

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, AUGUST 24, 2023

Held In-Person and Teleconference via Zoom

1. 5:15 p.m. Commencement.

Mayor Elizabeth Brekhus; Council Members Beach Kuhl; Julie McMillan, Elizabeth Robbins; Town Manager Christa Johnson; Town Attorney Benjamin Stock; Eli Flushman, Attorney, Burke Williams. Absent: Mayor Pro Tem Bill Kircher, Jr.

2. Posting of agenda.

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

3. Closed Session.

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9:
(one potential case)

4. 6:00 p.m. Open Session. Council will return to open session and announce actions taken, if any.

Mayor Brekhus announced no reportable action was taken in Closed Session.

5. Open Time for Public Expression.

There were no speakers.

6. Recognition for 20-year anniversary of Paul Stromoski, Police Officer.

Police Chief Pata recognized Officer Paul Stromoski for his 20 years of service and shared Officer Stromoski's prior experience and career highlights.

Mayor Brekhus presented Officer Stromoski with a plaque commemorating his 20 years of service, and a round of applause followed.

7. Mayor's Report

I am sure that you have read about the terrible fire tragedy on Maui and thought about how well our community is prepared for a fire and for evacuation. It is important that every resident is signed up for AlertMarin to receive notifications for emergencies. While the Town of Ross has an emergency siren, its main purpose is to alert residents of potential flooding and the siren cannot be heard throughout the entire Town. To receive emergency notifications please sign up for these free services: Alert Marin, Marin County Office of Emergency Management, Register at: <https://emergency.marincounty.org/pages/alertmarin>; and to Nixle register by texting your zip code to 888-777. Registering with Alert Marin and Nixle will ensure that emergency response and evacuation information is sent directly to your cellphone and is tailored to the type of emergency underway.

Please also consider getting involved in fire readiness organizations including Firewise or becoming a Neighborhood Block Captain. Please go to Fire Safe Marin at firesafemarin.org if you want more information about joining an existing Firewise neighborhood group (Ross has two Firewise groups: one on Woodhaven; the other in Winship Park) or starting a new one in your neighborhood. Information about hardening your home, defensible space and vegetation management to prepare for wildfires and other valuable information is also available at [Firesafemarin.org](https://firesafemarin.org) and at the Marin Wildfire Prevention Authority at marinwildfire.org.

For those of you who do not have the Ross School calendar handy, the start of school was Tuesday, August 22nd. Ross Back to School Night will be held on September 7th. The Ross School PTO is holding a mixer for Ross School's parents only that evening on the Ross Common. You can buy tickets at <https://www.rossbearspto.com/>. If you're feeling left out of that event, don't worry, the Town Dinner is set for September 22, 2023, and everyone in Town is invited! In an effort to be as inclusive as possible, we will host a community table that is open to residents who wish to sit with other members of the community and meet each other. This is of course the whole point of the Town Dinner, and we hope that many people will take advantage of this. Council members will be sitting at this community table in an effort to meet as many people in the community as possible. We hope to see all of you there at this Town tradition.

I'm sure many of you have been observing the work on Laurel Grove which consists of a sidewalk installation on the east side of the street. Some people have asked me why the sidewalk does not continue all the way down Laurel Grove. The short answer is it has to do with expense and also the ability of the street as built to accommodate a sidewalk. It doesn't mean that a sidewalk will not happen in the future, but it will take some additional funding and engineering strategies.

Other events going on around town include the Ross Historical Society luncheon event at which I will be speaking on September 7, 2023, at MAGC. In keeping with the subject matter of the group I will try and weave in some discussion about council members' duties past and present. And for that I will be tapping my father, Peter Brekhus, who served as mayor for 16 years to review Town Council duties from years past.

As always if you have any questions or concerns about the Town please let me know.

8. Council Committee & Liaison Reports.

Council Member McMillan reported the MCCMC Action Climate Committee met in July and she encouraged everyone to sign up for the Resilient Neighborhood Webinar course starting in September which is geared to reduce one's carbon footprint.

Council Member McMillan also reported on the Winship Park Firewise Neighborhood which is merging with the Barber Tract Firewise Neighborhood; it will be called the Barber-Winship Firewise Group. This merger will increase the group from 140 homes to approximately 280 homes. An event will be held at Marin Art & Garden on September 20th from 5:30 to 7:00 p.m. Fire officials will be speaking about defensible space, home hardening, emergency preparedness, and projects of the Marin Wildfire Prevention Authority.

Council Member Robbins reported that a subcommittee of the Ross Valley Fire Department Board is continuing to meet to discuss how to use reserve funds in the Department's budget.

9. Staff & Community Reports.

a. Town Manager

Town Manager Johnson gave the following report:

- The Laurel Grove Safe Pathways Phase 2A project is nearly complete and the new sidewalk and path are open to pedestrian traffic when there are no construction or traffic control activities. The Town Engineer noticed that the narrower 10-foot-wide lanes appear to be slowing down vehicles as intended. Final striping on Laurel Grove and colorized asphalt stamping work will be completed by mid-September.
- The Town is looking forward to RPOA's Live on the Common concert tomorrow evening starting at 4:30 p.m. They plan to hold another Live on the Common event in October and the date has been changed from October 8th to October 14th from 2:30 to 7:30 p.m.
- On September 7th at 11:00 a.m., the Ross Historical Society is holding a luncheon at Magic in the Livermore Pavilion. This luncheon is open to the public and those interested can register by September 1st via www.moya-rhs.org. Mayor Brekhus will be the key speaker and will describe how the duties of the Mayor and Council Members in Ross have changed over time. I will follow with information about the Town's recent accomplishments, major projects, and initiatives in the coming year.
- On September 13th the Town and Age-Friendly Ross are hosting their breakfast gathering at Cedars starting at 9:30 a.m. Please RSVP by September 5th to Ross Rec. The Town Clerk sent out an e-blast to Ross residents about these events. The topic of this breakfast is disaster preparedness. Staff has worked with Council Members McMillan and Mayor Pro Tem Kircher and staff from partnering agencies including Miranda Miller from RVFD to participate in sponsoring and promoting various opportunities for residents to receive education programming, either via a presentation similar to the one Council Member McMillan mentioned that will take place at Magic on September 20th or via handouts and referrals to various websites. Please RSVP to barberwinship@gmail.com for the September 20th event in advance.

b. Ross Property Owners Association

Marcia Skall, RPOA, restated the RPOA events as described by the Town Manager on September 13th (free Age-Friendly Breakfast) and September 25th (Live on the Common with a great band and food truck), and they are actively advertising for new members. Upcoming projects include

a second walnut table for the Post Office, Live on the Common event on October 14th, the Leadership Council's 3 meetings a year, and they're working on Winterfest and the holiday lights.

10. Consent Agenda

The following items will be considered in a single motion, unless removed from the consent agenda. Mayor Brekhus asked and confirmed there were no requests for removal of items and no public speakers.

- a. **Minutes: 7/13/23 Regular Meeting; 7/13/23 Special Meeting**
- b. **Demands.**
- c. **Town Council consideration of second reading and adoption of Ordinance No. 722 amending Title 15 of the Ross Municipal Code regarding Gate Safety, which was introduced at the June 15, 2023, Town Council meeting.**
- d. **Town Council acceptance of the Investment Report for the year ended June 30, 2023.**
- e. **Town Council consideration and adoption of Resolution 2332 appointing the Town Manager and Town Clerk/Administrative Manager as Administrators for the Town of Ross Wells Fargo credit card accounts.**
- f. **Town Council consideration to award the construction contract for the Shady Lane and El Camino Bueno Drainage Project and authorize the Town Manager to enter into a construction contract with LVI Engineering Inc. in the amount of \$263,900.**
- g. **Town Council review and approval of the Town of Ross response to Marin County Civil Grand Jury Report entitled *Build More ADUs – An Rx to Increase Marin's Housing Supply*.**
- h. **Town Council review and approval of an adjustment to the Fiscal Year 2022-23 budget adjusting the transfer from the Operating Fund to the Facilities & Equipment Fund from a previously approved amount of \$1,000,000 to \$1,700,000, a \$700,000 increase. It is also recommended that this \$700,000 be transferred into the newly established Capital Projects Fund in Fiscal Year 2023-24.**

Council Member McMillan moved and Council Member Robbins seconded, to approve Consent Calendar Items a, b, c, d, e, f, g and h. Motion carried unanimously (4-0).

End of Consent Agenda.

11. Public Hearings on Planning Projects – Part 1.

There are no Part 1 Planning Projects.

End of Public Hearings on Planning Projects – Part 1.

Administrative Agenda.

12. Town Council to receive a presentation by Marin Municipal Water District (MMWD) staff regarding the District's upcoming "Pine Mountain Tunnel Tanks" project that includes hauling excavation materials through Ross and provide direction to Town staff as needed.

Public Works Director Rich Simonitch stated Marin Municipal Water District will provide a presentation regarding the upcoming Pine Mountain Tunnel Tanks project which includes hauling excavation materials through Ross, beginning September 5th and through October 3rd.

Ranjiv Khush, MMWD Director for District 3, described the project replacing old infrastructure that supplies water from the Pine Mountain Tunnel which was constructed in 1919. He described the 1-½ mile tunnel's decommissioning and conversion into a storage facility for treated water, leaks, the proposed replacement with modern storage infrastructure, resources to move forward with the project, removal of dirt from the site, and transport of it through the watershed and out through the Town of Ross. The new infrastructure will increase water capacity in Ross Valley, withstand emergencies better, and provide more water in response to wildfire.

Crystal Yezman, MMWD Chief Engineer, gave a PowerPoint presentation on the project background and need, planned construction activity, temporary traffic impacts to the watershed roads and trails in Ross, public outreach, and next steps.

Mayor Brekhus clarified the location of the Ross Reservoir with Ms. Yezman.

Mayor Brekhus stated the dirt is suspected to have *Phytophthora ramorum* which can infect vegetation in the watershed. She confirmed MMWD is taking it off site and trucks will be tarped, cleaned and inspected before they are allowed to leave the job site. Ms. Yezman clarified they found the *Phytophthora* may have come from contaminated nursery stock.

Mayor Brekhus questioned parking and coordination around Phoenix Lake during the project. Ms. Yezman said a couple of spaces will be taken up to make room for the trucks but there will still be parking available. They envision 10 trucks and 2 waves of trucks per day around 9:00 a.m. and again prior to school pickup, except for Wednesdays. Flaggers will be on site to allow autos to get up Dibble Road when there are no trucks coming down. And they can make sure the trucks park up above and not take up parking spaces unnecessarily.

Council Member Kuhl asked and confirmed there will be a flagger at Glenwood and Lagunitas Road before the entrance, another one in the parking lot, and a flagger up at 5 corners in a spot where they will allow bicyclists and pedestrians to cross the closed fire road. There will also be increased ranger presence during the off hauls.

Council Member McMillan asked if the soil will be dry and asked how well tarps will do covering the soil to prevent contamination.

Ms. Yezman said their consultant has stated the aeration of Phytophthora is not the biggest concern of contamination and spread. It is when there is soil that gets deposited on the roadway. Therefore, they will ensure there is no soil knocked falling off the trucks and the tarping will mitigate the risk. They have water tanks stationed at the construction site and, if there is a dust issue, they can hose down the dirt before it is allowed to leave the site.

Council Member McMillan wondered if someone could follow the truck to ensure there is not soil being kicked off through the community.

Ms. Yezman said they can ask inspectors to do this. After the close of the project they will meet with the Public Works Director to look at any impacts to the road and will also check for soil/sediment, and follow-up with repairs and/or street sweeping.

Council Member Robbins said in the staff report it mentioned the condition of Lagunitas Road and Dibble Road were evaluated. She asked that the parking lot at Natalie Coffin Greene Park and the bridge that goes up the fire road be documented, if damaged.

Ms. Yezman said MMWD owns the bridge and a large portion of the parking lot. They have videotaped it, taken photos, and prior to the Ross Reservoir slide repair they put additional beams across the bridge in preparation for when they moved the soil back in 2021. They are confident the bridge can withstand the load of the trucks.

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

Mayor Brekhus and Council Members thanked Ms. Yezman and Director Khush for their presentation.

13. **Town Council to provide staff direction regarding the implementation of a Pilot *Ross Recreation Fee Assistance Program*; consider acceptance of a \$31,000 donation from the Coates Family for the purpose of initiating funding for the pilot program; and appropriate \$31,000 as both revenue and expenses in the Recreation budget account 5352-05.**

Recreation Manager Maureen Borthwick gave the staff report, PowerPoint presentation, and overview of staff's request of the Town Council to provide direction to staff regarding the implementation of the *Pilot Ross Recreation Fee Assistance Program* to consider acceptance of a \$31,000 donation from the Coates Family for the purpose of initiating funding for the pilot program; and to appropriate \$31,000 as both revenue and expenses in the Recreation Department budget account 5352-05.

Council Member McMillan cited the generous offer and program, and commended the Coates family and staff for developing the program. Because the Coates family has a project pending in the Town, she asked if there is any potential conflict by the Town receiving this donation prior to the final inspection of their project.

Town Attorney Ben Stock said there is no legal conflict for the donation, and noted he will draft a donation agreement to make it clear this is a donation and the Town is not waiving any and all powers under its police power.

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

Mayor Brekhus and Council Members cited the wonderful program, thanked the Coates family, agreed with the ability to fund needed recreation programs, and recommended publicizing the program to potential donors, teachers, the public, and school district.

Council Member Robbins moved and Council Member McMillan seconded, to accept a \$31,000 donation from the Coates Family for the purpose of initiating funding for the pilot program contingent upon the execution of a donation agreement; and appropriate \$31,000 as both revenue and expenses in the Recreation budget account 5352-05. Motion carried unanimously (4-0).

14. Town Council to provide direction to staff regarding the concept for a *Pilot Ross History Walk Project* submitted by the Ross Property Owners' Association (RPOA) and Ross Historical Society (RHS).

Recreation Manager Maureen Borthwick introduced Adrienne Liggett from RPOA and Richard Torny from the RHS. She gave the staff report and overview regarding the concept for a *Pilot Ross History Walk* project submitted by the RPOA and RHS.

Council Member Robbins asked and confirmed the story board signs will be placed on the small pathway that cuts through the Common. She asked if there has been consideration to put historic signs in front of each historic site such as the Post Office, the bear, and the school, noting that when the Ross Common overview was done there was a community-wide sentiment to keep the Common as is.

Ms. Borthwick deferred this question to Ms. Liggett, although she walked the path with Public Works and looked at proposed sites. They decided they would be off the path and would not disrupt any pathways or look of the pathways.

Adrienne Liggett, RPOA, said they did not think about doing separate sites and wanted to envision it as a continuous story walk. Using the best practices of the Conservancy, the signs are small and low profile so they are not intended to obstruct any views. When going up to Phoenix Lane there is a bit of larger signage and she said they would not propose anything like that.

Council Member Robbins asked about how much sample content is proposed for each sign.

Ms. Liggett said they provided illustrative examples to give an idea of types of material that could appear on the signs, but the next step would be to partner with Richard Torny from RHS to select content. Their goal now is to obtain consensus on whether the Town Council wishes to promote Ross's rich history.

Council Member Robbins said at times people exercise their dogs at the Common, and she asked if dogs running across the path might be an issue.

Ms. Borthwick said the dogs are typically further in and not next to the road. When touring the potential sites they were to have the story boards placed on the road side of the path, so she did not imagine that would be a problem.

Council Member Robbins referred to placement and said she believes this will be a major project and expensive to do. She asked if this would be done by a landscape contractor or whether it is something the Public Works Department could do.

Public Works Director Rich Simonitch said he thinks it would depend on the size and weight of the installation, but it likely will involve installing the finished plaque and stands into a fence post hole and setting it in concrete. Other than that, staff does not have the resources to do any heavy landscape design work. If story boards are light enough, staff can install them and put some concrete in the post holes, but not much more than that.

Council Member McMillan asked if the signs will direct people to the actual monument being referred to in the sign. If a sign is along the pathway about the bear, people will wonder where the bear is. She thinks it makes more sense to have a sign in front of Ross School, one at the Post Office/train station, one at Town Hall and one in front of the bear.

Ms. Liggett said the content given was an example and are not necessarily the content that would go on the path. They have so much history and the pilot program is intended to start on Ross Common. They will have cohesive pieces of history that work together to tell the story that works for the path.

Council Member McMillan said she would like to see more about how it is integrated and how it points to the actual structure being referenced. She asked if this is being replicated on something in San Francisco at Golden Gate Park.

Ms. Liggett said San Francisco Parks partner with the public library and do a wonderful story walk program. When families are walking through nature they can read pages of the story. Because they have the Ross book, it is a way to get some of the information out of that book and breathe new life, pulling the pieces out.

Mr. Torney commented that the information in the book is only a small part of the information that RHS would be able to provide for content on the signs. Customizing information on the signs to fit the installation seems to be a reasonable project. If there is not a sign right in front of the bear the sign will indicate where the bear is and information about the bear. For a pilot program, she thinks this would be a good way to start.

Council Member Kuhl commented this is another example of what the RPOA can do for the Town. It is very useful, commendable, and he is looking forward to learning more history of Ross's surroundings.

Mayor Brekhus said she is not fan of huge signs and wished Public Works signs were not all over the town. The signs in the staff report looked nice which are tucked into the fence and do not draw attention. Her concern is that if the signs stick out in the Common it will draw one's eye there instead of the Common being very natural. She would hate for RPOA to spend its money, for people to criticize it and the Town Council agreeing to it, said she loves the collaboration with RPOA and RHS, but asked for more scoping and data.

Council Member McMillan said the proposal is for ADR to review the design, the RHS and RPOA would come up with the language, and then it would return to Council for final approval to make sure the signs are in keeping with the Town and not too verbose. She thinks it is important the signs connect to the actual structure. Otherwise, they are a bit random. She suggested coming up with a map of the pathway and approximate locations where RPOA, Ross Rec, and RHS would propose the signs to get more of a vision.

Ms. Liggett agreed and thinks the direction from the Town Manager and Recreation Manager was to get high level support. RHS and RPOA are all volunteers and have jobs so they did not want to spend many hours selecting content, spending money, and working with the designer. Their goal is to receive general support for having a story walk. If the Council feels there are too many signs already in the Common and do not want to proceed this is something they would want to hear before going forward. She thinks a map is a great idea and doing a mockup of 1 or 2 of the boards so the Council can get a sense of the look and feel and amount of content, and they could then go from there.

Council Member Robbins said she thinks the first step is determining whether the community wants a story walk, and if so, more can be done. She also thinks more data is needed visually to see what a story walk would look like.

Council Member Kuhl suggested placing trust in the RPOA and RHS to figure out what the signs should say, where they should be, and what they should look like. He voiced support of moving forward tonight with the understanding they will come up with specifics about locations, etc. and then bring it back to the Council.

Discussion ensued regarding pros and cons, knowledge of the public about the item, whether the community supports this, how to canvass the community, preparing a survey, strong sentiments against change to the Common.

Town Manager Johnson commented that she encouraged the RPOA to look at the Common for the pilot program, noting it is easier to do it on Town-owned property. But, if the Council is interested in having interpretive signage on those significant buildings and public art, the RPOA could be asked to explore the idea further and bring it back as a way of starting the idea of having historical signage throughout Town, and it would be easier for it to be on public property.

She focused on the Common because the original informal suggestion was to have it along a pathway on Shady Lane and other streets through town. However, there are many places along Shady Lane which would not be appropriate to locate signage in the public right-of-way. Her original thought was that if there is Council interest, something like the Common might be considered because the Town has control over it. The RPOA and RHS took her advice, but it sounds like the Council is interested in seeing and learning more about the concept and bringing it back.

Mayor Brekhus asked if the idea is to run tours by the RHS or for self-guided tours to be done by the public.

Ms. Liggett said it could be two-pronged. People could on their own walk through and read the signs, but once there are enough of them RHS could lead richer tours and talk about more of Ross's history. There could be a program tied in with Ross School to get students to learn about history.

Mr. Torny stated there are bronze plaques; one on the Post Office more specific to the people who made the donations to build that, one on the Lagunitas Road Bridge, and one on the front of Eddy's Market which were installed in cooperation with the RHS. San Anselmo has a self-guided walking tour and they are beginning to use a QR codes which does not require a group leader. So, he thinks there are many options to provide history to those unfamiliar with it without making it a big deal.

Council Member Robbins said she likes the history part of it, likes the idea of having signs that are tasteful, and she would support the idea of moving forward with signs that share history of specific sites that are at or near those sites. She is not supportive of the walk concept because she does not see families and children doing that, and did not like signs in the Common after hearing from the public to leave the Common natural.

Council Member McMillan said she loves the history part of it and educating the community with the background of the structures. She again emphasized that it makes more sense to have the sign close to the structure being honored and see how that is received. She thinks the walking tour could be considered in the future, noting this could cause private property and right-of-way and utility issues. She suggested starting with the areas on public property that are easily identifiable and having the background connected to whatever item they are trying to honor.

Town Manager Johnson said another idea is Kittle Park. In the recently approved Facility Master Plan for the Civic Center site the study area included Kittle Park. There is not much room there and it is completely under-utilized. Perhaps there could be an opportunity if the signage works out to have some nice landscaping and a passive area of contemplation to include some history signage there and an easy walk for people and kids.

Council Member Kuhl said a few years ago the RHS discovered a buried marker in Kittle Park commemorating the fact there used to be a church there. He believes they have kept track of where it is so they can dig it up in the future. It tells the history of Kittle Park, and suggested the Council trust the RPOA and RHS and move forward.

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

Mayor Brekhus cited the concern without public input and voiced support of Council Member McMillan's desire to see something by the actual historical item. If located in the Commons she would like the sign boards tucked into a fence or hedge so as not to draw attention. The process should be to provide further research, bring it to the ADR and RHS, and then to the Council.

Council Member Robbins said she believes the majority of the Council support the history and signage, but not as part of the path.

Town Manager Johnson asked if the majority of the Council support RPOA and RHS doing additional research on areas other than the Common and bring something back to the Council.

Mayor Brekhus said she thinks if they want to pursue signage, she would prefer to see 3 signs starting at the Post Office, the Bear, and the Common, and present it to the Council before committing to a full program, and that the signs are near the actual historical item. She would also like to see a mockup and all of this to return to the Council.

Town Manager Johnson confirmed Ms. Bothwick had a majority of the Council's support and direction to work with RPOA and the RHS.

End of Administrative Agenda.

- 15. Public Hearing on an Order to Show why the Town should not order the repair work regarding a sinkhole at 61 Shady Lane be completed. In conducting such consideration, Town Council is recommended to consider the Staff Report, supporting documents in the record, Public Comments, and any objections or protests from the Property Owner or other interested party, and upon deliberation, adopt Resolution No. 2333 to order the repair of the sinkhole at 61 Shady Lane.**

Recused:

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

Public Works Director Rich Simonitch gave the staff report and overview regarding an order to show why the Town should not order the repair work regarding the sinkhole at 61 Shady Lane to commence and be completed.

Attorney Eli Flushman, Burke Williams, emphasized that Section 12.200.010 does make it clear that the owner is responsible for repairing that portion of the sidewalk and area right outside the property. The Town informed the property owner that the Town had determined this was a public nuisance as defined by the Ross Municipal Code Section 904100 which includes a violation of other ordinances makes this a public nuisance.

Mayor Brekhus asked and confirmed with Mr. Flushman that the notice was provided on May 24, 2023.

Council Member Kuhl said the property owner has said to him multiple times that according to him, there have been instances where the Town stepped in and repaired beyond what was required by law. Assuming that is true, he asked if that undermines the Town's right to require the Town to repair it now.

Mr. Flushman said it does not; The Town has every ability to enforce its ordinances.

Mr. Simonitch explained the instance the property owner is referring to which is up the street on Norwood where there was a condition in December unrelated to the storm. They began to see a depression outside of the pavement on people's driveway. There was one on Council Member Robbin's driveway that she noticed. At 11 Norwood, staff noticed an opening in the pavement pointed into the roadway where it would appear the roadway is being undermined. Staff hired a pavement contractor and excavated that out.

The depression formed many years ago when trees were removed. The organics rotted away which undermined the pavement above. They excavated a portion of the parking strip and roadway and it turned out there were several large roots extending under the roadway that were rotting out. As a proactive measure, the Town ordered more excavation into the roadway to remove the roots. They suspected at two other locations on Norwood would likely be the same.

Mr. Flushman added that those instances are separate and a different issue than what is before the Council.

Council Member McMillan said it sounds like a lot of time has been spent on this since January. She referred to the resolution in the 5th paragraph which states, "The notice to repair further informed the property owner that all costs of any abatement ordered would be a special assessment against the property and constitute a lien if the Town were required to make repairs." She asked if staff and legal costs incurred is something the Town is allowed to recover in this type of action.

Mr. Flushman said the costs of abatement are typically things the Town can seek to impose a lien on or seek recovery on these types of special assessments. The cost of abatement would include investigation and efforts to understand the situation.

Council Member McMillan asked if all of Mr. Simonitch's time on this matter starting in January, plus legal time would be part of the lien.

Mr. Flushman said it may be. What is also included is staff would return to the Council to present whatever itemized costs they would seek.

Town Attorney Ben Stock commented that Mr. Flushman has been helping staff in a prosecutor role for this nuisance abatement and he is advising the Council on any findings to be made. One suggestion staff will make is to also include the option of bringing a civil action to abate the nuisance. In Section 9.04.165, if the Town seeks attorney fees in that action they can receive them in the civil action. If they lose the action, the other side would get them.

Council Member Kuhl said if the Town does not bring legal action to recover the costs they would not recover them until such a time as the sale of the property. Mr. Flushman said this is typically how it is done with a lien on the property.

Council Member McMillan commented a lawsuit would involve a lot of time whereas if they abated this now the Town would get the hole filled and make it safer. Mr. Flushman confirmed.

Mr. Stock added that the resolution staff is presenting tonight would have 2 options. They would be empowered to bring either a lawsuit or get the hole filled immediately and go after the costs

later. He thinks what would occur would depend on the public interest of whether the Town thinks there is a danger to the public or whether they can hold off and seek costs through the court system. But, if the Public Works Director determines the road is at risk, they might need to front those costs and complete the repair and then recoup the costs.

Council Member McMillan asked about the risk involved with someone walking there and hurting themselves.

Mayor Brekhus noted the number of children during Halloween on the street and suggested having it fixed before Halloween or to put something over it.

Mr. Simonitch said his action was based upon safety. The geotechnical investigation states in the report that the pavement and sub-base of Norwood and Shady are not in danger. It is more about safety, when the rains come, it starts propagating, and Town assets are compromised.

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

Mayor Brekhus then called upon the property owner to speak.

Jonathan Pickett, attorney for the property owners, said a lawsuit has already been filed for \$750,000 against the Town seeking damages and attorney fees for inverse condemnation. The issue here is the sinkhole is actually much bigger than the Town realizes. It actually extends 12 feet towards Shady Lane in one direction, another 5 feet towards Norwood in the other direction, and only 3 to 4 feet towards the property owner's property. In fact, on the corner of Norwood and Shady where 51 Shady Lane is located there is a depression present there as well. Sinkholes do not just appear out of nowhere. They are actually caused by something. While the sinkhole may be on someone's property, the root cause has never been determined as to where that dirt went and what caused it.

This is thousands of tons of dirt that went somewhere and the question is where. If it is filled or repaired he questioned what would prevent it from re-occurring. The root cause must be determined first before you can appropriate liability to anyone. Essentially, for this section of the Municipal Code, the defect is in a public sidewalk and the Town can require the abutting property owner to repair the defect in the sidewalk, but only the public property can be repaired under this ordinance. The first issue is the Town did not follow the requirements of the ordinance which requires not only the mailing of notice but also posting of notice on the property. Failure to comply with that requirement is fatal.

Secondly, the resolution and the staff report refers to requiring the property owner to make repairs or if the property owner does not, the Town to repair and regrade the private and public property to the same grade as it was before the sinkhole developed and allowing the Town to enter the property of the private property owner to make the repairs.

First and foremost, this section of the Municipal Code does not allow the Town to use this method to obtain repair costs from a property owner for a repair on private property. Second of all, the Town cannot allow Town employees to go onto private property and make repairs based upon this ordinance. In fact, that requires a judicial court order and not simply a Council resolution for inspection or to make repairs.

Finally, he believes Council Member Kuhl is also conflicted out because of his involvement in the matter since the beginning. Essentially, his statements to the public and other members of the Town about the cause and his participation is unfair and a violation of the property owners' rights. Thus, he should be excluded from voting and making any decision.

Mayor Brekhus returned the discussion to the Town Council. She asked for an explanation of the wording of the amendment.

Mr. Flushman said if the Council was so inclined to add a #3 after the "Now, Therefore...." Clause, which would say, "In addition or in the alternative, pursuant to Ross Municipal Code 9.04.140, the Town Attorney may bring a civil action in the name of the people of the State to abate this public nuisance."

Mayor Brekhus asked if this would allow the Council to respond to the lawsuit should they so desire and request to abate this to address the sinkhole. Mr. Flushman confirmed.

Council Member Kuhl moved, and Council Member McMillan seconded, to adopt Resolution No. 2333 to order the repair of the sinkhole at 61 Shady Lane, as amended to add #3 after the "Now, Therefore...." Clause, which would say, "In addition or in the alternative, pursuant to Ross Municipal Code 9.04.140, the Town Attorney may bring a civil action in the name of the people of the State to abate this public nuisance." Motion carried unanimously (3-0-1; Robbins recused).

End of Public Hearing

Noted as Present:

Council Member Robbins returned to the dais.

Public Hearings on Planning Projects – Part II.

16. **Town Council consideration of the request for approval of an Amendment to the Use Permit by resolution for the Lagunitas Country Club to allow a fourth platform paddle (tennis) court and include the Lagunitas Country Club's representation that the Club's facilities will be solely for the use of its members and members' invited guests, both now and in the future, and the facilities will not be available to the public under any circumstances, and, according to this representation the Club is not subject to accessibility requirements.**

Lagunitas Country Club, 205 Lagunitas Road, A.P. No. 073-211-40, Zone R-1:B-A, General Plan: VL (Very Low Density), X (Moderate Risk)

Project Description:

The applicant requests approval of amendment of the Use Permit for the Lagunitas Country Club (LCC) to allow a fourth platform paddle (tennis) court and include its representation that the Lagunitas Country Club's facilities will solely be for the use of its members and members' invited guests, both now and in the future, and the facilities will not be available to the public under any circumstances. Based on this representation, they claim the Club is not subject to accessibility requirements.

Recused:

Council Member Kuhl recused himself from participating in the item due to his membership with the Lagunitas Country Club, and he left the dais.

Interim Planning and Building Director David Woltering gave the staff report regarding the Town Council's consideration of the request for approval of an Amendment to the Use Permit by resolution for the Lagunitas Country Club to allow a fourth platform paddle (tennis) court and include the Lagunitas Country Club's representation that the Club's facilities will be solely for the use of its members and members' invited guests, both now and in the future, and the facilities will not be available to the public under any circumstances, and, according to this representation the Club is not subject to accessibility requirements. Director Woltering indicated that while this is the Club's representation in the amended Use Permit condition, staff and the Town Attorney worked with representatives of the Lagunitas Country Club to include the following additional language as part of the Amendment to the Use Permit, "Should a public accommodation be deemed to exist, the Lagunitas Country Club must meet all applicable requirements legally mandated under the ADA."

Council Member Robbins asked if the clubhouse does not need to follow ADA guidelines since nothing at the Club is required to be ADA accessible. Mr. Woltering stated this is the Club's representation.

Council Member Robbins said she thinks the club has always been private but there have been public events like weddings, Council meetings, MCCMC meetings, etc. It sounds like this is a change in the status of the club because they would like to add an extra court; however, she asked if this is legal.

Town Attorney Stock stated it is not up to the Town to decide whether the Club is a public accommodation or not. This is up to the Club and the Town must take their representation. Private clubs can not be a public accommodation, but the point raised about Council meetings

occurring there, if they are a private club the Council will not hold Council meetings there any longer because such meetings must be ADA accessible. The Club is coming forward with an application and states in their business operations, they do not provide a public accommodation. The Town is relying on that representation if the Council amends the CUP for them.

Without going in depth, for instance if 24-Hour Fitness states they are a private club, anyone can get a membership. This is still a public accommodation. There is a distinction between a private club and a truly private club. It is his understanding that they feel they are a truly private club and if the Town moves forward with this amendment, the Town is relying on that representation.

Mayor Brekhus said she knows from a building she was remodeling in San Anselmo, that town required her to pay for a CASP certificate saying certain things met standards, and they wanted that because if they approve something, they could get sued. So, even if it was just her violation, San Anselmo itself could get sued so they wanted someone as an expert to state that. It seems what makes her nervous about the language is that the Town is relying on the Club's representation. She wondered if the analysis has or should be vetted so the Town is protected. Mr. Stock stated he spoke with the ADA attorney in his firm. Based upon their representations of what their model is like, the attorney stated it could be deemed a private accommodation. But again, it is not a finding the Town is going to make. If they are wrong and the Club gets sued or the Town gets sued for ADA or the Town gets sued, the club must indemnify the Town under the conditions of approval.

Mayor Brekhus asked what the change in use this would bring. The events held there by the Town Council have been under the Brown Act, and they cannot be held there if the club is private but she is wondering in what other uses this change would result.

Mr. Woltering said the applicant has indicated they modified their standards, and this would be a question for the applicant.

Mayor Brekhus called upon the applicant.

Oliver Dibble, Chairman, House and Grounds Committee, Lagunitas Country Club, introduced Nick Hoppe, President, and Tom Mays, Paddle Court expert. They have 2 main goals—one is to memorialize the prior club status and their use permit and the other is to open up the conversation about adding the fourth paddle court. They have been through this process starting in April 2022, and received ADR support earlier this year. Then, they were informed they needed a use permit modification to move forward.

Mr. Dibble said they are trying to respond within the Club and are not ignoring the importance of responding to an aging demographic in their membership. They have a number of ideas and projects that are not fully formed at this time to approach in a voluntary accessibility upgrade on the property. He was available for questions.

Mayor Brekhus cited a letter from the Club's attorney in support of the application in the file and said the Town Attorney has been consulted.

Mr. Dibble said they have worked with Mr. Woltering and the Town Attorney to craft appropriate language for the use permit, and they have agreed to their amendments and included them.

Council Member McMillan said if the Club is amending the use permit and eliminating any public function, she asked if the use of the club will decrease. Mr. Dibble said he was not sure what will happen. The public accommodations that were deemed to exist were so minor that he does not think they would have any effect on the use of the club. He could also not recall a Council meeting being held there.

Mayor Brekhus said they are sad the MCCMC events cannot be held there but she asked if there were any other uses the club anticipates changing as a result. Mr. Dibble said they have already modified all of their internal language to reflect what is in the private club. There are 7 tests and they have gone through all tests with the former Planning Director, and also the CASp consultant. They outlined all of those things and why they felt they were conforming to them. Mr. Dibble said the only change they made is to clarify their guest policy so that if someone wants to have a guest they must be there, which has already been implemented.

Council Member Robbins said if the Lagunitas Country Club states they are private, she asked if the Town must accept that position. Town Attorney Stock stated the Town is not making a determination of whether they are a private club, but the Town is not going to require them to go through the ADA process as they move forward with their use permit based on their representation and the language in the Use Permit amendment.

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

Mayor Brekhus said this does not feel like an inappropriate change, and Council Members concurred.

Council Member McMillan moved, and Council Member Robbins seconded, to approve an Amendment to the Use Permit by Resolution for the Lagunitas Country Club to allow a fourth platform paddle (tennis) court and include the Lagunitas Country Club's representation that the Club's facilities will be solely for the use of its members and members' invited guests, both now and in the future, and the facilities will not be available to the public under any circumstances, and according to this representation, the Club is not subject to accessibility requirements. Motion carried unanimously (3-0-1; Kuhl recused).

Noted as Present:

Council Member Kuhl returned to the dais.

17. 2 Crest Road, Design Review, Hillside Lot Permit, Nonconformity Permit, and a Variance, and Town Council consideration of Resolution 2329.

Benjamin and Laura Dewar, 2 Crest Road, A.P. No. 072-023-27, Zone: R-1:B-5A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate Risk)

Project Description:

The applicant requests approval of Design Review, a Hillside Lot Permit, a Nonconformity Permit, and a Variance. The project includes new landscape structures including a new pool/spa, pool equipment, bathroom, wood deck, outdoor kitchen, concrete retaining walls, new fencing and gates. The new pool will be 14' by 36' with encroachment into the side yard setback. The height of the existing fence near the proposed pool will be increased to a 6-foot-tall fence to create additional privacy and safety for the homeowners and neighbors. The project is requesting to modify three closets by lowering the ceiling height to less than seven feet, the minimum to meet the building code requirements for habitable space; therefore, 42.5 square feet would no longer be counted as habitable space and floor area. The applicant proposes to transfer the square footage of the existing three closets (42.5 SF) to a new bathroom within the buildable envelope. The Nonconformity Permit is required to exchange floor area for new floor area, with no increase to the total floor area. A Variance is requested to allow for the construction of new landscape structures including a pool/spa and BBQ, within the side yard setback, and to exceed the allowable lot coverage.

Mayor Brekhus announced this item will be continued to a future Council meeting at the request of the applicant.

18. 10 Shady Lane, Design Review and Variances, and Town Council consideration of Resolution 2330.

Courtney Kronenthal, 10 Shady Lane, A.P. No. 073-191-25, Zone: R-1:B-A, General Plan: L (Low Density), Flood Zone: AE (Floodway)

Project Description: The applicant requests approval of Design Review and Variances. The project includes demolishing existing storage sheds in the rear yard totaling 130 square feet and transferring the 130 square feet to the main house. The project also includes modifying four closets by lowering the ceiling height to less than seven feet, the minimum to meet the building code requirements for habitable space; therefore, the closets would no longer be counted as habitable space and floor area. Additionally, the project involves some minor additions and alterations to include enlarging the kitchen area to provide a family sitting room by 94 square feet and expanding the entryway, which is flanked by two wings facing the front parking area

facing Shady Lane by 71 square feet for a total of 165 square feet. A Variance is required to exceed the allowable lot coverage by 22 square feet. A Variance is also required to allow for the expansion of the kitchen area to encroach into the side yard setback.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for approval of design review and variances. Staff recommends the Council review the project and adopt the resolution approving design review and the variances for 10 Shady Lane.

Jared Polsky, representative for the homeowner, reviewed the changes made to the project, described initial measurement errors which were addressed, and asked for approval. The correction of the measurement errors results in not needing to reduce the ceiling height of closets to transfer floor area. And, with acknowledgement of these corrected measurements, the project would comply with floor area limitations.

Mayor Brekhus said a variance was not needed because of the kitchen projects into the side yard. However, she asked if a non-conformity permit instead of a Variance would be more appropriate for the expansion of the kitchen encroaching into the sideyard setback? Mr. Lopez-Vega said staff researched this and they found the Variance would be applicable and he recited the code language.

Interim Planning and Building Director David Woltering stated in looking at 18.52.030, it states, "A non-conforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with." Therefore, he agreed it does seem there is some internal conflict in this code section.

Mr. Stock said given past practices, it cannot be enlarged unless under "b" there is a non-conforming permit which begs the question why they have "a" if the Town will allow "c."

Council Member Robbins asked if it was okay in this case to have a non-conformity permit and not a Variance. Mr. Stock said yes, especially given past practices and language. He thinks it is a non-conforming permit and there is no need for a Variance for that portion of the project but for other portions.

Mayor Brekhus said under "f" and mandatory findings, they necessarily assume they will make findings that it substantially complies with design review. She also referred to the findings for the resolution which state, "The project will accommodate an expanded family." She thinks this should be stricken because the Town does not normally grant variances to families versus those without children. Even if the applicant's findings are written that way, she thinks this should be stricken. Mr. Lopez-Vega stated he already changed this.

Mayor Brekhus asked if the applicant wished to speak again on this item.

Mr. Polsky said he agrees with staff's information and clarified they are removing sheds at the back of the garage so they are ending up with more impervious surfaces. They are not increasing floor area, and it seems such a small tweak to the house improves the livability of the house while not impacting anyone. Therefore, he hopes the Council can approve the project.

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

Council Member Robbins moved, and Council Member Kuhl seconded, to adopt Resolution 2330, as amended to approve a Nonconformity Permit and making the applicable findings contained in Section 18.52.040 (f) 1 through 9, deleting the findings relating to the Variance for the kitchen expansion related to the side yard encroachment, while retaining findings related to the building coverage Variance, and approving Design Review for 10 Shady Lane. Motion carried unanimously (4-0).

19. 39 Allen Avenue, Design Review, a Nonconformity Permit, Hillside Lot Permit and a Variance, and Town Council consideration of Resolution 2331.

Matthew and Lauren Barshied, 39 Allen Avenue, A.P. No. 073-261-05, Zone: R-1:B-10, General Plan: ML (Medium Low Density), Flood Zone: X (Moderate Risk)

Project Description:

The applicant requests approval of Design Review, a Nonconformity Permit, a Hillside Lot Permit, and a Variance. The project includes an extensive interior and exterior renovation to modernize the existing two-story home to include white shingle siding, a grey veneer ledgerstone accent and new windows, and a new composition roof with grey shingles matching the existing roof. Also, the proposed project involves updating the front facade by removing the existing front entrance and stairs and relocating the front entrance to the lower level and adding a porch; a balcony is also being proposed above the new porch. The project will also add a total of 70 square feet of new floor area: the proposed addition of 67 square feet to the lower level consists of enlarging the garage, and the construction of a new entryway with stairs leading to the upper level, and an additional three (3) additional square feet on the upper level on the landing of the stairs. A Variance is required to exceed the allowable floor area by 70 square feet.

Recusal:

Council Member Kuhl recused himself due to the proximity of his residence, and he left the dais.

Assistant Planner Lopez-Vega gave the staff report and overview of the request for design review, a hillside lot permit, non-conformity permit, and a variance. The project was reviewed by the ADR and made recommendations. Staff recommends adoption of the resolution approving 39 Allen Avenue.

Mayor Brekhus referred to the staff report on page 4 states, "However, the applicant wishes to stay with the proposed white exterior color of the home based on follow-up conversations with staff." She thought the color is proposed to be grey.

Mr. Woltering said the issue of color was brought up by the ADR and some members encouraged a more natural exterior color rather than the proposed white. The applicant had indicated a desire to stay with the color presented to the ADR and not modify it to a more natural color. They may have changed their mind about this and he deferred to the applicant.

Jared Polsky, representative for the homeowner, displayed a rendering and commented that the design is an improvement of the existing house. They are reducing the impervious surfaces, proposing to reduce the size of the side deck from 438 square feet to 368 square feet, and are proposing 18.8% FAR which is below the 20% neighborhood guidelines but above the FAR allowed for a hillside lot.

Staff points out that hillside lot ordinances were written “to preserve significant features of the natural environment including watershed, canyon, knolls, ridgelines, and to minimize the disturbance to the natural terrain”. They are not causing more disturbance and even though they are technically in the hillside guidelines it does not fit the intention of the guidelines. If FAR guidelines are written to regulate mass and bulk, in this case, removing 150 square feet of obtrusive, unsafe exterior wood stair that does not count as FAR and replacing it with a safe, less bulky looking interior stair that does count as FAR, this is where the added square footage comes in, which they feel is a reasonable trade-off. The ADR recommended they look into a different color and the owners would like to use a warm grey color instead of the white, and this can be made a condition of approval.

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

Council Member Robbins said a variance for increasing FAR is unusual; however, this does not feel like it is increasing FAR because of the interior stairs with square footage being removed in the entrance, and she voiced support of the project.

Council Member McMillan agreed and thinks the new stairway will be safer than the existing stair.

Mayor Brekhus said it was suggested the deck is a non-conforming side yard structure, and she asked if this was because it is raised.

Mr. Woltering stated if it is a raised deck over 30” it would be considered a structure, and encroaching into a side setback area would require a variance, so height does matter.

Mayor Brekhus said she thinks the variance reasons do not add to bulk or mass, and cannot imagine how to fix the entrance without doing what has been proposed unless square footage is taken away from the home. She agrees it looks like it will be a nice façade and improvement and voiced support of the project.

Mr. Woltering stated there was a suggestion to add a condition for a warm gray color, and recommended the applicant submit for approval the gray color for review and approval to the Planning and Building Director.

Council Member McMillan moved, and Council Member Robbins seconded, to adopt Resolution 2331 approving 39 Allen Avenue Design Review, a Nonconformity Permit, Hillside Lot Permit, and a Variance, with the added condition the color be gray. Motion carried unanimously (3-0-1; Kuhl recused).

End of Public Hearings on Planning Projects – Part II.

Noted as Present:

Council Member Kuhl returned to the dais.

20. No Action Items: (Mayor)

- a. Council correspondence – None.
- b. Future Council items – None.

21. Adjournment.

Mayor Brekhus adjourned the meeting at 8:50 p.m.

ATTEST:



Cyndie Martel, Town Clerk



Elizabeth Brekhus, Mayor