

**REGULAR MEETING of the ROSS TOWN COUNCIL  
THURSDAY, DECEMBER 8, 2016**

**1. 5:00 p.m. Commencement.**

Mayor Katie Hoertkorn; Mayor Pro Tempore Elizabeth Robbins; Council Member Elizabeth Brekhus; Council Member Beach Kuhl; Council Member Rupert Russell; and Town Attorney Greg Stephanich.

**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.**

**Conference with Legal Counsel—Existing Litigation**

**Government Code Section 54956.9(d)(1)**

**In the Matter of the Appeal Regarding PERS Membership Eligibility of Gary Broad,  
PERS Case No. 2014-914, OAH Case No. 201520995.**

**Conference with Legal Counsel—Existing Litigation**

**Government Code Section 54956.9(d)(1)**

**In the Matter of the Appeal Regarding Membership Eligibility of Patricia M. Riley, PERS  
Case No. 2016-005, OAH Case No. 2016080840.**

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

**6. Minutes -November**

Mayor Hoertkorn asked for a motion.

**Council Member Kuhl moved and Council Member Brekhus seconded, to approve the Meeting Minutes of November 10, 2016 as submitted. Motion carried unanimously.**

**7. Demands.**

The demands were met.

**8. Open Time for Public Expression.**

Cat Landly, St. Anselm's Parrish, introduced herself to the Council.

Margie Sheehy, Fernhill resident, is present to recognize and thank the Town for their financial support and indicated that their guests are very appreciative to have a warm meal and shelter.

Jim Owen, Lagunitas Road resident, thanked the Council for all they do. He asked the Council to consider special use permits and specifically enforcing such permits. He hoped to talk in the future about mechanisms more functional for complying with use permits.

**9. Introduction of new Public Works Director/Town Engineer Richard Simonitch.**

Richard Simonitch has joined the Town of Ross as the new Public Works Director/Town Engineer starting December 5th. Richard has over 30 years of experience in both the public and private sectors in design, engineering, and management of residential and commercial land development, water resources, and storm water management projects throughout northern California. Richard grew up in Ross where he attended both Ross and St. Anselm School until his family moved away to Contra Costa County. During his years as a consultant in the private sector, Richard developed his Civil Engineering and Land Surveying skills on the design and construction of various municipal engineering projects including several major residential subdivisions in Contra Costa, Napa, and Solano Counties.

In 2004, Richard became part owner and principal engineer with Creegan and D'Angelo Engineers where he managed the company's branch office in Monterey. With this assignment, Richard also became the contract City Engineer and Public Works Director for the small coastal town of Sand City, California, where his engineering and management skills were key to the successful construction in 2010 of the first full scale municipal desalination plant to provide drinking water under the newly amended State of California water treatment rules. Richard continued working as contract Public Works Director for Sand City until late 2012, when he left the private sector to take a position with the County of Marin Department of Public Works Land Development Division. During this time, Richard was also appointed Marin County Surveyor, and acting City Surveyor for the Cities of San Rafael and Larkspur. The Town is very excited to have Richard on board.

**10. Mayor's Report.**

Mayor Hoertkorn reported that this week started with the 8th Annual Ross Auxiliary Tree Lighting Ceremony on December 4th. It was a wonderful event; the Ross Commons was filled with children drinking hot chocolate, courtesy of Ross Cafe, and confiding their holiday wishes to Santa Claus! Ross School choir, Ross Preschool children & The Branson A Cappella choirs all provided holiday spirit. It was a privilege as Mayor to light the Christmas tree and welcome everyone to the event. Thank you to Ross Auxiliary for bringing such warmth cheer to the community! Welcome to our new Public Works Director, Richard Simonitch. Mr. Simonitch is highly recommended and has over 30 years of public works and engineering experience working in both the private and public sectors. They are delighted to have him join the staff. Speaking of Public Works, the new improvements at Sir Francis Drake and Bolinas intersection are substantially complete. Hopefully the improvements will be well received.

Finally, Dan Winey, a long time invaluable member of the Town of Ross Advisory Design Review Board (ADR), was recently recognized and awarded as the lead architect on the project for Gensler the 2016 Gold American Architectural Prize. To quote from the award: *"As the tallest building in China Shanghai Tower, designed by Gensler, has had an immediate and profound impact on the country's perceptions of how a skyscraper can contribute to a city, a country, and a culture. Not only does it rise over Shanghai as a new symbol for its modern emergence on the global stage, but also points the way forward for technical innovation accomplished within the parameters of a Chinese cultural identity. Powerful in form yet delicate in appearance, Shanghai*

*Tower would be a graceful addition to any skyline, but its function, identify, and symbolism are firmly rooted in the needs of its specific site.”* Way to go Dan!! How many ADR boards have such bragging rights? I wish everyone Happy Holidays!

**11. Council Committee & Liaison Reports - None**

**12. Staff & Community Reports.**

**a. Town Manager.**

Town Manager Joe Chinn is happy to report that they had an impressive turnout at the polls and Measure K passed with almost 79% voting in favor of it. As you may know, Measure K required a two-thirds majority vote to pass and the Town far exceeded that. A total of 1,463 ballots were cast in Ross, which comprised 89.59% of the registered voters (1,633). The Public Safety tax will take effect on July 1, 2017, and continue for eight years until June 30, 2025. He thanked the community for all their support.

**b. Marin Art & Garden Center.**

Diane Doodha, representing MAGC, asked those to donate to MAGC, if they so choose, which would be much appreciated. On Saturday, December 10<sup>th</sup>, the holiday fair is taking place. Pixie Park will have a bake sale and a patio sale. MAGC then wished everyone a happy holiday.

**c. Ross Property Owners Association.**

Diane Rudden, representing RPOA, thanked Cynthia and Eric for the work done across the street and they will find out about the well and options available next year. RPOA thanked Anthony for being very helpful as well as Chris and Ross School for their wreaths that were donated to the merchants.

**d. Ross School – No report.**

**e. Ross Historical Society/Moya Library.**

Charlotte Levin, representing Ross Historical Society/Moya Library, published a booklet of the history of the MAGC that costs \$5.00. To purchase the booklet, please email Charlotte or go to their website. She added that they are located in the oldest building in Ross and are open from March to November. They are continuing their first Friday series beginning in March.

**13. Consent Agenda.**

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

**a. Town Council consideration of adoption of Resolution No. 1977 certifying the results of the Municipal Election held on November 8, 2016.**

**b. Town Council consideration of adoption of Resolution No. 1978 changing the April 2017 regular Council meeting date.**

**c. Town Council consideration of adoption of Resolution No. 1979 reaffirming the Town Investment Policy.**

**d. Town Council authorization to extend current Dispatch Services Agreement between the Town of Fairfax and the Town of Ross Police Departments.**

Mayor Hoertkorn asked for a motion.

**Mayor Pro Tempore Robbins moved and Council Member Brekhus seconded, to adopt the Consent Agenda as submitted by staff. Motion carried unanimously.**

**End of Consent Agenda.**

**14. 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.*

**a. 2 Canyon Road, Nonconformity Permit No. 2016-047, and Town Council consideration of adoption of Resolution No. 1980.**

Ben and Patti Shimek, 2 Canyon Road, A.P. No. 072-092-06, R-1:B-A (Single Family Residence, 1 acre min. lot size), Very Low Density (.1-1 unit/Acre). The applicant is requesting a Nonconformity Permit to allow a 43 square foot second floor addition within the footprint of an existing single-family residence. The residence has an existing nonconforming roof height of 34 feet 2 inches. The Nonconformity Permit is required to allow for structural alterations to a nonconforming building.

Existing and proposed conditions:

<b>Lot Area</b>	<b>42,646 square feet</b>
<b>Existing Floor Area/Ratio</b>	<b>5,926 sq. ft. 13.9% *(15% permitted)</b>
<b>Proposed Floor Area/Ratio</b>	<b>5,969 sq. ft. 14%</b>
<b>Existing Lot Coverage</b>	<b>4,459sq. ft. 10.5% *(15% permitted)</b>
<b>Proposed Lot Coverage</b>	<b>No Change.</b>
<b>Existing Impervious Surfaces</b>	<b>No Change</b>
<b>Proposed Impervious Surfaces</b>	<b>No Change</b>

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 1980 conditionally approving a Nonconformity Permit to allow an existing dormer to be expanded within the footprint of the residence that has a nonconforming roof height.

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

Mayor Hoertkorn asked for a motion.

**Council Member Brekhus moved and Mayor Pro Tempore Robbins seconded, to approve 2 Canyon Road, Nonconformity Permit No. 2016-047, and adopt Resolution No. 1980. Motion carried unanimously.**

**b. 137 Bolinas Avenue, Nonconformity Permit No. 2016-044, and Town Council consideration of adoption of Resolution No. 1981.**

Kimberly Tully-Sutton, 137 Bolinas Avenue, A.P. No. 073-041-02, R-1 (Single Family Residence, 5,000 square feet min. lot size), Medium Density (6-10 units/Acre). The applicant is requesting a Nonconformity Permit to allow the renovation and installation of new dormers and skylights within the footprint of an existing attic space. The existing residence is considered legal nonconforming because the residence is located within the front and rear yard setback.

Existing and proposed conditions:

<b>Lot Area</b>	<b>4,836 square feet</b>
<b>Existing Floor Area/Ratio</b>	<b>1,618 sq. ft. 33% *(20% permitted)</b>
<b>Proposed Floor Area/Ratio</b>	<b>No Change</b>
<b>Existing Lot Coverage</b>	<b>1353 sq. ft. 27.9% *(20% permitted)</b>
<b>Proposed Lot Coverage</b>	<b>No Change.</b>
<b>Existing Impervious Surfaces</b>	<b>No Change</b>
<b>Proposed Impervious Surfaces</b>	<b>No Change</b>

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 1981 conditionally approving a Nonconformity Permit to allow the renovation and installation of new dormers and skylights within the footprint of an existing attic space.

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

Mayor Hoertkorn asked for a motion.

**Council Member Brekhus moved and Mayor Pro Tempore Robbins seconded, to approve 137 Bolinas Avenue, Nonconformity Permit No. 2016-044, and adopt Resolution No. 1981. Motion carried unanimously.**

**End of Public Hearings on Planning Projects.**

**Administrative Agenda**

- 15. Town Council discussion/action on preferred future use of the portion of the Ross Common that is currently the site of the Town-owned property known as 6 Redwood Drive.**

Town Manager Joe Chinn summarized the staff report and recommended that the Council discuss and decide on the preferred future use for the Town-owned building at 6 Redwood that was severely damaged by a fire in 2015, and further direct staff to provide a resolution on the consent calendar in the following Council meeting, which supports that decision.

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Mayor Hoertkorn acknowledged for the record that Mary Ann Neumann is her daughter and Rich Hoertkorn is her husband.

Mayor Hoertkorn opened the public hearing on this item.

China Dowling, Kentfield resident, noted that her son and his family lived at the subject property that burned down. She briefly spoke about keeping this property as workforce housing. She is relieved to hear the acknowledgment of the fact that the house was not up to code. She thanked the community for the support and urged the Council to consider continuing workforce housing at 6 Redwood Drive.

Mary Ann Neumann, Ross resident, is an active citizen in Ross and having lived in Ross for five years and having little children there is no place to go for children under the age of five, so when this became a prospect she was thrilled. She talked to other mothers who became equally excited to have a public playground for small children in Ross. It is important to note that all other communities nearby have playgrounds. Within nine days she raised 109 signatures from 96 distinct households. There are approximately 240 households with children under the age of 18, which means 40% of those households supported this petition in such a short period.

Emmy, Ross resident, supported a playground in Ross, so she has a safe place to play.

Teddy, Ross resident, wanted a place to play without getting hurt by the older kids.

Shana Lourdeaux, Ross Auxiliary President, noted that several new young families are coming into the community. Currently they have 32 members, so there are young families looking to take their children to places other than the school. They raised \$20,000 for Pixie Park, so there is interest in the community to raise money for a public park. Her in-laws are very supportive of the park and in 30 years from now this park would be well used and appreciated.

Jennifer Malcolm, Chestnut Ave resident, thanked the Council for listening to the community. She is very supportive of the park. The existing park is unsuitable for children under five. The park is closed to toddlers during school hours. In an effort to come to an agreement other locations have been considered, but those alternatives are not a good fit.

Victoria Boddington, Ross resident, supported the playground on behalf of her children Sofia and Jacob Gray who have been working very hard on this project. She then read a letter into the record on their behalf for the Council's consideration supporting the playground at 6 Redwood Drive.

Casey, Winship Avenue resident, supported the playground. This is for the future of their children. The best use of the land at 6 Redwood Drive would be a playground to help businesses thrive and be very inclusive and welcoming. This will be an investment in their children's future and there is nothing more valuable.

Mindy Novak, 28 Loma Linda resident, is a mother of three young boys under the age of four, so she fully supports the park. Ross is unique like no other town she knows in the way the community comes together. There are strong bonds that exist and a public park embodies the

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idea of the community coming together. Ross Preschool PTA feels it is a pivotable time for the school. The school provides important funds. This year the majority of students are not from the Town of Ross. As a PTA group they are working hard to revitalize the school and they constantly hear about the concern about the lack of outdoor space. A nature-based park would truly help them reach their aspirations for the pre-school. This park could go a long way to making the Ross Preschool a top choice. On behalf of the Ross Preschool PTA, she sincerely hopes the Council will consider the nature-based park as a way to support and enhance the Town's preschool.

Alexis Fineman, Walters Road resident, supported the continued use of 6 Redwood Drive as workforce housing. She loves the idea of a nature-based playground, but this is not the right location. The community is in need of workforce housing. There is a housing crisis in Marin County, not a lack of playgrounds. This will become a destination playground, parking and traffic will be an issue.

Chris Neumann, Ross resident, noted that the fire provided an opportunity to re-evaluate the opportunities of this parcel. There is a lot of support for the park and this is not the right location for workforce housing.

Annabelle, San Anselmo resident, Pixie Park Master Planning Chair, noted for the record that Pixie Park is neither for nor against either proposal. She asked that the Council clarify what Pixie Park is and their current renovations plans to help in their decision. They will support what the Town decides through the public process. Pixie was founded in 1952 and is run by volunteers. The park is open to anyone who wants to join. Members can choose from various membership types that vary in cost based on the volunteer hours committed. Operational expenses, lease of the land and maintenance needs are paid for by membership dues. No municipal tax dollars go to Pixie Park. It is 100% funded by their members. They have some renovation plans coming up that have been two years in the making and hope to start in February with 30% of their funding secured at this point.

Diane Rudden, Ross resident, emailed the Council in regard to her concern about workforce housing. She is a pediatric nurse, so children have always been important to her, but this is not the correct location for a playground. This only provides one workforce house, but that is better than none.

Barbara Call, Redwood resident, supported workforce housing at 6 Redwood Drive. A playground is a very narrow use of the community at large. Many do not understand the location of that park. It provides huge liability risk to the Town if it becomes a playground. This nature-based park as projected would be more appropriate in an urban community. Redwood Drive is an unsafe location due to the traffic, the baseball park, soccer fields, and the very busy intersection. A better location could be found. If kept, as workforce housing it will benefit the entire community, providing income to the Town, which the Town could then use to maintain a park in a different location.

Craig McCarty, Poplar Avenue resident, has lived in Ross for over 31 years and thanked the Council for all their hard work. He has worked in commercial real estate for over 25 years throughout the United States and in many countries around the world, and in his opinion, based on an income approach to the property, as a rental it is worth conservatively \$400,000 to

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\$500,000, market based housing it is worth up to \$800,000. He's worked on three bond issues – Measure D, Measure E and Measure K and this is a significant financial asset.

Gilbert Fleitas, Glenwood resident, supported the park at Redwood Drive. It will save the families in Ross from having to drive to different locations.

Jeff Babcock, Redwood Drive resident, strongly recommended that 6 Redwood Drive be rehabbed into a rental unit for a Ross Town employee, which is the highest and best use to serve as affordable housing in what is already a residential neighborhood. This is clearly a controversial matter and questioned the role of Mayor Hoertkorn standing as an elected official and a highly visible proponent of transforming this priority into a preschool park when her daughter is leading the campaign. There is ample self-interest and believed Mayor Hoertkorn should recuse herself from this matter. This is a classic conflict of interest.

Cate Babcock, Redwood Drive resident, experienced 6 Redwood Drive as being a residence for mostly Town employees and recently non-town employee. She believes in the general plan and they must provide for workforce housing, so she would appreciate the Council acknowledging their views as residents on Redwood Drive. There will be negative impacts if this location is used as a park. There will be tremendous noise, traffic and garbage. This is a very dangerous intersection and not an appropriate location for a playground for young children. She asked the Council to rehab the residence and continue as workforce housing.

Peter Nelson, Circle Drive resident, encouraged the use of rehabbing the house and its continued use as workforce housing. The idea of parking, traffic and access would create a huge problem if it becomes a park.

Chris Skelton, Attorney for 8 Redwood Drive, submitted correspondence on Tuesday and identified some concerns about CEQA, General Plan, Housing Element and various other aspects of this land use discussion. This is not a mutually exclusive policy choice. There is concern for not having appropriate age levels in Town and the Council heard this is not an appropriate location for a playground. The northeastern corner of the Common is another alternative for a park. It is defined with sidewalks and a walkway through the Common and better access to public parking. It is a safer intersection. Also, there is no demolition cost or site grading necessary and there are mature landscaping. This also avoids competing uses and it is complimentary to Ross School and St. John's. He reiterated that this is a not a mutually exclusive decision – the Town cannot have its cake and eat it too. He encouraged the Council to keep the workforce housing, and if there is a demand in Town for a park, then pursue other alternative locations.

Charlotte Levin, Poplar resident, expressed concern for the traffic, which has become almost impossible. There are too many issues in terms of traffic congestion and hopes that will be considered when the Council makes its decision.

Julie McMillan, Crest Road resident, stated at the June meeting she reviewed the minutes and it seems based on the minutes there were two options, evaluate workforce housing and evaluate whether to open the park up and expand the Common into the space. It seems between June and December this nature-based playground took a life of its own without any input from the Council. She is puzzled by the process. She does not understand how the concept was



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commissioned or paid for without Council input. The community should not be divided. This should not be a generational issue. She suggested that the Council form a small parent committee and figure out if there a need, and if so, figure out a place where they do not have to destroy an existing asset that generates a net income to the Town.

Ken Fineman, Walters Road resident, believed this has not been reviewed economically. There are hidden costs. Several are threatening a lawsuit, which must be factored in and there are unexpected CEQA environmental costs. Also, housing is a benefit for employees. There are other alternatives for a nature-based park. If the Council turns 6 Redwood Drive into a park, he asked that the Council not ask the community to pass other measures. He encouraged the Council to rebuild the house and continue workforce housing.

Peter Barry, former Council member, Ross resident, support toddlers, but does not support this particular proposal for a nature-based park. There are alternatives that would not be so costly to the Town.

Randy Orr, Allen resident, supported the continued use at 6 Redwood Drive as workforce housing. This is a large piece of property and the house should be rebuilt.

Thana Fineman, Walters Road resident, felt the ball was dropped on this matter. The nature-based park is an entirely new proposal. She asked who paid for the consultant and expressed concern for the procedure. She believed that the neighbors' input on Redwood is very significant. They are in close proximity, and this will be a significant change of use from workforce housing to a toddler park. She expressed concern for traffic, garbage, parking and environmental impacts. There are no bathrooms or toddler changing tables. The neighbors must be heard and this should remain workforce housing.

Rich Hoertkorn, Lagunitas Road resident, supported the nature-based park. He stated that for more than 40 years he has owned Section 8, employee, and adult senior housing, and there are unintended consequences building affordable housing as one unit. It works best when there are at least four units.

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

Mayor Hoertkorn stated she has not sent any emails or made any phone calls in regard to this matter, so she is not sure where Mr. Babcock received his information. When she makes decisions, it is for the best interest of the Town.

Town Attorney Greg Stepanicich stated in general this is a policy decision made by the Council. Council members are free to express viewpoints, which would not be a conflict of issue as it would in the case of a private development project. In terms of CEQA requirements, if the Council decided to further explore and provide for a design for a park, there would need to be CEQA compliance. Currently, they are conceptually looking at options so there is no requirement to conduct a CEQA analysis until they have a project in mind. So far CEQA has not been violated.

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Council Member Kuhl thanked the members of the public for all the provided input, which is he found very helpful. He considers both proposals to be great suggestions because they are good for the Town. In part, he must choose one or the other. He supported rebuilding to maintain public housing because he felt there are other alternatives if they really feel a park is needed for toddlers. The park proposal is merely a concept. Frequent maintenance would be needed as well as bathrooms. He expressed concern for night use, fencing, and locked gates. He desired the schools view on this matter since they will be heavily impacted as well. He has never made a decision based on the potential for a lawsuit. It is their duty as members of the Council to do what they feel is right. He supported rebuilding the house and using it for, hopefully employee housing.

Mayor Pro Tempore Robbins noted that there is a real interest for a park that meets the needs of young children. A park located in the center of Town is a lovely concept, but workforce housing is extremely valuable. She respects the opinion of former council members who all strongly support workforce housing. Being able to house a Town employee is important. There are other locations for a park. She supported renovating the house at 6 Redwood Drive for the continued use as workforce housing.

Council Member Russell stated that it is very impressive to see all the members of the public in attendance. There are merits to both sides of this case. He is sympathetic to the idea that they need to help revitalize the downtown, but he is also sensitive to the fact that they have neighbors who are opposed to a park and it would be a significant change to the community. He further supported rebuilding the house and its continued use as workforce housing.

Council Member Brekhus supported rebuilding the site for workforce housing. This is a tough issue and she is a huge supporter of providing a community space for kids, but they will never have workforce housing again. She heard several great discussions from this meeting. She felt having a park in this area would revitalize downtown. Having a park or creating a meeting space has real merit. Also, it is appropriate for the Town and the Recreation Department to continue to improve Ross Preschool. In terms of space, she has a soft spot for Pixie, at some point they discussed as Council, whether there could be some partnership. Maybe it is an opportunity to revisit that discussion along with a fundraising plan. It is important to maintain workforce housing. This is not an appropriate space for a toddler playground.

Mayor Hoertkorn noted that economic issues have been discussed. In 2005, they had a workforce house that flooded and it was demolished. There were no comments in that regard and that lot could handle multi-unit housing, which is a much better solution for workforce rather than one small unit on parkland. If the community wants workforce housing then that should be explored through a bond, not through Town money in reserves. They heard from a lot of residents with small children that were in support of a toddler park located in the downtown area. They continue to lose stores and a vibrant park in Ross Common would make a big difference and help revitalize the downtown. Until the house burned down, the house was in miserable shape and not up to code. This is parkland by definition and should be used by the community, not as workforce housing.

The Council discussed and considered two options on the preferred future use of the Town-owned building located at 6 Redwood Drive. The property, which has been used as a rental for

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workforce housing, was severely damaged by fire in 2015, and has been vacant since. After considering several options at the June 2016 Council meeting, the Council directed staff to further explore the option of repairing the house and renting it, and the option of demolishing the house and converting the land to be part of the Ross Common Park.

**Option 1 - Repair the House and Continue Renting:** Repairing and returning the use of the building to a single family residence rental could provide more affordable workforce housing in a very expensive rental market. The rental unit could assist in providing net revenue to the Town of approximately \$10,000 to \$20,000 annually.

**Option 2 - Build a Natural Playground:** Town staff were contacted by members of the community to express their desire in having a natural play area park to be utilized by families with young children. Currently, there are two playgrounds located on the Ross School property adjacent to Ross Commons, but both of these playgrounds are not available for public use during the school day and neither are certified for children under age five. The proposed nature playground would serve children up to about age 10 and be themed based on nature and the redwood trees on-site. The nature-based park would have very different elements of play and interaction than the existing playgrounds and would be available to the public during and after school.

The Council received numerous emails from the community weighing in on these options. After much deliberation, the majority of the Council agreed to Option 1 - Repair the house and continue renting.

Mayor Hoertkorn asked for a motion.

**Council Member Kuhl moved and Mayor Pro Tempore Robbins seconded, to repair the house at 6 Redwood Drive and continue to be used as a rental unit, hopefully for Town employees; and direct staff to prepare a resolution and bring this matter back on the consent calendar at the next Town Council meeting. Motion carried 4-1. Hoertkorn opposed.**

*The Council took a 10-minute recess.*

**16. Town Council consideration of introduction of Ordinance No. 677, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.52 "Nonconforming Structures and Uses" to clarify what constitutes the repair, maintenance, and alteration of a nonconforming structure.**

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council consider introduction and first reading of Ordinance No. 677 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 discussed page 3, F4 and felt that provision seems inconsistent. Planning Manager Scoble noted that for Option 1 it would remain. Staff explained that these are thoughts being presented and it is up to the Council to determine whether or not the finding is necessary. Council Member Brekhus believed it is contradictory and could be troublesome.

Mayor Pro Tempore Robbins asked staff if a dormer could be added, but only if it does not extend the nonconformity. Planning Manager Scoble responded that a dormer could be added within the footprint of the building.

Mayor Hoertkorn opened the public hearing on this item.

Peter Nelson, Circle Drive resident, expressed concern about 86% of the houses in Ross do not conform to the setbacks so the common situation would be for example his home, the setback goes in the middle of the house. He is not sure about these examples because there would be no way there could be any nonconforming changes because essentially they cannot extend the nonconformities. If the addition is proposed within the footprint of the residence and not extending height limitations then a nonconforming permit could be considered. A variance would be needed if the building were outside of the footprint. Up until 2014, all these examples being presented would have required a variance due to the regulations.

Diane Rudden, Ross resident, clarified that this takes effect to those below their percentages or across the board. Planning Manager Scoble noted that it would be affect those property owners that have some type of nonconformity relative to floor area, lot coverage, setbacks and building height.

Chris Skelton, attorney, noted this is an issue that impacts the greater population of Ross. It is not ready for primetime or a decision tonight. He believed it should be studied in more detail. The example that staff presented in regard to working within the framework of the code he found interesting. Several lots have narrower lot widths and because of the large side yard setbacks the building envelope is quiet small on these narrow lots. If they take a conservative view they may be encouraging homeowners to not improve their homes thereby creating dangerous conditions or replace exactly in kind and that may result in a similar or same house being built on the property line. He encouraged consideration of improved policy to try and re-center the house. In realty, it would be an overall improved situation for the neighborhood. He asked the Council to continue the discussion to a later date and provide direction to staff as to how this should be interpreted.

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

Council Member Kuhl agreed they must study this matter in more detail. At the start of 18.52.030 generally speaking there are several negatives that make it incomprehensible.

Council Member Russell asked if they defer discussion could they get the minutes from the Council meeting preceding the change from 2014 that will influence the direction. Town Attorney Greg Stepanicich stated they are trying to get to a point where they can have regulations not based on variances, but based on something reasonable.

Mayor Hoertkorn expressed concern that they absolutely have a lot of nonconforming structures, but there are implications to neighbors with these lots as well. The nonconformity permits make

it much easier and really create problems for neighbors. They need a creative way to make it somewhat easier, but what they have done is put neighbors in a situation.

Council Member Brekhus supports the Council having flexibility. Nonconforming sounds like a "dirty word," but it is not, other communities did a better job zoning properly. She believed most homes in Ross are nonconforming and they need to allow commonsense improvements. They need to be the watchdog and decide whether an added nonconformity is a good idea or a bad idea. She felt tying their hands would lead to unintended consequences. Mayor Pro Tempore Robbins added that the entire conversation started thinking they needed to tighten things up. Council Member Brekhus believed they must look at whether the project benefits the community. Mayor Pro Tempore Robbins stated that the Council must decide, not allow neighbors the ability to dictate what could be built.

Council Member Russell suggested continuing the matter. Town Attorney Stepanicich agreed to take a fresh look and see how this can be revamped, so the first step is to simplify the provisions. Council Member Brekhus agreed that reviewing prior minutes would be beneficial.

Mayor Hoertkorn asked for a motion.

**Council Member Kuhl moved and Council Member Russell seconded, to continue introduction of Ordinance No. 677, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.52 "Nonconforming Structures and Uses" to clarify what constitutes the repair, maintenance, and alteration of a nonconforming structure. Motion carried unanimously.**

17. a. **Town Council consideration of adoption of Urgency Ordinance No. 678, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.42 "Residential Second Units" to address development standards for Second Unit/Accessory Dwelling Unit.**
- b. **Town Council consideration of introduction of Ordinance No. 679, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.42 "Residential Second Units" to address development standards for Second Unit/Accessory Dwelling Unit.**

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council:

1. Adopt Urgency Ordinance No. 678 to adopt an urgency ordinance amending Ross Municipal Code Chapter 18.42 (*Second Units*) updating Ross's regulations to comply with recent amendments to State Law regarding Accessory Dwelling Units.
2. Consider introduction and first reading of Ordinance No. 679 to amend Ross Municipal Code Chapter 18.16 (*Single Family Residence (R-1) District*) and Chapter 18.42 (*Second Units*) to comply with recent amendments to State Law regarding Accessory Dwelling Units.

Planning Manager Scoble noted that under the regulations there is reference to "off street parking" and that should be changed to "on street parking." Also, the urgency ordinance effective date should be January 1<sup>st</sup>, 2017, not effective immediately as referenced.

Mayor Hoertkorn opened the public hearing on this item.

Peter Nelson, Circle Drive resident, expressed concern for the setback issue. The State standard being presented applies to the entire city. They have excessive variances because the zoning code was setup that 85% of the homes in Town do not comply and must come before the Council for a variance. The Town does not comply for requirements for variances. This proposal addresses the letter of the law, but not the intent. Planning Manager Scoble stated that the addition of a second unit or accessory dwelling unit within the footprint of a residence would be permitted as part of their regulations as well. The State law does not allow a second story addition above a residence as part of these regulations, but the proposed code amendments would allow the Council through the exception process to allow for a second story addition above a residence.

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

Mayor Pro Tempore Robbins discussed page 3 of the staff report and felt it would be helpful to add the other sorts of structures found in this Town such as garages, sheds & playhouses, so they cannot be converted and provide the kind of setback protection they have discussed. Council Member Russell hoped there would be an opportunity for further discussion from the public on this matter. He is not comfortable since this is beyond the agenda item.

Mayor Hoertkorn asked for a motion.

**Council Member Kuhl moved and Council Member Brekhus seconded, to waive further reading and adopt Urgency Ordinance No. 678, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.42 "Residential Second Units" to address development standards for Second Unit/Accessory Dwelling Unit as presented with the edits as noted by staff. Motion carried unanimously.**

**Council Member Brekhus moved and Council Member Kuhl seconded, to waive further reading and introduce Ordinance No. 679, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 18.42 "Residential Second Units" to address development standards for Second Unit/Accessory Dwelling Unit. Motion carried unanimously.**

18.
  - a. **Town Council consideration of adoption of Urgency Ordinance No. 680, an Ordinance of the Town of Ross amending Ross Municipal Code Chapters 18.12.223 "Medical Marijuana Dispensary" and 18.40.210 "Medical Marijuana Dispensaries Prohibited" to expressly prohibit the cultivation of non-medical Marijuana, prohibiting commercial non-medical Marijuana activity in all zones in the Town and prohibiting the delivery of non-medical Marijuana and mobile Marijuana dispensaries.**
  - b. **Town Council consideration of introduction of Ordinance No. 681, an Ordinance of the Town of Ross amending Ross Municipal Code Chapters 18.12.223 "Medical Marijuana Dispensary" and 18.40.210 "Medical Marijuana Dispensaries Prohibited" to expressly prohibit the cultivation of non-medical Marijuana, prohibiting commercial non-medical Marijuana activity in all zones in the Town and prohibiting the delivery of non-medical Marijuana and mobile Marijuana dispensaries.**

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Planning Manager Heidi Scoble summarized the staff report and recommended that the Council:

1. Adopt Urgency Ordinance No. 680 to adopt an urgency ordinance amending Ross Municipal Code Sections 18.40.210 (*Medical Marijuana Dispensaries Prohibited*) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivation of marijuana as permitted under State law.
2. Council consider introduction and first reading of Ordinance No. 681 to amend Ross Municipal Code Section 18.40.210 (*Medical Marijuana Dispensaries Prohibited*) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivate of marijuana as permitted under state law.

Mayor Pro Tempore Robbins clarified that the State now allows either indoor or outdoor cultivation up to six plants. Town Attorney Greg Stephanicich responded that it allows cities to decide whether or not to allow outdoor cultivation, so cities can still prohibit. What is proposed prohibits all outdoor cultivation, which is consistent with new State law and indoor is permitted by State law up to six plants.

Mayor Pro Tempore Robbins clarified that if they allow outdoor cultivation there is no limit. Town Attorney Stepanicich noted that it is up to the local jurisdiction to decide.

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

With the passage of the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) by the voters on November 8th, the Council agreed to adopt an Urgency Ordinance to amend Code Section 18.40.210 (*Medical Marijuana Dispensaries Prohibited*) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivation of marijuana as permitted under State law. The Urgency Ordinance will be in place until the regular Ordinance becomes effective January 1, 2017. The proposed ordinance prohibits commercial marijuana activity in all zones, and provides that the Town shall not issue any permit, license, or other entitlement for any activity that requires a State license under the AUMA or the Medical Marijuana Regulation and Safety Act. It also amends the ban on cultivation to provide that indoor cultivation of six or fewer marijuana plants within a single private residence is permitted as authorized by State law.

Mayor Hoertkorn asked for a motion.

**Council Member Kuhl moved and Council Member Brekhuis seconded, to waive further reading and adopt Urgency Ordinance No. 680 to adopt an urgency ordinance amending Ross Municipal Code Sections 18.40.210 (*Medical Marijuana Dispensaries Prohibited*) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivation of marijuana as permitted under State law. Motion carried unanimously.**

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**Council Member Brekhus moved and Council Member Russell seconded, to waive further reading and introduce Ordinance No. 681 to amend Ross Municipal Code Section 18.40.210 (*Medical Marijuana Dispensaries Prohibited*) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivate of marijuana as permitted under state law. Motion carried unanimously.**

**End of Administrative Agenda.**

**19. No Action Items:**

**a. Council correspondence - None**

**b. Future Council items**

- Limit converting garages - setbacks
- Lighting at the Post Office

**20. Adjournment.**

Mayor Hoertkorn moved to adjourn the meeting at 9:39 p.m.

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Kathleen Hoertkorn, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk