

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, AUGUST 11, 2016

1. 5:00 p.m. Commencement.

Present: Mayor Pro Tempore Elizabeth Robbins; Council Member Elizabeth Brekhus; Council Member P. Beach Kuhl; and Town Attorney Greg Stepanicich. *(Hoertkorn/Russell absent)*

2. Posting of agenda.

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

3. Open time for matters pertaining to the closed session items in agenda item 4 - None

4. Closed Session.

Public Employee Performance Evaluation

Title: Town Manager

5. 6:00 p.m. Open Session. Council will return to open session and announce actions taken, if any. No reportable action.

6. Minutes – July

Mayor Pro Tempore Robbins asked for a motion.

Council Member Kuhl moved and Council Member Brekhus seconded, to approve the Meeting Minutes of June 14, 2016 as submitted. Motion carried unanimously. (Hoertkorn/Russell absent)

7. Demands.

The demands were met.

8. Open Time for Public Expression - None

9. Mayor's Report.

Mayor Pro Tempore Robbins read Mayor Hoertkorn's report as follows: At our July meeting, the Council reopened the discussion on whether the Town should regulate short-term vacation rentals, such as those found on the AirBnB, VRBO, and Homeaway webhosting platforms. The Council concluded that more community input is needed and Town staff will begin eliciting community input through a variety of methods, such as a Town-wide email survey/poll and a follow-up workshop/discussion. In the May 2016 edition of *The Morning After*, Mayor Hoertkorn announced that the Town's staff would begin reviewing the Town's regulations to reflect the current values of the Town, the intent of the regulations, and how to make them more clear. Since May, the Council has already amended two very important chapters of the zoning regulations (*Exceptions to Basements and Attics and the Minor Exceptions*) and will be considering amendments to how nonconforming structures will be treated at the August meeting.

August 11, 2016 Minutes

Hard to believe that the Summer is almost over - School starts session on August 18, the Ross Preschool starts on September 7, and Recreation Fall Program registration begins the week of August 15. Mark your calendars for our Town Dinner on September 30th, which will be held this year on the Ross Commons.

The coming months will see several upgrades to the infrastructure in the Town – the Sir Francis Drake/Bolinas intersection and pedestrian improvements are to begin in August, much of Lagunitas Road is to be slurry sealed, and the Sanitary District is planning significant sewer repairs beginning this Fall including along Shady Lane and along other roadways. They will look to keep you informed with these projects as they proceed. While Mayor Hoertkorn really enjoys meeting residents at the Post Office prior to Council meetings, Mayor Hoertkorn will not be able to meet with you there the next couple of months due to an unexpected medical leave until mid-October. In the meantime, Mayor Hoertkorn looks forward to hearing from you by email at khoertkorn@gmail.com.

10. Council Committee & Liaison Reports - None

11. Staff & Community Reports.

a. Town Manager

Town Manager Joe Chinn reported that the County recently completed the Corte Madera creek pathway project which provides a great connection and a nice wide path for all. The SFD/Bolinas roadway improvements start the week of August 22nd along with the Lagunitas Road repair which follows the Water District’s construction project. The Army Corp and Marin Flood Control will be hosting a Corte Madera Creek flood control meeting on August 22nd at the Ross School.

b. Marin Art & Garden Center – No report.

c. Ross Property Owners Association – No report.

d. Ross School

Debbie Wolf, Chief Business Official for Ross School, reported that they are in the middle of two weeks of professional development and on Monday they would visit Skywalker Ranch. Back to school night will be held on September 1st and their first leadership meeting will be held on Friday, September 2nd. Also, they hired a new Spanish teacher along with a new math teacher and science teacher.

12. Consent Agenda.

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

a. Town Council consideration of adoption of Ordinance No. 673, amending Title 18 “Zoning” of the Ross Municipal Code Chapter 18.45, to revise the applicable findings required in order for the Town Council to grant a minor exception when neighbors do not provide written consent from neighbors.

b. Town Council acceptance of FY16 Q4 Investment Report.

- c. **Town Council consideration of adoption of Resolution No. 1962 approving the regular Council meeting dates for 2017.**
- d. **Town Council response to Marin County Grand Jury Report “The 911 First Responder Referral Program: More Than a Band-Aid® for Seniors” dated June 16, 2016.**
- e. **Town Council response to Marin County Grand Jury Report “Law Enforcement Citizen Complaint Procedures: The Grand Jury has a Few Complaints” dated June 23, 2016.**
- f. **Town Council response to Marin County Grand Jury Report “Marin’s Hidden Human Sex Trafficking Challenge: It’s Happening in Our Backyard” dated June 23, 2016**
- g. **Town Council approval of tree selection for replacement trees at 78 to 84 Sir Francis Drake Boulevard.**

Mayor Pro Tempore Robbins asked for a motion.

Council Member Brekhus moved and Council Member Kuhl seconded, to adopt the Consent Agenda submitted by staff. Motion carried unanimously. (Hoertkorn/Russell absent)

End of Consent Agenda.

13. Public Hearings on Planning Projects.

Public hearings are required for the following planning applications. Staff anticipates that these items may be acted upon quickly with no oral staff report, Council discussion, or public comment. If discussion or public comment is requested for any item, the Council may consider the item later in the agenda. The Council will act on each item separately.

Mayor Pro Tempore Robbins recused herself from the next agenda item in order to avoid the appearance of a conflict, so such item would be continued to the next Town Council meeting.

a. 1 Southwood Avenue, Nonconformity Permit No. 2016-031, and Town Council consideration of adoption of Resolution No. 1963.

Leslie and Jeff Bergholt, 1 Southwood Avenue, A.P. No. 073-152-10, R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size), Medium Low Density (3 - 6 units per acre). Nonconformity Permit to allow for a garage remodel and related improvements at an existing single-family residence. The project includes a different roofline, new garage door and side doors, and arbor on west side elevation.

Effective Lot Area	12,502 square feet
Existing Floor Area Ratio	26.1% (15% permitted)
Proposed Floor Area Ratio	26.1% No Change
Existing Lot Coverage	19.3% (15% permitted)
Proposed Lot Coverage	19.3% No Change
Existing Impervious Areas	22.4%

Mayor Pro Tempore Robbins asked for a motion.

Council Member Brekhus moved and Council Member Kuhl seconded, to continue to a date certain 1 Southwood Avenue, Nonconformity Permit No. 2016-031, and Town Council consideration of adoption of Resolution No. 1963. Motion carried 2-0. (Robbins abstained, Hoertkorn/Russell absent)

End of Public Hearings on Planning Applications.

Administrative Agenda

14. Ross Recreation Update.

Mike Armstrong, Recreation Manager, reported that Maya Zorn, former Recreation Clerk was promoted to Recreation Specialist. Maya will be responsible for the supervision and operation of all youth sports leagues and camps and will assist with program registration. Also, Stephanie Levinson, Head Preschool Teacher, has left the Ross Preschool to accept a teaching position with the Dixie School District in San Rafael. Kerstin Bandner has been promoted to Head Teacher and will oversee the operation of the Ross Preschool including scheduling and supervision of staff and is responsible for all operational aspects of the preschool. In addition to the promotion of Kirsten Bandner, Glenda Davidson has been added to the Ross Preschool staff to teach in our pre-k program. Glenda comes to Ross Preschool from St. Rita's in San Rafael. She was the director of the pre-K program at St. Rita's in for 6 years. Glenda will also be assisting with our immersion program at Ross School and has 19 years of experience teaching 3-5 year olds. She is well versed in Handwriting Without Tears, the writing program that our pre-K curriculum uses.

Also, Ross Commons will be receiving some needed turf maintenance in preparation for the coming Fall season. Topdressing and seeding is currently being performed. Additional restoration efforts will be scheduled for the fields during the closure from December to March.

Recreation Manager Armstrong reported that Ross Recreation enjoyed another successful summer season with over 1,100 participants registering for their programs. Our traditional camp offerings such as Top Gun, Adventure Camp, Marin Explorer's and Camp Safari and Kinder Camp were offered over a six-week period. New activities enjoyed by our traditional camps included the addition of a ropes course trip for both Adventure and Top Gun Camps. The ropes course promoted team building and leadership skills and was very popular with the participants. The Department also conducted a drama camp and a remote control car mechanic class. These programs were complimented by the addition of new offerings, offered in late July and early August. The new additions included mountain biking, fishing and cooking camps. The response they received from these camps was very positive and will be expanded next year. Staff developed an on-line survey, which was distributed to all participants in their Summer program. Responses from the survey will help critique their programs and give them valuable input in developing or adjusting their programs next summer. Fall program registration will begin on August 15. They are currently finishing the brochure which will be available in a PDF form on the Ross Recreation website. A minimum amount of brochures will be printed for

August 11, 2016 Minutes

distribution to local schools. They are transitioning from a printed brochure to electronic PDF version in an effort to reduce their carbon footprint.

The Recreation Department will again serve as the lead agency for organizing the Town Dinner scheduled for September 30th. Based on input from staff and the Ross Recreation Advisory Committee, the Town Dinner will return to the original site located on the Ross Common Street. Arrangements for lighting, tables, chairs and music are underway.

15. Town Council direction for design guidelines of sidewalks and pathways within the public right-of-way.

Town Manager Joe Chinn received a request for this item to go to the Advisory Design Review (ADR) Group, which is a reasonable request, so the Council could provide guidance tonight or wait until after the ADR meeting.

Nathan Valles, Moe Engineering, summarized the staff report and recommended that the Council provide direction to staff for the development of sidewalks and pathway design guidelines within the public right-of-way.

Town Manager Chinn pointed out that currently the Town does not have written guidelines as to acceptable sidewalks and pathways within the Town right-of-way. Due to resident input and concerns, consistency of look, and efficiency in processing sidewalk plans it would be beneficial to have a written guideline for the construction or repair of sidewalks and pathways.

Council Member Kuhl asked staff who has the duty to build sidewalks. Mr. Valles explained that when a residence comes in along Lagunitas where there is a dirt path, they would be asked to improve to safe standards as part of their improvements, just as they may be asked to improve their culvert or asphalt surface of their driveway within the right-of-way.

Mr. Valles added that asphalt pathways exist in many areas of Town, including Ross Common, much of Lagunitas Road and along Sir Francis Drake Blvd (SFD). Asphalt has durability, strength, can be repaired easily, and is a relatively cost-effective material. The downside to asphalt is that some residents feel that asphalt is unsightly. The pathway along Shady Lane was constructed using a product called NaturalPAVE, which is a decomposed granite material with a resin binder. This material is available in a range of colors, and the color was chosen to blend with the existing area, retaining the natural look of the existing dirt path. Although the desired effect was achieved at first, within a few years the pathway changed color and is now very similar in color to a normal asphalt pathway. The NaturalPAVE material also turned out to be less durable than asphalt, necessitating significantly more maintenance. When maintenance and repairs are made, the repairs need to be full depth repairs and are distinctly noticeable. The Public Works Committee determined that NaturalPave and/or other resin binder type products should no longer be recommended for use within the right-of-way. Staff recommends against using the decomposed granite material with a resin binder due to the lack of durability, strength, and higher cost of installation and maintenance. Other materials that do not meet ADA standards should not be used within the public right-of-way. In locations such as corner ramps where the pathway would intersect a street, contrasting tactile mats (*commonly called truncated domes*) must be installed to warn the visually impaired that they are entering a roadway. The mats come in a variety of colors, and the Town has recommended that charcoal grey be used for

August 11, 2016 Minutes

concrete, and colonial red be used with asphalt. The commonly seen yellow domes are not recommended for use in the Town.

Council Member Brekhus felt it is appropriate for ADR to review the recommendations before the Council provides direction.

Mayor Pro Tempore Robbins opened the public hearing on this item, and seeing no one wishing to speak, the Mayor Pro Tempore closed the public portion and brought the matter back to the Council for direction.

The Council directed the ADR Group to review the recommendations provided by Moe Engineering.

16. Town Council consideration of introduction of Ordinance No. 675 amending Title 18 “Zoning” of the Ross Municipal Code Chapter 18.52 Nonconforming Structures and Uses, to clarify what constitutes the repair, maintenance, and alteration of a nonconforming structure and to establish a new finding that requires that the project may not increase the nonconformity unless a variance is granted pursuant to Chapter 18.48 of the Ross Municipal Code.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council consider introduction and first reading of Ordinance No. 675 to amend Ross Municipal Code Chapter 18.52, nonconforming structures and uses, to clarify what constitutes the repair, maintenance, and alteration of a nonconforming structure and to establish a new finding that requires that the project may not increase the nonconformity unless a variance is granted.

Council Member Brekhus wanted to know why a variance is not required when expanding the nonconformity, so when an applicant adds into the setback and also adds height by extending across. Planning Manager Scoble stated that staff took consideration the spirit of the existing regulations and the flexibility it offers the Council in making lands use decisions regarding nonconforming structures. Planning Manager Scoble further stated that the regulations are proposed to be amended to require a variance if the nonconformity is proposed to be exacerbated.

Council Member Kuhl pointed out this would permit increasing maximum bulk, which is a concern. Planning Manager Scoble responded that in order for a nonconformity permit to be approved there are specific findings that must be achieved, and one finding is consistency with design review standards and criteria section of the design review chapter, which is a very lengthy list of items. Essentially design review is embedded in the nonconformity permit process. In this situation, because they are making a structural alteration to a building, a nonconformity permit is automatically triggered.

Council Member Brekhus noted confusion for the variance portion. She desired flexibility in the future. She then discussed a house on Lagunitas in regard to the main house with two rentals both in the setback, and if that person wanted to change one of those rentals to a garage, she asked staff if that would not be allowed under that provision. Planning Manager Scoble noted that garages are a permitted use, but the use of the structure can trigger a variance. Town

August 11, 2016 Minutes

Attorney Greg Stepanicich also noted that rather than being approved by staff, it would have to go through a nonconforming permit or other permit process for review. It would trigger additional review and come before the Council.

Mayor Pro Tempore Robbins asked if that is clear enough because the intention is storage structure or shed, not living space. Planning Manager Scoble noted the zoning regulations have definition of floor area, not living spaces, so livable space such as guesthouses, second units and garages are all treated as floor area. Planning Manager Scoble stated that a garage use has a different building code occupancy, so staff could look at it as a use or create a different definition or modify the regulations. Mayor Pro Tempore Robbins believed they must clarify the definition of living space. Council Member Kuhl believed that would be a change of use and asked staff if the various uses are defined in the code. Planning Manager Scoble noted that various uses are defined in each zoning district, but as it relates to floor area or livable space it is not defined.

Mayor Pro Tempore Robbins opened the public hearing on this item, and seeing no one wishing to speak, the Mayor Pro Tempore closed the public portion and brought the matter back to the Council for discussion and action.

Council Member Brekhus stated that she was surprised by the threshold and believed it should be six months to one year. She did not support the proposed changes and desired more flexibility. She had a hard time understanding the language and did not believe it provided more guidance. Mayor Pro Tempore Robbins wondered if this is too restrictive, but they need to be clear. She then asked staff if there is a way to have more flexibility. Council Member Kuhl suggested continuing this item. Town Attorney Stepanicich desired more direction in regard to making additions or changes to nonconforming structures. Council Member Brekhus suggested going back to the existing nonconforming permit regulations, which has to be consistent with the design review guidelines, which includes mass and bulk.

Town Attorney Stepanicich noted that the basis for changing the ordinance in the first place was to get away from having too many variances, which should still be the Council's goal. The problem in Ross is that so many structures in Ross were rendered nonconforming when the zoning standards changed. They must find the middle ground. Council Member Brekhus pointed out that Ross has very strict setbacks. Ultimately, it is way more conservative. Town Attorney Stepanicich added that the setbacks drive the nonconforming and maybe they should review the setback requirements. A nonconforming permit has standards that must be met on a case-by-case basis or should there be a stricter standard.

Town Attorney Stepanicich noted that it is a question of how strict of a standard and how much discretion does the Council want on a case-by-case basis and how strict should the findings be for the nonconformity standard. Mayor Pro Tempore Robbins felt the nonconformity should not be increased, but have some exception process. The general intention is to not increase nonconformity, but there is a process for design and function that seems beneficial to the property in regard to an exception. Council Member Brekhus did not support that position and expressed concern for subsection (d). Planning Manager Scoble responded that the intent of subsection (d) was to be more flexible. For example, if an applicant proposes a 199 sq. ft. addition with conforming setbacks, a nonconformity permit would not be required and a

August 11, 2016 Minutes

ministerial building permit could be issued. Town Attorney Stepanicich noted that the exception to subsection (a) through subsection (d) is subsection (e), which is the nonconforming permit. Council Member Brekhus stated with subsection (e), rather than a variance, she felt design review guidelines should be required. Town Attorney Stepanicich noted that is how the current code is written. With this proposed change it is stricter than the current code because the existing nonconforming cannot increase, which is the new limitations.

Mayor Pro Tempore Robbins asked how do they discourage increasing nonconformities, but make the rare exception possible. Council Member Brekhus did not believe the exceptions are rare or unusual. They should encourage conformity.

Town Attorney Stepanicich believed they should take a fresh look at the findings and consider other options. Council Member Kuhl suggested eliminating the last sentence of subsection (e) as follows: *“such expansions or alterations shall not increase the existing nonconformity or nonconformities unless a variance pursuant to RMC Chapter 18.48 is concurrently granted”* since subsection (d) provides limitations as follows: *“a nonconforming structure may be added to, without a nonconformity permit, so long as the addition complies with all zoning regulations pursuant to RMC Title 18, including compliance with the R1 and B: Combining District development standards (e.g., setbacks, lot coverage, floor area, height, and parking) and the addition does not affect an existing nonconformity.”* Town Attorney Stepanicich suggested considering the change of use in regard to living space as well.

Council Member Brekhus asked staff to bring this back when there is a full Council and explain how this applies to Southwood, Poplar, and Winding Way. Town Attorney Stepanicich agreed to provide examples.

Mayor Pro Tempore Robbins asked for a motion.

Council Member Kuhl moved and Council Member Brekhus seconded, to continue this matter to a future Town Council meeting. Motion carried unanimously. (Hoertkorn/Russell absent)

17. Town Council consideration of approval of lease for temporary Portable Building for Building, Planning, and Public Works staff.

Town Manager Joe Chinn summarized the staff report and recommended that the Council authorize the Town Manager to enter into a lease agreement for the installation of a temporary portable building to act as an interim consolidated office for Building, Planning, and Public Works Staff.

Council Member Brekhus expressed concern for whether they provided any notice to residents about this portable building and noted that they are bound by design review guidelines. She desired a rendering in order to visualize the appearance of this portable building. Also, she asked if building fees would increase to cover this building. Town Manager Chinn responded that it would be built-in to the overhead cost. This would be so insignificant that it would not materially change any fee. Planning Manager Scoble responded that if this item comes back they agreed to notice residents. Also, the intent of design review regulations are for permanent structures and this will be a temporary structure so this would not trigger design review. Temporary structures are not allowed typically in any residential zoning districts. Staff stated

August 11, 2016 Minutes

that design review would not be required, but staff is open to go through the design process if so desired by the Council. If this were a permanent structure, design review would be required, but since this is temporary it did not meet the spirit or intent of the design review requirements. Council Member Brekhus stated that the fire portable building was supposed to be temporary and it has been present for twelve years.

Mayor Pro Tempore Robbins asked if the Council votes on this item tonight. Town Manager Chinn noted that staff needs authorization to move forward with a year lease or purchase. The Council could approve this tonight or have us first go to ADR.

Mayor Pro Tempore Robbins opened the public hearing on this item.

Peter Nelson, Ross resident, this should be considered as not temporary and should be given proper consideration. The proposal is fundamentally sound and very logical. He believed this will help with efficiency and would be a great service to the Town.

There being no further public testimony on this item, the Mayor Pro Tempore closed the public portion and brought the matter back to the Council for discussion and direction.

Council Member Kuhl did not question the need for the space, but had reservations for approving tonight. Three to five years is temporary as opposed to a solid building. He believed they are running a risk of having considerable public objection to doing this unless they are sure they are doing this in a way that is appropriate. He is inclined to run it through some sort of design review process or continue to inform the public of what is proposed. He agreed to have staff provide a rendering to better understand the appearance of the portable building.

Council Member Brekhus is frustrated that they do not have a facilities plan in place. This would be an easier decision to make with more public input. Town Manager Chinn noted that a draft facilities plan would likely be presented in the Spring of 2017. The facilities plan process will have a lot of public discussion. It will likely be three years at the earliest that any space can be built and occupied.

Council Member Brekhus expressed concern for the expense for the portable building along with the yearly cost. It would be an easier decision with more public input. She wanted to see plans, renderings, story poles, landscaping, etc.

Mayor Pro Tempore Robbins agreed they are in need of additional space. It is important to have office space. She is in favor of the proposal, but there is not consensus to approve tonight. Staff must provide renderings and a landscaping plan in order for the Council to better understand the appearance of this building. She agreed with the idea of leasing the portable building. She is not sure story poles are needed in this case. She felt a rendering would be sufficient.

Council Member Brekhus believed story poles are important in order for the public to understand what is going on and provide input. Council Member Kuhl added that it is going to be a temporary building. Council Member Brekhus suggested considering a permanent space as an option such as bumping out the existing space. Mr. Nelson felt a permanent solution is worth considering in regard to cost effectiveness to the Town. Council Member Kuhl stated that

August 11, 2016 Minutes

it will take time for any permanent building, and wanted to this temporary building done in a way that does not offend residents aesthetically, but get this completed in a timely manner.

The Council directed staff to provide a rendered drawing of the proposed portable building at the next Town Council meeting.

18. Town Council review of Council Procedures Manual.

This item was continued to a future Town Council meeting when all five Council members are present.

End of Administrative Agenda.

19. No Action Items:

a. **Council correspondence** - None

b. Future Council items

- Review Sir Francis Drake (SFD) County project. Staff to find out status from County and if any public meetings scheduled. It will be determined at a later date whether to request County presentation at Council.

20. Adjournment.

Mayor Pro Tempore Robbins moved to adjourn the meeting at 8:32 p.m.

Elizabeth Robbins, Mayor Pro Tempore

ATTEST:

Linda Lopez, Town Clerk