerk for making this happen.

Tomorrow, May 12th, the Ross Property Owner's Association, with the Town of Ross as co-sponsor, will host a live music and dining event. The event starts at 4:30pm with music until 8:30pm. The band is local to Marin and will likely advertise their concert on their social media. We expect a festival crowd of 300.

On Monday, May 22nd, a community workshop on the facilities master plan will be held here in Town Hall. There will be tours of the civic center site starting at 4pm and each tour will end in Town Hall where there will be stations where residents can view the concepts and provide their feedback. A postcard was sent to all Ross homes, and we'll do an email blast next week and put it in the Morning After this Friday. Residents can go to Town Hall anytime between 4:00-6:00 p.m. to view the concepts and talk with staff/consultants to ask questions and provide feedback.

A special Town Council meeting has been scheduled for Wednesday, May 31st at 6:00 p.m. for the purpose of discussing the final draft of the Housing Element document and its final EIR.

Summer Camp and Program registration is open! Register online at www.rossrecreation.org or by calling 415.453.6020. New pickleball lines for four courts and portable nets were recently installed at the courts at Fredrick S. Allen Park. Ross Recreation is currently working on scheduling pickleball classes.

b. Ross Property Owners Association. Diane Doodha, RPOA, reported that the Ross Auxiliary Spring Fling had 400 people in attendance; new Christmas garlands for the bridge are being ordered; there is an upcoming “Moms for Demand Action” event coming up; Age-Friendly Ross will be meeting on June 14th at Branson School; the new flower baskets are hanging and are being watered; the new walnut table was installed in the Post Office and another will go on the other side by the trash bins; summer and fall Live on the Common dates are August 25th and October 8th; they are planning for historical walks through Ross and working in conjunction with Ross Historical Society to take people on tours; new resident welcome kits are being delivered; they are working on adding a shade canopy to the tennis court; and there are plans to improve lighting in the Post Office lobby by switching to LED lights. Lastly, they invite the Council to attend Live on the Common tomorrow, May 12th beginning at 4:30 p.m.

12. Consent Agenda.

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

- a. Minutes: 4/13/23**
- b. Demands.**
- c. Town Council to authorize Town Manager to execute a Consultant Services Agreement with Elizabeth Ford for accounting and bookkeeping services for a two-year term July 1, 2023 through June 30, 2025 in a total amount not to exceed \$160,000.**
- d. Town Council adoption of Resolution No. 2301 appropriating Road Repair and Accountability Act (SB 1) funding to the FY 2023-24 Annual Operating Budget for Fiscal Year (FY) 2022-23, estimated as of January 2023 to be \$57,722, into the Gas Tax Fund to fund portions of various pavement rehabilitation projects for the FY 2023-24 Roadway fund budget, and adopting the list of projects to be funded by SB1 in FY 2023-24.**
- e. Town Council to authorize the Town Manager to execute the Second Amendment to a Master Consultant Services Agreement with CSG Consultants, Inc. for Building Plan Review and Inspection Services.**
- f. Town Council adoption of Resolution No. 2307 approving the Police Chief Employment Agreement between the Town of Ross and Raffaello Pata for the period May 11, 2023 through May 31, 2026 and amending salary schedule.**
- g. Town Council to authorize Town Manager to pay Ross Valley Fire Department \$66,300 for fire fuel reduction services conducted in the Fall 2022.**
- h. Town Council review and acceptance of the FY 2022-2023 Third Quarter, nine-month, Financial Summary Report.**

- i. **Town Council review and acceptance of the Investment Report for the Nine Month Period ended March 31, 2023.**
- j. **Town Council adoption of Resolution 2305 confirming the Ross Valley Paramedic Authority tax for the 2023-2024 Fiscal Year.**
- k. **Town Council to:**
 - a. **Authorize the Town Manager to execute an amendment to the 1996 Revised Hazardous and Solid Waste Joint Powers Agreement with the County of Marin; and**
 - b. **Designate the Town Manager as the Town's representative to the JPA Board and the Planning & Building Director as the alternate.**
- l. **Town Council review and acceptance of the information provided in the Housing Element Annual Progress Report (APR) for 2022 to be submitted to the Governor's Office of Planning and Research (OPR) and to the State Department of Housing and Community Development (HCD).**
- m. **Town Council adoption of Resolution 2308 approving the application for grant funds from the State Department of Parks and Recreation "Recreational Trails Program" for the Natalie Coffin Greene Park Pedestrian Bridge Replacement Project.**

Councilmember McMillan moved and Council Member Robbins seconded, to approve Consent Calendar Items a, b, c, d, e, f, g, h, i, j, k.1, k.2, l, and m. Motion carried unanimously (5-0).

End of Consent Agenda.

10. Public Hearings on Planning Projects - Part 1.

- a. **74 Baywood Avenue, Design Review, Hillside Lot Permit, an ADU permit and a Variance and Town Council consideration of Resolution 2302.**

Michael and Renad Cieplinski, 74 Baywood Avenue, A.P. No. 072-131-10, Zoning R-1: B-5A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate Risk)

Project Summary: The applicant requests approval for Design Review, Hillside Lot Permit, an ADU permit, and a Variance. The project includes a new front yard fence and remodeling and renovating the existing single-family home. The project proposes to construct a 1,000 SF Accessory Dwelling Unit (ADU) which requires an ADU Permit. The Variance is required to exceed the allowable floor area and lot coverage. A Variance is also required to construct of a new pool within the side yard setback. New landscaping and hardscape is also being proposed throughout the property.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for design review, hillside lot permit, an ADU permit, and a Variance, and adoption of Resolution 2302.

Council Member Robbins said the Council often considers variances in the setback, but she did not recall considering variances that exceed FAR for homes or ADUs.

Planning and Building Director Rebecca Markwick confirmed she has not seen this type of variance that would exceed FAR since her arrival to the Town. Staff typically sees floor area in excess of what is allowed through the non-conformity permit, meaning the floor area is already there and existing, but in this case it is to add more floor area.

Mayor Pro Tem Brekhus said when the Council has seen these the request for variance has not always been successful. She spoke with the applicant's representative and was told the special circumstances are that zoning provides for a low FAR and they want a higher FAR. She also has been trying to go to an exception for FAR and not a variance, the difference being that the Council does not need to make legal findings. Other properties around this property have a higher FAR allowance than they do, and this is the special circumstance.

Ms. Markwick said it would have to be a special circumstance on their lot, meaning it is excessively steep. The topography does not warrant development like those in the surrounding neighborhood so they do have a reduced floor area because they are a hillside lot, but this is in the Town's zoning ordinance and not a special circumstance. They could reduce the 142 square feet from the ADU and would not need a variance to exceed the floor area.

Council Member McMillan stated to access the site, a driver must go up either Wellington or Baywood. There is a portion of both roads that are privately maintained and the neighbors on the Baywood side paid to repave and upgrade this side about 4 years ago. The Wellington side has not been upgraded or repaved in a long time, so she asked for a condition to access the site on the Wellington side instead of the Baywood side.

She also noted the previous owners of 74 Baywood Avenue did not participate in the repaving of the Baywood side because they are on the other side or the Wellington side. Ms. Markwick stated staff could add this condition and referred to counsel.

Assistant Town Attorney Benjamin Stock said there must be a nexus to the condition being imposed. It sounds as if the nexus would be because that portion has not been repaved and is therefore less stable.

Council Member McMillan added that the road on Wellington needs to be redone and construction will further deteriorate the condition of the road, whereas the other Baywood side that has been redone is in good condition, and she confirmed the condition would just be for the construction access to the site.

Mr. Stock said this would be the nexus to establish the condition for construction purposes.

In response to Mayor Pro Tem Brekhus regarding the condition, Council Member McMillan said the condition would state that during construction all construction vehicles shall access the site by going up Wellington and turning left onto Baywood instead of going all the way up Baywood.

Mayor Kuhl called on the applicant to provide a presentation.

Council Member Kircher announced someone was having trouble accessing the meeting on Zoom, and Mayor Kuhl called for a brief recess, and then reconvened the meeting.

Town Manager Johnson reviewed protocols for how to access the meeting link to participate via Zoom and she said this requires no password. She offered residents to meet with the Town Clerk on how to access the meeting via the computer during normal business hours.

Mayor Kuhl invited the applicant to make a presentation.

Colleen Paz, Architect, Paz Studios, said unless someone has questions about their drawings she had no prepared presentation.

Mayor Pro Tem Brekhus asked and confirmed Ms. Paz was unable to hear the comments regarding FAR and the variance.

Council Member Robbins then recapped the question she had regarding variances for FAR which is unusual, confirmed there have not been any in quite some time, and the ADU would be slightly smaller if the variance was not approved.

Ms. Paz said they thought it was fair to ask because the previous project approved in 2018 had a higher FAR than what they are asking for now. Given the site is less than ½ acre and it is zoned for 5 acres, the zoning was punitive, and asking for 11% versus the 15% which neighbors with similar lot sizes are allowed seemed like a fair request.

Mayor Pro Tem Brekhus said she remembers the prior owners, going to the property, but did not remember the history about how this happened. She had the concern whether the special circumstance was just that other properties are zoned for higher FAR because, if that is the request, it can be made by every property in Ross so she questioned how to address this.

Ms. Paz said they are just asking for less than what was approved for the last project; that it is zoned for 5 acres and it seems it is improperly zoned where others are allowed 15%.

Mayor Kuhl suggested that as a result of Councilmembers having questions of this item, the public comment period should be opened for comments. He asked if the applicant had any further comments about the project, and Ms. Paz apologized, thinking that the ADR had unanimous approval. She can rejoin and bring up the drawings on another screen if the Council wished.

Council Member McMillan said the architect mentioned that in 2018 the project was approved for greater square footage and the Council did not see those approval documents. She asked what the square footage was in the 2018 approval.

Ms. Paz replied that the FAR was 4,108 square feet or 14.8%. It was allowed 20% in the zoning requirements which is in the staff report from 2016 which was the planning application portion of the 2018 building permit. The floor area and lot coverage were allowed to be 20% per that application and they were asking for 12.7%. They ultimately decided this during construction and the house size was reduced through a building permit revision.

Mayor Kuhl opened the public comment period. There were no speakers, and Mayor Kuhl returned discussion to the Council.

Council Member Robbins said she thinks it is a lovely project, thinks the variance for the pool is fine, and she would support the project if the FAR was not exceeded.

Mayor Pro Tem Brekhus said she is confused by what happened in 2018. She also has concerns about FAR being exceeded. She thinks the procedure to require a variance is bad because then the Council is cherry picking and they do not have the legal rationale to do that. She would like the Council to consider amending their procedure so it is an exception and they would have that flexibility. Without that flexibility, they should reduce it and she would be fine with a variance for the pool. She remembers some previous applications were denied based on a FAR variance not being allowed so she feels this is consistent with that and not arbitrary.

Council Member McMillan asked if the Council can amend the application during the meeting to change the variance for the FAR to be an exception.

Assistant Town Attorney Stock said this would be a Municipal Code amendment.

Council Member McMillan said she would like a better understanding of what happened in 2016 and did not know why so much more FAR was allowed in 2016 versus what is being proposed now. It seems unfair that they allowed 4,108 square feet in 2018 and they are not going to approve this now.

Ms. Markwick stated she found the staff report and minutes from 2016. It looks like the proposed floor area in 2016 that was approved was 14.8% and 4,108 square feet. It looks like the project was summarized, there was discussion about the swimming pool and retaining wall, no one spoke, and the project was unanimously approved.

Mayor Pro Tem Brekhus asked if it was approved with a variance for floor area. Ms. Markwick said no, the minutes state that the permitted floor area is 15% and it is asking to demolish the existing house. The project included design review, hillside lot, and a variance for the retaining walls. She is certain that the code permits 10% in this district, and there was a hillside lot permit for 15% for floor area, and now it is being permitted at 10%.

Mayor Pro Tem Brekhus said one option would be to approve without the variance and give the applicant an option to further analyze it and come back on a continued item if they can show the Council something different and the Council can look at it then.

Council Member Robbins said this seems reasonable and it gives them the option to redefine FAR.

Mr. Stock stated the application before the Council tonight is for a certain development project that includes the requirement of a variance. The Council cannot approve a portion of that which would be redoing their application.

Mayor Kuhl said the Council could continue the project to the next meeting. Council Member Robbins said they could also approve it without the variance for FAR and then the applicant could come back if they have new information to bring forward.

Mr. Stock suggested continuing the item for a month with direction to the applicant of what the Council is receptive to and what additional information is needed to decide on the variance at the subsequent meeting. He did not think the Council could approve the application tonight without the variance.

Mayor Pro Tem Brekhus asked if they could just approve the pool house at a size that does not require the variance. They can reduce it by 142 square feet. Ms. Markwick stated staff would need to amend the resolution because it includes a variance for the setbacks and extra floor area.

Council Member Robbins suggested asking the applicant.

Ms. Paz said yes, she would be interested in knowing if it would be approved with the variance, and if not, in honor of saving the clients another month of process, they would want the Council to approve it without the ADU variance.

Mr. Stock said he would like to speak with the Planning Director to ensure this can be done tonight or to bring it back to the Consent Calendar.

BREAK

Mayor Kuhl called for a brief recess at 7:13 p.m. and thereafter reconvened the meeting at 7:17 p.m.

Mr. Stock announced that if the Council is willing to approve the variance for the pool but not for the lot coverage, staff would amend the resolution to remove the title for the floor area lot coverage and ADU and make it refer to constructing the new pool. In the findings, on page 5 of the draft resolution, under variances approved it would state, "Variance for the pool is approved based on the following mandatory findings." They will do a word search to ensure there are no other references to FAR in the variance findings and then the Council could move forward tonight.

Council Member Robbins moved to approve the request without the variance.

Council Member McMillan suggested an amended motion to add the construction travel restriction condition.

Council Member Robbins withdrew her motion.

Council Member McMillan moved and Mayor Kuhl seconded, to adopt Resolution No. 2302 approving the project without the variance to exceed the allowable floor area and lot coverage portion, and add a condition to restrict construction access to be on the Wellington and Baywood side and not on the Baywood site, or the counter-clockwise approach and not the clockwise approach. Motion carried unanimously (5-0).

b. 15 Makin Grade, Design Review, Nonconformity Permit and a Hillside Lot Permit and Town Council consideration of Resolution 2303.

Cameron and Dave Rivinus, 15 Maken Grade, A.P. No. 072-101-25, Zoning: R-1: B-5A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate Risk).

Project Summary: The applicant requests approval for Design Review, Hillside Lot Permit, and a Nonconformity Permit. The project is requesting to improve an aging lot with a new pool, landscaping improvements, and remodel the existing non-conforming guest house. New landscaping includes trees, shrubs, and a new rectangular shaped pool to replace the existing oval pool. The project also proposes to add 405 square feet of floor area to the existing guest house by converting the basement into a gym and bathroom.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for Design Review, Nonconformity Permit, and a Hillside Lot Permit at 15 Makin Grade, and adoption of Resolution 2303.

Mayor Kuhl asked and confirmed the applicant wished to defer any presentation.

Mayor Kuhl opened the public comment period. There were no speakers, and Mayor Kuhl returned discussion to the Council or asked for a motion.

Council Member McMillan moved and Council Member Robbins seconded, to adopt Resolution No. 2303 approving the request for Design Review, Nonconformity Permit, and a Hillside Lot Permit at 15 Makin Grade. Motion carried unanimously (5-0).

End of Public Hearings on Planning Projects – Part 1.

Administrative Agenda:

11. Town Council adoption of Resolution 2306 a statement of unity against anti-Semitic messages and all forms of hate speech.

Mayor Kuhl read the language of the resolution into the record and he opened the public comment period.

Diane Rudden, Age-Friendly, said she is speaking on behalf of a few of her friends to let the Council know that people in town support the Resolution.

A speaker stated that as a Jewish American, he appreciates what the Council is doing and voiced support of the Resolution.

Lee Notowich (via Zoom) thanked the Council and said he was happy people were responsive and voiced their opinion. When the recent incident happened, the Town Manager, Police Chief, and Council Members worked to look at options, speaking with the DA and law enforcement. He appreciates the strong statement in the Resolution and voiced support of its adoption.

Mayor Kuhl moved and Council Member McMillan seconded, to adopt Resolution No. 2306, a statement of unity against anti-Semitic messages and all forms of hate speech. Motion carried unanimously (5-0).

12. Town Council to provide feedback on the overview of comments from the California Department of Housing and Community Development (HCD) on the Draft Town of Ross 2023-2031 Housing Element.

Director Markwick introduced the item, stating the Town is required to update the Housing Element of the General Plan to address local needs of housing and new State laws. They are required to plan for 111 new housing units over the next 8 years, has been working with Dyett & Bhatia who has prepared the draft Housing Element which was submitted to HCD on December 13th. HCD had 90 days to review the draft element and provide comments. On March 13th, the Town received a letter from HCD which noted that the draft reviewed by HCD complies with many of the statutory requirements; however, it identified several revisions that will be necessary to ensure the document fully complies with State Housing Element laws. She introduced Andrew Hill from Dyett & Bhatia to review comments received and responses to discuss with the Council.

Andrew Hill, Dyett & Bhatia, said in December, the Council approved sending the draft Housing Element to start HCD review. This kicked off a 90-day review period, staff received a letter of comments from the State, and they have been working to address those comments. They are planning to bring a revised version of the Housing Element to the Council together with the FEIR.

The purpose of tonight's hearing is to give the Council an advanced review of the modifications made to the draft in response to HCD comments and to provide comments and ask questions. The Council is not acting on the Housing Element as a hearing has been scheduled for May 31st.

Mr. Hill said the modifications fall into 3 categories: Changes to the sites map and inventory, changes to the implementing programs, and other additions and clarifications.

Sites Map and Inventory: The St. Anselm's Church site was included; however, subsequently in conversations with the church, Father Brown told them they do not have 2 housing units on the site currently and do not have plans to build additional housing units in the next 8 years. Therefore, this site has been removed from the inventory. There are still adequate units to meet the RHNA obligations at all income levels, so it is not problematic.

Additionally, the draft inventory assumed that 5 existing units at the Branson School could be counted towards RHNA if they were deed-restricted. Branson had indicated they were open to that; however, State law establishes certain conditions under which existing units can be counted towards RHNA which include existing units in poor repair and if they are substantially rehabilitated can count towards RHNA.

Market rate units converted to affordable housing with the financial assistance of the town can also be counted, non-residential space converted into Housing can be counted or mobile homes preserved on site. However, the 5 existing multi-units on the Branson campus do not meet any of these criteria, so they have been removed. Even with this removal, the town has sufficient capacity to meet RHNA obligations at all income levels.

Mr. Hill presented a snapshot of the revised inventory. The 10 new units at Branson remain on the inventory and there are no other additional changes. This revised inventory has a capacity of 140 units which is sufficient to meet RHNA at all income levels with a buffer.

Changes to the Implementing programs: Additionally, HCD's letter requested modifications to implementing programs that are included in the Housing Action Plan in chapter 4. These are mostly about the timing and specific steps the Town will take to facilitate buildout of the inventory. For Program 3-A which is about housing at the Civic Center site, HCD requested the town add additional details to demonstrate units will be built during the planning period.

Specifically, HCD wanted the town to add milestones, dates, and spell things out in Program 3-A. The details have not yet been decided, but in consulting with staff, they have created a pathway to get there that provides the specificity HCD is looking for. That pathway would identify potential funding partners, non-profit developers who would build and operate the units, and entering into an exclusive negotiating agreement with developers by the end of the third quarter of 2024, subsequently entering into a development agreement to agree to the terms of the development by the end of the 4th quarter in 2025, targeting approval of the developer's application by the end of the first quarter of 2026, and issuing building permits by the end of the 4th quarter of 2027.

They are also preparing a new Appendix that would include background information such as the RFQ released, staff reports regarding the Facilities Master Plan, and a Fact Sheet on the Civic Center, all in the interest of demonstrating this project is moving forward.

Similarly, for Program 3-B which is about housing at the Post Office, HCD had also requested additional details of milestones and dates be added to the program to demonstrate completion would happen within the planning period. Those details are not known at this time but in working with staff, they put together a potential pathway that would provide the level of detail HCD is looking for. This would identify partners, negotiating agreements, approving a development application, and ultimately issuing a building permit. The timing would be sequential and in this case, the Post Office would proceed after the Civic Center.

HCD had also requested some new programs be added to the draft around fair housing. 2 of the biggest obstacles to housing access in Ross and in Marin County have to do with the cost of housing and the diversity of housing types. There is a lot already included in the draft element that addresses these issues. They asked HCD to get their advice on what additional actions they would like to see, and they pointed them to Rolling Hills Estates which is a community with similar demographics and background and size to Ross. Rolling Hills Estates has a certified Housing Element and they included programs around affirmatively marketing opportunities for affordable housing, or proactively advertising the availability of affordable housing as it is built. So, they used this as a model and are incorporating that program.

They have also included a similar program to provide information and assistance to affordable developers who may be interested in housing for special needs populations or extremely low income households in Ross, and another fair housing program being added has to do with promoting the availability of county rental assistance programs to cost burden renters in Ross. He noted 58% of senior renters in Ross experience cost burden which means they are paying more than 30% of their incomes for housing. In response, they included a program to advertise the availability of county programs offering rental assistance. This program would involve staff partnering with groups like St. Vincent de Paul to raise awareness of the programs.

Lastly is a program to send the Housing Element to water and sewer service providers to make sure they are aware of plans for lower income housing and that they prioritize service to those sites.

Additionally, HCD's letter requested some edits to existing programs or addition of some new programs to ensure the Town code remains in compliance in January, including new State law after the Housing Element was adopted. These are specific edits and a red-lined version has been included.

Additional Clarifications: The third change has to do with addition of other amplifications and clarifications. The Ross Housing Element relies on ADUs as a major source of new housing so HCD asked for additional evidence or analysis to demonstrate there is capacity for those units. They had a lot of demographic detail and suggested who might be future inhabitants of those ADUs. To supplement that, they are proposing to include a map, and there are over 900 parcels in Ross that have the potential for an ADU. Since 2018, about 31 ADUs have been permitted which were mapped, and they are projecting 80 new ADUs have the potential of being built.

They had a consultation call with HCD staff on Monday and while they made a reference in Chapter 3 to many of the programs included in Chapter 4, they asked them to explain more about what those programs are in Chapter 3 and how they would facilitate housing, and they will add that level of detail, as well.

Similarly, for SB 9 housing, they projected about 30 units over the next 8 years. They included a map of candidate parcels and HCD asked for more specific details and they are including tables to identify sites, added the building footprints of the existing buildings so again, much more detail to back up the projections for SB 9 units.

Like the request around the Civic Center site and the Post Office site, HCD is also asking for more clarification around the milestones and timing for construction of housing on the Branson School site. HCD suggested getting a letter from Branson that formally expresses their interest in providing housing, identify why they need it, and to spell out specific steps and timing. Program 3-K talks about what the Town would do and are meeting with Branson on a regular basis and the Town would talk about site planning and facilitation of plans.

HCD also asked for more background information on regional fair housing trends. They had included some information on regional fair housing but Appendix D concentrated mostly on conditions in Ross. HCD asked they compare conditions in Ross with Marin County as a whole. The County has prepared a background countywide analysis of fair housing conditions which has been incorporated into the appendix.

They also asked the Town to include a table of quantified objectives. Some communities have rehabilitated lower income housing units they count towards their RHNA and other communities might be preserving mobile homes or other units which can be counted. This table is required by law to say how many units would be new construction, how many would be rehabilitated, and conserved in Ross.

In conclusion, they will be posting a red-lined version of the Housing Element on the Town's website in advance of the May 31st hearing and HCD comments. The FEIR will also be ready in advance of the meeting and posted as well.

Mayor Kuhl said it appears that part of what HCD is doing is making the Town put down on paper an actual plan of action to accommodate what they want. That makes it easier for them to hold the Town's feet to the fire in case they do not comply precisely with what is stated in the Housing Element. He asked if Mr. Hill has any feeling from HCD of whether they are close to satisfying the requirements now or whether they may have looming problems.

Mr. Hill said he thinks none of these items are substantial. They did not say you cannot project ADUs over the 8 year period, did not say they could not use a particular site, cannot plan housing at the Civic Center. This is asking for more supporting details. All indications from HCD is that the Town is moving down in the right track.

Mayor Kuhl asked and confirmed the City of Sausalito has received certification this week, but other Marin communities are still working through the process.

Councilmember McMillan said if there are sites identified here that the Town does not want to develop later, she asked if they have any flexibility to change their minds. Mr. Hill said it is first getting to certification which is what they are doing now. After that is the implementation. Through the annual reporting process, the Town will have the opportunity to indicate what the current status is. If a site not on the inventory develops housing, that still counts towards RHNA which would put the Town ahead of the curve. So, if the Town is making progress towards the numbers it is less important about which sites are developed. However, through this process they tried to identify the most logical sites to develop, but that is not to say they will all be developed.

Council Member Robbins asked the Council to take the Post Office site off the site map because she has heard from members of the public that they would like to keep the center of Town which is zoned Civic not a residential area. This site was rushed at the end of a meeting without thoroughly evaluating the benefits of using the Post Office as a site. She thought the buffer could address these or suggested adding units to the Civic Center site or the Cedars or 6 Redwood.

Mayor Kuhl referred to the process and said if they included the Post Office area and the whole plan was approved, he asked and confirmed that the requirement would be for the Town to issue an RFP because it is the Town's property to find out what entities would be interested in building those units.

Mayor Kuhl asked if there is any requirement the Town would have to continue to own that property. Mr. Hill said there is no requirement, and if the Town sold it, then the Surplus Lands Act would be triggered which requires surplus properties by any jurisdiction be offered for affordable housing development. But, this is in the event the property is sold. Even if it is leased the Surplus Lands Act might be triggered.

Mr. Stock said regarding the Town having an obligation for the numbers targeted for that site if they sell the site on the Housing Element, the obligation stays with the property regardless. The Town is identifying that site for housing. If sold, the obligation to have housing there would remain unless the Housing Element was amended to remove that site off the list and identify other sites.

Council Member Robbins asked and confirmed that if there is enough of a buffer, they could remove that site; however, Mr. Hill said there is a potential risk because so much of the lower income units are assumed as part of ADU development. A total of 80 ADUs is assumed and then they are allocated to the income levels based on a regional ADU affordability study that was done that says on average, 60% of ADUs built are affordable to lower income sites. They can do that for the certification process, but when it comes to implementation, the Town must report annually on how many units are affordable to each of those income levels. That will rely on the homeowner deed restricting their units for lower income units.

If the Town gets to a point where deed restrictions are not happening and they are not on track to meet the ADU counts for lower income units, the Town may need to upzone land to make it available for lower income units. The benefit of having the 6 units on the Post Office site and 6 units on the Town Center site, it is a good step towards that lower income goal.

Council Member Robbins said she thinks the community would rather deal with the upzoning issue and risk having residences in the civic area. She said they could pencil in 3 at the civic center site and try to find other locations and send back the same number to the State.

Mr. Hill said if they are shifting units from the Post Office to the Civic Center or having a small net reduction from an EIR perspective, it would not generate any new adverse impacts. If they tried to find new sites at this stage that had not been analyzed in the EIR, that might make things more complicated.

Mayor Kuhl asked how many residential units are there now in the business district. Mr. Hill said there are 6 residential units above the bike shop south of the Post Office parking lot and those are the only residential units in the downtown area now.

Mayor Pro Tem Brekhus asked if they must discuss with potential partners or non-profit developers, potential development of the Civic Center. She said assuming people were identified but if the terms were not acceptable to the Town, she asked if the Town could control those terms.

Mr. Hill said the Town is not handcuffed to build exactly what is on the inventory; however, if things do not develop as anticipated this is why there is a buffer. If there are too many sites and the ADU production trend is not anticipated such that they get halfway through the planning period and it is clear the Town is not on track, it is possible the State may ask for rezoning or require the Town develop another plan.

Council Member Kircher said if they were now to change what they previously submitted he asked if that would affect the timing of adoption of the final plan by the end of May. Mr. Hill said it depends on the nature of the change. If it is a relatively simple change that does not trigger new potential impacts that would require the EIR to be recirculated it would be acceptable, but large changes would trigger a delay.

Council Member Kircher said if they eliminated the units over the Post Office and added 3 to the Civic Center site he asked if this would delay the certification process. Mr. Hill said no, he thinks this can be accommodated, but it presents potential risk that rezoning may be required at some point later in the process.

Council Member Kircher said if they do leave the 6 units over the Post Office in the current plan he asked if they are obligated to go ahead with that unless the Council is satisfied they can preserve their relationship with the Post Office that traffic circulation is adequate. Mr. Hill said this is true and more effort could go into ADU production or SB 9 housing production and get ahead of the curve on those items and there may not be a need for that.

Council Member Kircher asked if the Town would not necessarily have any second guessing from the State that they should have tried harder or done this or that, or he asked if it is within the Town's discretion.

Mr. Stock replied that it depends on where the Town is in the housing cycle and how much progress has been made. Mr. Hill said there are many communities in California in the 5th cycle that did not make their RHNA targets from the prior years. Ross did make its RHNA targets, but there are laws at the State level where halfway through the cycle, the State will assess progress. Those not making sufficient progress are subject to streamlining by developers.

Council Member McMillan said she did not fully understand that a large portion of the ADUs need to be deed restricted for low, very low or moderate income. She asked if the Town has a plan to do that. She asked if the Town are asking the owners if they would voluntarily like to do that or she wondered if the Town will impose that as part of the approval process.

Mr. Hill said some of the programs included in Chapter 4 of the Housing Element offer additional incentives for owners to deed restrict. In conversations with the community, many people have indicated they are interested in making an ADU available to a teacher or a local employee.

City Manager Johnson said she wants to be sure Mayor Pro Tem Brekhus's question about the Civic Center project is answered. She wants to clarify that she worked on a 40 unit low income housing project in a former Sonoma County agency. One thing she would be doing is working closely with Mr. Stock or someone in his firm who specializes in these types of development agreements to ensure the Town is getting the best deal and the best project that they can get. An element of it which is important, especially with the Civic Center project area, is to have a good management plan in place for the entity operating the project to ensure it really conforms and works well with the uses around it. Staff would also be working closely with the Council along the way, given they would be real estate negotiations.

Mayor Pro Tem Brekhus asked what the incentives are that might incentivize residents who are considering ADUs to deed restrict them. She also asked if there was more the Town could do because in Napa one woman is getting \$40,000 if she builds a small ADU, \$60,000 if she builds a larger ADU and deed restricts. She did not think the Town had that funding, but she wondered if there were other incentives to get these built and deed restricted.

Mr. Hill said in the additional materials the Council received yesterday, there is Program 3-I which was in the draft that offers a development fee discount for owners who elect to make their units deed restricted.

Mayor Pro Tem Brekhus asked what the monetary amount would be for this. Ms. Markwick said she did not think staff thought through how they would reduce fees yet, but as compared to other jurisdictions in terms of a discretionary review, the ADU fee here is high. Some jurisdictions have no fees for an ADU application. Possibly, they could start there with no fee, or reduce building permit fees, but they just have not determined this yet.

Mayor Pro Tem Brekhus asked if that should be part of what is proposed so both HCD and residents know how great they will push the ADUs over the Civic Center and Post Office sites. She thinks it is realistic housing here.

Mr. Stock said Program 3-I right now commits the Town to doing a fee study in determining the reduction in 2024. This is the program so there is a plan HCD can hold the Town's feet to the fire in terms of how much of a discount the deed restricted units will get.

Council Member Robbins returned to the Post Office sites, the RFP in 2025 and negotiating agreement in 2027, and said if non-profits come forward, she asked if the Town will need to develop these units if not taken off.

Mr. Hill said it depends on how much progress is being made. If by 2025 the RFP is to be released, if the Town is ahead of the curve with ADUs and SB 9 units and decide they can make their RHNA without proceeding with the Post Office, this would be at the discretion of the Council.

Council Member Robbins said if they took the units off and were not making progress, they would scramble where housing would go, but they would not necessarily be at the Post Office. Mr. Hill confirmed.

Mayor Kuhl asked if there is anything specific of what the Town will tell the State that describes the nature of what they will do at the Post Office. He recalls an early discussion about putting 6 units along the run of the Post Office parking lot and later hearing suggestions they would build them on top of the existing Post Office. He asked if there is anything they will submit that binds them to either one of those options.

Mr. Hill stated no. Initially, the proposal last summer was just generally on the Post Office site and no details of where they would be. The reaction from the community was that they did not want to see the units on the green space on the northern portion or on the parking lot in the southern portion. So, they specifically redrew the map showing over the Post Office building, but this is more for messaging to the community. The program itself does not say specifically where they will be. HCD is also not asking on the site where they would be developed. They are asking more about the milestones and dates for them to be built within the 8 year planning period.

Mayor Pro Tem Brekhus said the reason they need to do an RFP above the Post Office and they are not proposing that at the Civic Center, is because they are relying so heavily on those sites being low income at the Post Office.

Mr. Hill said they are all lower income and he believes they would all be part of the same process, and he believes they both must go through an RFP process.

Town Manager Johnson said this was an oversight. She agrees the Post Office site has staff going out for an RFP for a developer and the Civic Center one does not. She thinks they might decide as they get closer the best way of obtaining interest from qualified developers. She spoke with Mr. Hill when putting together those steps. If they decide there is another process or a particular way of doing it which might be better for the site, they will be able to adjust their strategy.

Mayor Pro Tem Brekhus said either way, they are saying in 2024 they will look at financing the ADUs. She asked if it is not advantageous right now to say if you deed restrict ADUs, the development cost is zero or some small figure. That gives strength in the ability to create more low income housing from HCD's standpoint and asked if they should consider that.

Town Manager Johnson said next year, staff will be updating the fee schedule for the Town and thorough analysis needs to be done for the ADU fee structure they have in place. They need to determine what the costs are to process these ADU permits and at the same time, they can look at what incentive programs they can offer.

Council Member McMillan asked and confirmed HCD has not identified the timing of the fee study as an issue. Mr. Hill said if the Council would like them to go back and prepare some proposed revisions to ADU programs or additional ADU programs to further incentivize deed restriction, they can do this and bring them back on May 31st for the Council to consider.

Town Manager Johnson said before getting to specific amounts, she would want to make sure staff knows how much it costs the Town and then they can look at incentives. Mr. Hill agreed, and noted there also may be incentives that are not fee-based as well.

Council Member McMillan referred to the Post Office, and it seems that Mr. Hill said they did not have to propose units directly above the Post Office and develop them in that general vicinity. It looks like the language in Program 3-B is very specific. It states, "As part of a future renovation, the Post Office building will be redeveloped with workforce housing."

Mr. Hill said again, the reason for that is to speak to community concerns and not out of any requirement that HCD is making. It was more to broadcast to the community that they heard concerns. The language could be modified but they would want to be sure community members who expressed concern would not feel they were backtracking on anything that was discussed previously.

Council Member Robbins asked and confirmed that the Town could include wording regarding incentivizing ADUs without fee amounts.

Council Member McMillan said it seems like Program 3-B; the Post Office, it seems the dates mentioned in the blue bullet points are not the same dates mentioned in the objectives and timeframes. If they are to stick with the Post Office, she suggested the dates, objectives, and timeframe are consistent with what is identified in the bullet points above. Mr. Hill said they are intended to be the same, and he agreed to double check them.

Mayor Pro Tem Brekhus said the data point about seniors spending more than “x” amount above their income, she wants to make clear that this is a data point but it does not mean that those people are not sitting on other available incomes that allows them to comfortably live with spending the amount they are spending on housing.

Mr. Hill said that could be. It is based on census information and he thinks that is an income and does not necessarily account for any investments.

Mayor Kuhl opened the public comment period. There were no speakers, and Mayor Kuhl returned discussion to the Council.

Mayor Kuhl said this is a non-action item but it may be appropriate now for Council Members to indicate to staff any changes they might propose.

Council Member Robbins referred to the mitigation measures for transportation, and she mentioned that providing 10 electric bikes is something the Town should not be in the business of providing and maintaining for those at the Civic Center site. She suggested stating the Town will work with the developer who will provide bike storage as the mitigation. Mr. Hill said it is not for tonight, but he could note that observation.

Mr. Stock said this is not on the agenda tonight and staff can make that correction for the May meeting to remove that mitigation.

Council Member Robbins said she thinks the Council should remove the Post Office site. She does not think moving the 6 units from the parking area to on top of the Post Office met in any way the concerns of the community. They did not want any housing in the civic area. It is possible there are non-profits who would make this happen and if the community does not want it, she did not want to commit to it in this document. Therefore, she proposed putting 3 more on the Civic Center site and see if they can put 3 elsewhere, or if not, reduce the buffer by 3.

Mayor Pro Tem Brekhus said she supports the 6 units be built at the Post Office and thinks it would not be a hardship for people. It would be a hard site to develop on the second story at the Post Office, but she still thinks it is the right site for development, so she is not supportive of removing it. She also does not want to have any risk this not get approved. She knows all of them want to do as much as they can to incentivize the most realistic housing they can do in Ross which will be ADUs. Additionally, she said people do not have to rent to low income individuals, just deed restrict it but this is what the Town will try and encourage people to do. She also supports the amendments made by staff.

Council Member McMillan confirmed Mayor Pro Tem Brekhus supports the 6 units be built on the Post Office site. She said she thinks the Council should explore moving as many units as they can to the civic center and she still thinks they have an ample buffer.

Council Member Kircher said he is reluctant to do anything that would delay the process of certification. He really thinks they have some urgency to get this certified and while he received some reassurances that elimination of the six units proposed over the Post Office might not set them back, he still thinks there is a risk that there would be delay in terms of the State's review of this change. In looking at the language, even if they were to keep the six units in the plan, they should modify the language. It states, "The Post Office be redeveloped with workforce housing in a format that preserves public parking on site for use of Post Office patrons." The people who park there are not exclusively those using the Post Office. In fact, most are not. This is simply the only available parking in that area.

Secondly, the Town must also preserve the traffic circulation pattern. It could not just be a dead end. Everybody relies on passage through the Post Office lot to make various turns in the downtown area. If they just eliminate the six units over the Post Office, that problem goes away, but he is somewhat conflicted on this and would not want to see any further delay.

Council Member McMillan asked if it would be possible for staff and the consultants to have a chat with HCD and tell them the Council is considering moving 3 of the units from the Post Office to the Civic Center and otherwise not have any units at the Post Office and determine if this would satisfy them before submitting the final language to ensure they keep on schedule.

Mr. Hill said he thinks they can try. They are in the throes of reviewing many Housing Elements throughout the state. It was difficult to get one meeting with them and one by the 31st, as well as considering packet timing. He would say that HCD is very focused on the feasibility and to the extent they can make the argument that it is more feasible to develop 9 units at the Civic Center site than 6 and 6, and if the Council directs them to look at additional incentives for deed restricted ADUs and which has wider support throughout the community, he thinks HCD would be amenable to that amendment.

Council Member Robbins said this would be her preference. She would much rather scramble for extra ADUs and rezone than find people are coming forward and the Town is being held to build at the Post Office where the community has said they do not want housing.

Council Member Kircher said perhaps this could be presented to HCD as a concern on the Council's part that this really may not be feasible. So many things must come together here such as consent by the Post Office, negotiations with them, and it appears more feasible these would get built at the civic center even though there are some challenges. If this would persuade them, he would support eliminating this part of the plan. He also said that he does not think there is anything that would prevent the Council later adding them back in if they were in a jam.

Mayor Kuhl said with the exception he supports putting housing in the Post Office parking lot, but does not support putting housing on top of the Post Office, given disruptions in people getting mail over the construction period. He does not have any big quarrels with what has been done and he thanked Mr. Hill.

Town Manager Johnson said she wants to be sure the Council is clear on what they are doing and what the consensus is because they have a deadline. The Council will be asked to review and adopt the Housing Element and environmental document on May 31st and they must have the revised Housing Element document out 7 days before which would make it May 23rd or 24th which means the consultant, staff and attorney must have time to put it altogether, so she thinks the deadline is one week from today.

She asked if the consensus is to remove the units from the Post Office site and remove the site from the Housing inventory now and then the consultant and staff can obtain feedback from HCD. She will not be able to come back to the Council with HCD's feedback in the next week and get this done, so she wants to be sure there is consensus from the Council.

Mr. Hill said he thinks he has heard that the Post Office site should be removed and that 3 units from the Post Office site should be shifted to the Civic Center for a total of 9 at the Civic Center, 0 at the Post Office. Additionally, the Council would like them to look at other programs, whether it is amending existing programs or possibly adding a new program which offer additional incentives for homeowners who build an ADU and deed restrict it for lower income households to offset the net loss of 3 units at the Post Office.

Council Member Kircher agrees this is the consensus, but realistically getting feedback from HCD in one week may not be possible. But, he asked if it would be possible to make some additional statements explaining why they are doing this, the rationale and HCD will at least see that.

Mr. Hill explained that after the Council adopts the Housing Element, staff will resubmit it to HCD in a red-lined format so they can also see what changes have been made but they have made a matrix of their comments and will indicate how and where in the document they have responded. They also send a cover letter so it can also go in this as well. Technically when they resubmit the element, HCD has 60 days to do their next round of review but they have told them they will provide an interim report out at 30 days and will continue to work with the Town through that 60 day period. So, they will have the opportunity to talk with them and explain those items.

Mayor Pro Tem Brekhus said to her if she moved into Ross and the Post Office were 2 stories versus 1 story and it looked the same, she does not think aesthetically that would destroy anything about this town. She cautioned people, stating for those who have driven by the Larkspur project that is 4 stories high and people are not happy, this is what people will see on Sir Francis Drake right next to the Civic Center in order to fit 9 units there. So, some Council Members have heard from people about the Post Office which is to rebuild will be very expensive, but the Town will develop the Civic Center and she just wants to make sure everybody understands that to fit 9 units on that small site, it will be a high rise. To her, balancing housing here and there and knowing they must be aggressive with their ADUs because these will be built, she cautioned Council Members about signing onto high rise buildings. She thinks if this is put out to residents, they may say they do not want to see that either.

Council Member McMillan said she has confidence that the layout of the 9 units at the Civic Center can be figured out so it is not a 4-story building.

Mayor Pro Tem Brekhus said there is parking on the 1st floor for those units, and she asked how to get 9 units without 4 stories. Council Member McMillan said she walked that space and there is a lot of space. The public works yard is very large and she thinks they should try to get more units there and leave it to the architect to figure out the best layout and not assume the units will be stacked on top of each other.

Ms. Markwick stated there is the notion of a reciprocal parking agreement and should they go from some of the concepts for the Civic Center site, they are going from 26 parking spaces to 40 spaces so if the units are increased at the Civic Center site, they could have some reciprocal parking agreement with the actual Town staff parking. So, there are ways of getting around the huge ground floor parking garage.

Council Member Robbins voiced support of what seems to be the consensus. She thinks it is the best approach.

Mr. Hill and Town Manager Johnson confirmed they had direction, and Mayor Kuhl closed the item.

13. Town Council introduction of an ordinance amending Title 6 of the Ross Municipal Code regarding Reusable Foodware and schedule consideration of adoption of ordinance for June 15, 2023.

Planning and Building Director Rebecca Markwick gave the staff report and background regarding introduction of an ordinance amending Title 6 of the Ross Municipal Code (RMC) regarding reusable foodware and to prohibit plastic foodware through the ordinance. Staff recommends the Council introduce the ordinance amending Title 6 of the RMC regarding reusable foodware and schedule consideration of adoption of the ordinance for June 15, 2023.

On May 10, 2022, the County of Marin adopted its reusable foodware ordinance and Tiburon, Fairfax, Larkspur, and San Anselmo have adopted the ordinance, and San Rafael, Sausalito, Mill Valley, and Novato have had their first reading of their ordinance. She then described affected entities the ordinance would regulate, features of the ordinance, use of foodware for customers dining in restaurants, food vendor charge of 25 cents at the point of sale for every non-reusable cup provided, and the County's Environmental Health Division taking on the role of enforcement if adopted within 12 months of the County's ordinance adoption. The County has agreed to waive the one-time enforcement fee which is \$621 with the intent to encourage countywide adoption of this ordinance.

Mayor Kuhl opened the public comment period. There were no speakers, and Mayor Kuhl returned discussion to the Council or asked for a motion.

Mayor Pro Tem Brekhus moved and Council Member Robbins seconded, to introduce an ordinance amending Title 6 of the Ross Municipal Code regarding Reusable Foodware and schedule consideration of adoption of ordinance for June 15, 2023. Motion carried unanimously (5-0).

14. Town Council consideration whether to regulate short-term residential rentals and provide policy guidance to staff on what actions should be taken, if any.

Planning and Building Director Rebecca Markwick said staff is asking that the Town Council consider whether to regulate short-term residential rentals and provide policy guidance to staff on what actions should be taken, if any.

Consideration of short-term rentals has been an on-going discussion since February 2015 when the Council determined regulation was not warranted. In 2016, the Council identified short-term rentals would provide opportunities and challenges and requested staff solicit further input from the community. In 2016, a 12-question survey was sent to the Town-wide email distribution list and received 165 responses. Respondents were divided in supporting regulating short-term rentals and not regulating them at all.

At the 2016 Town Council meeting, the Council decided on a wait and see approach and decided to continue the policy discussion to a future date. On January 12, 2023 the Council requested a review and discussion of short-term rentals in the Town. Currently, Ross does not regulate short-term rentals for single-family dwellings. The ADU section of the RMC requires rentals of ADUs for a term longer than 30 days.

Tonight, there are 3 options for the Council to consider:

1. To prohibit short-term rentals. The Town can decide to implement a prohibition on short-term rentals via an amendment to the RMC. The Town can use existing code enforcement or adopt code amendments to enforce the RMC. Enforcement can occur on a complaint basis or the Town could increase its enforcement capabilities by contracting with a firm that utilizes software to search the internet for local listings with the ability to identify the address of an on-line posting which greatly enhances enforcement potential, or
2. The Town could allow short-term rentals and continue without registration or fees as done now; or
3. The Town Council could allow short-term rentals with regulations. The Town could require fees and levy a TOT (Transient Occupancy Tax) which would require a ballot measure to enact. The Town could also contract with a firm that utilizes that same software. Additionally, the Town can regulate occupancy numbers, number of days rented per reservation, and per year, per month, and on-site residency of owner.

As of writing the staff report, staff has received 12 emails in support of regulating short-term rentals ranging from not allowing them to placing regulations so they could be allowed. Tonight, staff is asking for direction on the options mentioned above.

Council Member Kircher said he read through the emails and staff report, but he still does not have a clear picture in mind of how many short-term rentals there are in Ross, who the renters are, and what their situation is such as whether they are renting for revenue, whether they are in business of renting out properties on a short term basis, or are they an older retired couple who travel elsewhere during the winters or summers. He also would like to know more about who the renters are and why they are renting homes, such as for events, retreats, for family events like weddings, or here to party.

He has seen lots of references to complaints, how frequent are they and what is the nature of the complaints. He thought they could include loud noise, parking problems, vandalism, etc. He understands the overall issues but does not have enough specifics to go one way or the other on this.

Ms. Markwick said since she has been with the Town she has received 2 complaints about short-term rentals. They were not about noise, trash, parking, but she thinks they just indicated they think there is an Airbnb next door to them. One email staff did receive was from someone in favor of being allowed to rent out their home during the summer when they go away on vacation. Other than that, it has been quiet in terms of having any data.

Council Member Kircher said some jurisdictions permit, prohibit, and have conditions. Mill Valley apparently does regulate these units and he asked what the nature of the regulation is. Ms. Markwick said they have a registration fee, required conditions to qualify for a short-term rental which is that the rental space must be a legally permitted space, if there is a single-family dwelling and an ADU they cannot rent both out simultaneously, they have terms of agreement, and a violation of terms, so it is laid out well. If the Town Council was interested in regulating it, they could model it after the City of Mill Valley's.

Mayor Kuhl asked if the first question is whether this is a problem or sufficient problem to justify adding regulations.

Council Member McMillan wondered if the Town were to continue to allow short-term rentals but with regulation how much of a burden it would be. She asked if they have the capacity in Town to follow-up and apply, etc., which seems burdensome. Ms. Markwick said she thinks it would take a significant amount of staff's time and it would depend how they regulate them.

Mayor Pro Tem Brekhus said she thought the staff report identified 3 short-term rentals presently in town. Her review of the previous discussion there were 3 as well. Ms. Markwick said she forgot the complaint on Baywood and had not received that direct complaint, but she received the other ones on Shady and Upper.

Mayor Pro Tem Brekhus said the complaints she recalls from this discussion before, was that they do not like having a short-term rental next to her. It had nothing to do with noise, partying or parking which is the same as what staff has heard.

Council Member Kircher said there is a reference to the host compliance digital enforcement program. He asked to describe what that is. Ms. Markwick said she has not used the software but it searches the internet for short-term rentals from all the sites which are not Airbnb or VRBO. Host Compliance would contact staff, let them know there is a short-term rental located in the town. They also could send out the compliance letters themselves and then staff would send them out. If this is something the Town is interested in she can sit through the demonstration.

Council Member Kircher asked if there is a significant expense to the Town to use the software, and he asked if it would cost a significant burden for Town staff. Ms. Markwick said she guessed the software would help Town staff in terms of time management, but she does not have the cost of the program.

Council Member Kircher said he thought about exploring how many people are really renting their homes out, during what periods of time, and whether there are patterns so the Council can make a more informed decision. Ms. Markwick said when it came to the Council in 2017, the Host Compliance was estimated to cost between \$27,000 and \$35,000.

Town Manager Johnson said she checked in with the Town Manager of Fairfax yesterday because that town recently engaged Host Compliance and their experience has not been positive thus far, primarily because Host Compliance was purchased by Granicus which does a lot of local government websites and software that manages Council agenda and report processing. Because of that purchase, the Town believes it has not been getting the level of service they were marketed and signed on for.

Also, the feedback was that while Host Compliance and possibly other competitors assist Town staff in identifying properties that are engaging in that use proactively, but code enforcement is reactive as the Town responds to complaints. Once they are identified, the company might send out a letter to the property owner saying they saw they have their property listed on "x" site and this is prohibited or is regulated in the town, etc. and here is what they need to do to be compliant. After that point, it becomes a code enforcement issue and it must come to Town staff to enforce.

In response to Council Member McMillan's inquiry about how much staff it would take, it is how the Council would choose to regulate it. It could be a matter of setting up a registration system and regulating it to solve a problem. Some communities like Newport Beach had a big problem with trash. The owners of the vacation rentals would not get enough trash service. In response to that, they have always had a ministerial program but they required any property owner with a vacation rental to show they were paying for garbage service and additional pickups.

One of the things very difficult to enforce, such as in Laguna Beach, is they were doing more of a site specific where many conditions were put on each property depending on input from neighbors, what neighbors were most concerned about, parking, and so in response their Council and PC would allow short term rentals for 5 weeks of the year which is impossible to enforce. They are dependent on the property owner being forthcoming and being good neighbors.

So, if the Council wants to go down this route, this is something the Town would have to tailor and think about enforcement which is very difficult to obtain proof of whatever the complaint is. Therefore, the Council would be spending the time to hear from those involved. The Council can keep it simple through a registration process with standard conditions, such as if there is a party and parking issue, or garbage issue, they want a number to call that will respond. A condition can be that they always have an emergency contact available.

Council Member Robbins asked if it is possible that the number of rentals indicated in the one email received, who checked the websites, is that there are 18 short-term rentals and not 3, as the email suggested. Ms. Markwick said she has not searched Airbnb or VRBO. It is possible and she looked at some of the links but it took a while and some are in San Anselmo.

Mayor Kuhl said the last time they discussed this and if you look online you will see 15 or 20 houses that are listed under Ross but in fact when looking at them, they are really not in Ross. Ms. Markwick said those were some of the links that were sent to staff.

Council Member McMillan asked if it might be true that some of them are in Ross as she was surprised by some of the ones she looked at. So, it is not just the 3 in the staff report where staff has received complaints.

Mayor Kuhl opened the public comment period.

Laura Dewar (via Zoom), from 2 Crest Road, said regarding complaints, she shared that the main thing is a safety concern for her 2 young girls who are 2 and 4. The property across the street is not the primary residence of the owner and they are operating a commercial enterprise in a residentially zoned neighborhood. So, it is the safety of her children. It also takes away from the housing stock the Council just spent a lot of time talking about how to increase. It also takes away from the much needed long-term rentals which are difficult to find in Ross. She does support that. It also takes away from the neighborhood character and community that makes Ross so special to have transient people come through for 3 to 5 nights.

Having at least a 30-day requirement changes the type of person staying there and it makes the property owner more thoughtful of who they allow. She also noted the house even has its own advertising on Instagram for their guest house/holiday house/vacation house. So, it demonstrates it is a commercial enterprise and she thinks it is important that the Town addresses this and moves forward with this.

Mayor Kuhl closed the public comment period and public hearing.

Mayor Kuhl said they have not answered the question of whether it is worth the effort of determining whether what is occurring is creating a sufficient problem for it to be worth it to pursue regulations. The one concern Ms. Dewar spoke about sounds like they are running a commercial business out of their house and they should be at least told they have to get a business license.

Ms. Markwick stated she has talked with that homeowner and it is different than Ms. Dewar's comments. They say they also live in Ross and this is their secondary home. They have family that comes and stays from Europe for long periods of time and when their family is not there they do rent it out as a short-term rental.

Mayor Kuhl said he thinks the Council is making a "mountain out of a mole hill" here.

Council Member McMillan said she thinks they could prohibit any rentals shorter than 30 days and that way they do not need any regulations. It is no extra work for staff. It allows people to continue to make their homes available but for a longer term for a better reason than just renting a business out of their home. They can plan when they go on vacation, can rent it out for 30 days. She thinks one thing people have not said is that people do not move to Ross to live next to a short-term rental. They move here for the community, the school, and it changes the character of the neighborhood by having short-term rentals. She also does not think the Council wants to be in the business of having short-term rentals and have staff try to get people to comply. So, she thinks it is a good compromise to have 30 days or more for short-term rentals without any regulation.

Mayor Kuhl asked how the Town will enforce this. Council Member McMillan said she thinks people will complain if shorter than 30 days because they will know. If they do complain, then the Town will have to go down a path.

Council Member Robbins said she thinks they could start with a 30-day minimum without enforcement and see where that gets the Town. That might solve the problem, and if not, they can discuss whether they should back off or pay money to have some sort of enforcement. The Council has received correspondence about it where people were very much in favor of keeping a neighborhood feel by not having houses turn over with short-term rentals. She suggested seeing what happens with the minimum of 30 days and for it to be complaint-driven which is not a bad way to start.

Mayor Pro Tem Brekhus said she feels this item got placed because of one complaint and this is frustrating. When she looked at the links she saw about 5 residences, but that does not mean they are being rented all the time. In fact, she saw one that she remembers coming before them in 2017 and the owners saying they put it on there and it allows them to go to Europe for a week and afford that during the summer. She is an Airbnb renter and she rents for less than 30 days. She does not consider herself to be a transient that should alarm people's children.

She noted that the Town's past Town Manager rented an Airbnb because he could not afford to buy a house in Marin, so he would rent and then go back home on the weekends to his home. This is a solution in search of a problem. The Town has had 2 complaints in the last year. She has not heard of any complaints since 2017 where they were told there were 3 homes without complaints except for the concept and idea of having short-term rentals.

As the Town Manager said, if someone suspects it is less than 30 days she asked if the Town would really stake out that home and try and figure out if that group left and another group arrived. She questioned those wanting to visit their kids and grandkids for a week during Christmas. They can go to San Anselmo but not in Ross? She really thinks this is a ridiculous item and thought one resident who wrote in support had many good reasons. These are people who come into the community for a short term and there is nothing nefarious about it. If they had complaints about parties and other nuisances, she would be supportive of it, but because they do not, she is not supportive of it.

Council Member McMillan said they did have 3 complaints in the last year and in her mind, she thinks the community is more like Tiburon and Belvedere and Larkspur than it is the County of Marin, San Rafael, or Novato. So, she does not look at this as complaint-driven. She looks at it as more preserving the character of their community and the reason why people move here. It is not to live next to an Airbnb. This is not why people are paying \$4 million to move to Ross.

Council Member Kircher said there may be a reliance on the fact they do not have any regulation. He would still like to know more about the people who are renting their properties out and why they are doing this. As an example, an older retired couple who love Ross, are having trouble paying their property taxes and every summer they go to visit family and they rent their house out and use that money to pay their property taxes. He does not know if that hypothetical couple exists, but the Town is saying they have been able to do it but now you cannot. If they are going to do something they should give some notice and phase this out and not abruptly say today you can and tomorrow you cannot. His concern is he just does not feel he has enough information to really either think of a halfway solution or come out with a total ban.

Council Member Robbins said she understands wanting to know who these people are, but she thinks the concern is that she thinks a month does not limit most people who are renting for reasons Council Member Kircher is suggesting. She thinks what this would do is make it so someone could complain if their next door neighbor with a swimming pool that has a different party every weekend with different people. People do not move to Ross to live next to a house that is turning over and over. It is fine to live next to a house that is rented and certainly a summer rental or 30 days which changes the whole landscape to her. It is the 5 or 7 day or weekend rentals. With many swimming pools in Ross this is how these houses are being marketed and she looked at all the listings that were emailed. If they set it at 30 days they could phase it in to provide notice. She suggested seeing if this works and likened it as a win/win for everybody.

Mayor Pro Tem Brekhus said the problems being described do not exist. She has talked with the resident who rents that house out and she said she has had family stay in there, but other than that she rented it 2 or 3 times.

Mayor Kuhl said they are saying the same things over and over and asked for a motion.

Council Member Kircher stated he needs more information to make an informed decision.

Town Manager Johnson said she heard Council Member Kircher state he was looking for information on the property owners that are engaging in this activity and what the circumstances are, how many, and how often. She knows there was a survey done in 2016/17. Staff could pursue something similar. They could contact the resident who sent in the links, could review those properties on the links, contact those people who have listed their properties, or could send a letter to the property owner.

Ms. Markwick said she has talked with people in the staff report and they would be willing to provide data on how often they rent, who they are renting their homes to, why they are doing it, but beyond that she has not spoken with anyone else but could contact them.

Mayor Kuhl said they will get 2 or 3 people who provide information and the Council will assume that represents the community.

Town Manager Johnson said also there is a phenomenon common on the Monterey Peninsula where she has close friends and family wherein Carmel and Monterey prohibit short-term rentals. What ends up happening is people advertise on Airbnb and VRBO as a 30 day or more rental, but then they just do not rent it for the entire 30 days and then the next guest does not come in until that 31st day. So, if a property owner wants to do this, it is difficult to keep them from doing it. She asked Council Member Kircher what other data he wanted to see.

Council Member Kircher said any way they approach this it will be a lot of work and it may still not tell them that much. It is hard to collect, people may not be forthcoming, and so he is inclined to go with Council Members who do not want to do something now, with the proviso that if the Town receives more complaints he would like to revisit it. Alternative B was if it were to be a ban he would want it to take effect far into the future, like one year later and have a specific ordinance, and then people could come in and oppose it.

Mayor Pro Tem Brekhus moved and Mayor Kuhl seconded, for the Town Council to not approve a short-term rental regulation. Motion carried (3-2); McMillan and Robbins voted no.

- 15. Councilmembers McMillan and Robbins recommend that the Town Council direct staff to prepare and return to the Town Council for review and action the necessary documents to place a measure on the November 7, 2023 ballot that would renew the public safety parcel tax.**

Town Manager Johnson provided the staff report and said this is a recommendation from the subcommittee of Council Members McMillan and Robbins regarding seeking voter approval of the renewal of the Town's public safety parcel tax. She gave an overview of Measure K which extended the public safety parcel tax for 8 years until June 30, 2025 with an annual COLA. In the current fiscal year, the current parcel tax rate is \$1,085. Proceeds from the special tax are used solely for the purpose of providing public safety services, police, and fire services in the Town. Currently, the proceeds of this tax cover 20% of the cost to provide those services. Police and Fire services in Ross is 50% of the General Fund's annual expenses, so it is most of the Town's annual expenses.

The Town relies on this tax to support the operations of those public safety departments. Unlike many jurisdictions, the Town does not have a large sales tax base, and they instead rely on property taxes, fees for services, and grants to provide services.

Every year a 5-year financial forecast is presented to the Town Council as part of the annual budget process. This forecast states that the Town's current level of services are fundable if the public safety tax is renewed. However, if the parcel tax expires without a replacement, the Town would have to reduce expenses by approximately \$1 million per year which would cause severe service level declines in the Town.

The subcommittee met a couple of times, asked for information, and ultimately came up with the following recommendations:

1. They recommend the Council place the renewal measure on a special election date of this coming November 7, 2023.
2. They recommend asking the voters to approve a 10-year term starting July 1, 2025 in order to provide stability for Town finances and public safety operations.
3. They recommend the Council maintain the existing rate with annual COLA increases to keep up with cost increases due to inflation to provide police and fire services.
4. They recommend maintaining the existing purpose of the tax which is that proceeds are used solely for the purpose of providing police and fire services. That special purpose requires a 2/3 voter approval in order to pass the measure.

The Town would incur approximately \$20,000 to \$26,000 of additional election costs if the measure is placed on the November 2023 ballot. The cost may be lower if another City or town in Marin County decides to also hold a special election in November because certain components of the election costs the County incurs are shared. She has heard another jurisdiction is considering putting a measure on but she was not sure of the exact number yet. These costs would be included in the FYE 2024 budget.

Regarding next steps, if the Town Council accepts the subcommittee's recommendation, staff would bring back for Town Council approval a resolution, an ordinance, and other documents including the ballot question language required to place the renewal of the parcel tax on the November 7, 2023 ballot for voters to decide.

Mayor Kuhl opened the public comment period. There were no speakers, and Mayor Kuhl returned discussion to the Council.

Mayor Kuhl voiced appreciation of the work of the subcommittee. He knows both Council Members have good judgment because they have been through this.

Council Member McMillan commented that they expect every Council Member to share equally in the burden of sitting in front of the Post Office.

The consensus of the Town Council was to give direction to staff to bring back the enabling legislation for the ballot measure to the next Council meeting.

End of Administrative Agenda.

Public Hearings on Planning Projects – Part II.

16. 63 Laurel Grove, Design Review, Hillside Lot Permit and a Variance and Town Council consideration of Resolution 2304.

Joshua Schiller, 63 Laurel Grove, A.P. No. 072-131-33, Zoning: R-1: B-A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate Risk)

Project Summary: The applicant requests approval for Design Review, Hillside Lot Permit, and a Variance. The project is requesting construction of a new 588 square foot carport that includes a green roof and a 9-foot retaining wall. The project also includes converting the pool cabana basement into a gym and home office adding 708 square feet of floor area in the existing basement space. A new deck is proposed outside the newly conditioned space. Variances are requested to exceed the allowable floor area by 1,296 square feet, construct the new carport within the side yard setback, and construct a 9-foot retaining wall.

Recusal:

Council Member Kircher recused himself from participating in the matter due to the proximity of his residency to the property, and he left the dais.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for Design Review, a Hillside Lot Permit, and a Variance and Town Council consideration of Resolution 2304. He stated 2 ADR members were in support of the floor area increase due to the unconditioned space is existing and it is not an expansion to the footprint. They also agreed that the structure has no impact to the neighbor's privacy and it does not add bulk or mass to the site. The same ADR members could not support the deck as proposed and asked that it be reduced in size and more landscape screening be proposed to help soften it. The ADR members acknowledged the deck was a means to access the gym and office and understood its necessity.

The applicant has reduced the overall size of the deck by 40% so it is less visible with added plantings. Staff clarified that the area proposed for development under the pool deck is not considered a basement by the Town's definitions.

Staff requests that the Town Council adopt Resolution 2304 approving Design Review, Hillside Lot Permit, and a Variance.

Council Member Robbins referred to variances for FAR in the previous project and she asked what is the reason for the findings for the variance to increase the FAR.

Ms. Markwick stated the findings are both in the resolution and there is an analysis on page 6 of the staff report. Special circumstances and conditions applicable to the land are the existing topography, the lot layout, and patterns of development on the property and the neighborhood. This project complies with the required FAR for the R-1-B-A but because it is subject to the more restrictive floor area of the hillside lots because 2/3 of this lot is very steep and this specific building envelope is the only flat part on this lot.

Council Member Robbins said for the parking expansion, she asked if this can be done without a FAR variance if they did not have the carport. Ms. Markwick said there are 2 contributing factors of the FAR increase—the carport and the area under the pool deck. She confirmed if a variance for FAR is not supported they could still have their parking increased by building the retaining wall.

Council Member McMillan asked if staff has background on why the existing FAR is so much higher than what is normally allowed under a hillside lot ordinance. If she is doing it right, the existing percentage floor area ratio is 66% higher than what would otherwise be allowed under Hillside Lot Ordinance and what is being proposed is 105% greater than what is allowed under the ordinance. She asked if staff could shed some light on the Council's rationale to approve the development to allow the 5,580 square feet.

Ms. Markwick said she does not have that information right now but can search the old minutes and find it. She confirmed Council Member McMillan was not on the Council at that time.

Mayor Pro Tem Brekhus said she was on the Council when that was approved. She does not remember what the rationale was, but in breaking down the variance analysis one argument is it is a Hillside Lot ordinance and the FAR allowance is smaller than it would otherwise be. But, if that is an argument she questioned why the Council would allow it to exceed that. She is a little torn about the buildable area. The area where the gym is being proposed is quite steep but she agrees there is a flat envelope. The final one she heard is the topography of this site which is it is a hillside lot. She asked what about that means more floor area should be allowed for this site.

Ms. Markwick stated the topography of the site lends itself to one specific area of where you can build. The rest is extremely steep and unbuildable and they have this existing flat area that allows for a buildable envelope.

Mayor Pro Tem Brekhus said by that rationale, anyone who is in a hillside lot ordinance maybe gets to build more FAR than what would otherwise be allowed if they have a flat envelope that could arguably allow for more FAR. Ms. Markwick said it would depend on how that lot slopes and where the contours are.

Council Member McMillan said they allowed that for the Spanish style house on the corner of Baywood and Wellington. That is a hillside lot but they were only building on the bottom flat part.

Mayor Kuhl asked if it is true that most of this lot is unbuildable on the other side of the road, and Ms. Markwick confirmed.

Mayor Pro Tem Brekhus said the only rationale she thought of is whether this space is already existing. That to her, it seems like a more compelling argument for granting a variance in this location than any of the other arguments, and she asked how staff felt about that.

Ms. Markwick agreed and one of the variance findings is that you must make the design review findings with it, and you are not increasing bulk and mass with the extra floor area.

Mayor Kuhl opened the public comment period, and there were no speakers. He called on the applicant to present.

Mark Fritts, ADR, (via Zoom), said as noted in the staff report there were 2 ADR members who did not support the variances requested. He was one of those ADR members. He clarified he is not speaking for the rest of the ADR or the RPOA of which he is also a member. He has an issue with the findings on the variance, specifically nowhere in the Hillside Lot ordinance is there an exception for exceeding the calculated FAR because they want a gym or home office, or whether the building can be seen by neighbors or not, or there is no exception if the space already exists. Secondly, there is nothing about this project that is the preservation of property rights or hardship. There is no hardship about having a gym. Owning a hillside lot is not a hardship nor is it a property right to have additional FAR on that lot. This lot is already over the FAR by 66% which makes it 100% over the FAR which is a data point that is significant to reinforce in this application.

The fourth point involves consistency. It was alluded to in the questions by Council that being on the ADR for many years, they strive for consistency in application of their ordinances. They have seen many Hillside Lot ordinance applications come before them, and they try to keep those consistent in their approach, and leveraging the ordinance in its entirety is helpful in determining whether they are appropriately reviewing applications or not.

Lastly, regarding precedent, he did not find the findings very compelling in the staff report for this to be 100% over FAR for a hillside lot. The Town has a Hillside Lot ordinance for a reason, multiple projects have come before the Council in the past 10-15 years that have been constrained. If something like this moves forward, he would expect that those people who have been constrained to have a grievance, and secondly, anyone coming forward with a Hillside Lot ordinance project would leverage this as precedent to say that the ordinance is not applicable while it cannot be seen from neighbors or the space below exist. Every hillside lot has space beneath the constructed area. In this case, the development was flattened to create an area to build upon. That is not the natural topography of that lot.

Rebuttal – Applicant

Eric Cole, Applicant/Architect, said if they got rid of the lid for the carport they would not be over the FAR but by putting it on there, it is a green roof. It makes it less visible for everyone else, and by making it look better it is punishing them which is frustrating. The same thing with the setback. If they pushed farther into the hillside, they still have the retaining wall but would not need a setback variance. Finally, for the gym this was also frustrating and their points are good, but this is unused and sort of wasted space so frankly the siting on it does not look that great so this would make it look better. He thinks it is just common sense and it is hard to listen to this because everything they are trying to do is making it look better for everyone else and makes it more usable for his client.

Council Member McMillan asked if there is anything precluding this applicant from applying for an ADU that would give them the space underneath the deck. Ms. Markwick said no.

Council Member McMillan said she supports the carport with the roof and she was not sure if there was any way to allow the applicant to do that and not allow them to expand the understory of the deck because in her mind, they are so far over the FAR already and they can come back to get the square footage with an ADU.

Council Member Robbins stated the carport increases the FAR by 588 feet. She would be in favor of not a variance for FAR just because of the precedent but a variance for the retaining wall so they can expand their parking.

Council Member McMillan said this is not a garage but a carport with a green roof so the uphill neighbor will not see the cars when looking down. She understands the precedent, but thinks it is a unique precedent.

Mayor Kuhl said his recollection when the Council last dealt with this property, the uphill neighbors who are no longer there objected to whatever the applicant wanted to do about parking. He thinks they objected specifically to a carport. The other thing is his philosophical view about hillside lots is he thinks of hillside lots as being something different than what this is. Here, there is a flat area that is buildable as has been demonstrated and what makes it a hillside lot is something on the other side of the road that is very steep and clearly where building cannot occur. So, he is willing to give some ground and not be a stickler about the fact that it is a hillside lot and some of the numbers a hillside lot would impose on the property. So, he was inclined to vote for the project, as presented.

Mayor Pro Tem Brekhus said she thinks that this proves that a FAR variance is a bad procedure and the Town should not have it. They should have an exception which is what many jurisdictions do. If they see a project and think it could be allowed, it gives them the flexibility whereas we have boxed themselves in. She has been trying to unbox them and nobody wants to change the Town's ordinances for whatever reason. Then they get into this kind of predicament. She thinks it is problematic.

When looking at the gym head on with all the glass and how visible it is, she does not think it is fair to say nobody will see that. It is a very visible structure especially with the amount of glass. So, she has a hard time making the findings on the gym, even though the use of that space does not bother her. If it were an exception and she was not feeling the burden of precedent she would be okay with it.

She feels like the variance findings for the carport could be made there because there is an area where there is no parking on the street. They want cars to be off and not cars parking on the side of a hillside, given there was a slide near there. So, the variance on the carport is an easier sell for her because she feels you can make it based upon the location of the property and the need to not have cars parked on the private roadway which likely is an easement. But, the gym is harder even though the space is so usable and obvious.

Therefore, she has a hard time supporting the gym because of the precedent and variance requirement, but can support the carport. She also would say this proves a point that the Council needs to get more clarity with ADR on this because their prior rules were that ADR was not supposed to necessarily pass on variances. If that is the case, she wants applicants to be very clear that just because they got an approval from the ADR does not mean the Council will not look at a variance differently. If the ADR is now reviewing variances, she would like to know when this started because her last understanding was that they were not passing on those.

Mayor Kuhl said he thought the same thing; that the ADR plays no part in interpreting the rules as they apply to a particular project.

Council Member Robbins said if a variance for the carport is approved she asked if that can become a garage at some point, and Ms. Markwick said yes, noting the Town's definition for floor area is that carports and garages are synonymous. Council Member Robbins said therefore, it could become a garage without any Council approval, and Ms. Markwick confirmed.

Mayor Pro Tem Brekhus said the Council could condition it so it is not.

Council Member Robbins said she has no concerns about the parking and is okay with the retaining wall, but she is reluctant to have variances for FAR when they do not generally let people go over the FAR. She does not mind if the basement became an ADU but she does not feel they can say you can have a variance to make it a gym, given they have no control over an ADU.

Mayor Kuhl re-opened the public comment period.

Joshua Schiller, Owner, said he appreciates the comments because he understands the importance of the precedent. This is not a precedent because that space exists. He can put gym equipment in it but it is not very pleasant to use without putting a wall and deck there so he can open it up. The Council is making a huge mistake if they do not approve this. It is a usable space for an important family that is now going to be a third generation Ross family. They are not setting precedence for anyone else. It is a basement that already exists that is completely in line with all the principles for the Building Code. They have no ability to use most of the land they purchased and pay taxes on and are just trying to clean up something that has been built that makes no impact.

He asked how could the Council have an issue with that and does not understand it at all. He appreciates the issue of precedence but this is an existing structure. If the Council has a problem with the fact it was approved previously this is not something they are here to relive or relitigate. It is a beautiful house, a beautiful town and making this more attractive and usable does not hurt anyone. Every neighbor is in support of their project. There is one neighbor who drives by their house and this is a private road he must pay to maintain and there is no one else coming up the road. No one can see this. Lastly, he appreciates the Council letting him make his comments and the work of the Council.

Mayor Kuhl said in response he does not want to get hung up on how they use the word "precedent." If the Council does something and later someone else wants to do the same thing, they will say the Council did it for somebody else and he thinks this is how the word is being used in this discussion. He confirmed there were no other comments from the Council and he asked for a motion.

Mayor Pro Tem Brekhus moved to approve the carport and the retaining wall variance and not to approve the area under the deck space at 63 Laurel Grove.

Mr. Stock stated staff will revise the resolution and findings under the variance to make it clear that the variance for the FAR only applies to the carport and not the basement.

Mayor Pro Tem Brekhus moved and Council Member McMillan seconded, to approve the carport and the retaining wall variance and not to approve the area under the deck space at 63 Laurel Grove. Motion carried (3-1-1; Kuhl opposed; Kircher recused).

End of Public Hearings on Planning Projects – Part II.

Noted as Present:

Council Member Kircher returned to participate in the remainder of the meeting at 10:08 p.m.

17. No Action Items:

a. Council correspondence – None

b. Future Council items – Mayor Kuhl suggested the Council address and resolve the FAR process for a variance versus an exception issue at some time in the future, and Mayor Pro Tem Brekhus voiced support of this item.

Mayor Pro Tem Brekhus requested Afterschool Care Program be agendized for June 15th, and Council Member Kircher voiced support of this. Town Manager Johnson stated she will work with the Recreation Manager and provide this to the Council on June 15th.

18. Adjournment.

Mayor Kuhl adjourned the meeting at 10:11 p.m.

A handwritten signature in black ink, appearing to read "P. Beach Kuhl", is written over a horizontal line.

P. Beach Kuhl, Mayor

ATTEST:

Cyndie Martel, Town Clerk