

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, JANUARY 11, 2018

1. 6:00 p.m. Commencement.

Mayor Elizabeth Robbins; Mayor Pro Tempore Beach Kuhl; Council Member Elizabeth Brekhus; Council Member Julie McMillan; Council Member Rupert Russell; and Attorney Trisha Ortiz for Town Attorney Greg Stepanicich.

2. Posting of agenda.

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

3. Minutes – December minutes continued to next Council meeting.

4. Demands.

The demands were met.

5. Employee Appreciation Program and presentation of recognition of Town employees Public Works Superintendent Robert Maccario and Sergeant Steve Nelson.

Town Manager Joe Chinn and Police Chief Erik Masterson on behalf of the Town recognized two long-time employees for their years of dedicated service and presented Public Works Superintendent Robert Maccario and Police Sergeant Steve Nelson with a small token of appreciation for their many years of service.

6. Open Time for Public Expression.

Peter Nelson, Circle Drive resident, talked to the Council before about speaking very clear and slow into the microphone. Several do not speak clearly into the microphone, so it is very hard to hear and understand in regard to better reporting.

Tom Gaffney, Laurel Grove resident and Town representative for Marin Emergency Radio Authority, discussed the police and fire departments radio system used during emergencies, which is around 15 years old. The FCC wants them to switch from 300 to 700 megahertz, so the cost to replace the entire system is about \$15m. The plan was to have the system operational by the end of the year, but it's looking more around 2020.

Nancy McCarthy, Wellington Avenue resident, expressed concern for her neighbor violating the Town's tree ordinance. She never received notice and is now facing potential damage from the trenching that took place within the property line. She felt the penalties should be enhanced and wanted the trees in Town protected from such hazards.

7. Mayor's Report

Mayor Robbins reported that the holiday season may be over, but there are still special events that you won't want to miss. Help build the next Neverland at Pixie Park by attending the Ross

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Auxiliary's annual winter dinner, to be held on Saturday February 10. All proceeds go to Pixie Park. The event begins with a cocktail party and auction at the Marin Art and Garden Center, followed by dinner at private residences. For information and questions contact rosswinterdinner@gmail.com. For tickets go to rosswinterdinner.com.

Winter rains require open drains. Now that the rainy season is upon us, please be sure to check the drains in front of your home and on your street. It is the responsibility of the homeowner to keep these drains free of leaves and debris; please check your drains on a regular basis. The Town Public Works Department can help if drains become flooded. Contact them at 415-453-1453 Option 4.

The Town Council holds a strategic workshop each winter and this year's workshop will be held at the Marin Art and Garden Center, Livermore Room, on Thursday, February 15, from 9-4pm. A wide range of topics will be on the agenda, including Town finances, Town goals, and Town policies. The public is welcome to attend this workshop.

The Ross Common is closed until early March to perform annual maintenance and turf restoration for the upcoming Spring and Summer youth sports seasons. Ross Recreation still has openings in a number of adult and youth winter programs, including February Winter Camp, held during the school's winter break, February 19-23. Sign up at www.rossrecreation.org.

8. Council Committee & Liaison Reports – No report.

9. Staff & Community Reports.

a. Town Manager

Town Manager Joe Chinn announced that the pre-school playground expansion at St. John's Church would be completed in the next few days. He reminded all residents to take responsibility for their drain, drainageways, and culverts in and around their properties and keep them clear from debris.

b. Marin Art & Garden Center – No report.

c. Ross Property Owners Association.

John Kieckhefer, RPOA representative, reported that RPOA has been in discussions with the Town's arborist to continue beautification of the lot across the street. RPOA encourages any smaller beautification projects to be brought to the RPOA for their assistance.

10. Consent Agenda.

The following four items will be considered in a single motion, unless removed from the consent agenda: *Item 10b was removed from the Consent Agenda.*

a. Town Council consideration of adoption of Ordinance No. 685, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 6.18 "Smoking Regulations", to address new and existing multi-unit residences, regulating the sale of tobacco products, updating definitions, and prohibiting smoking on active construction sites.

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c. **Town Council consideration of adoption of Ordinance No. 687, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 10.28 "Stopping, Standing, Loading and Parking" adding Section 10.28.080, and Chapter 18.40 "General Regulations" amending Section 18.40.120 to regulate the parking of Recreational Vehicles within the Town of Ross.**

d. **Town Council acceptance of Town of Ross Fiscal Year 2016-2017 Independent Audit Report.**

Mayor Robbins asked for a motion.

Mayor Pro Tempore Kuhl moved and Council Member Brekhus seconded, to adopt the Consent Agenda Items a, c, & d as submitted. Motion carried unanimously.

End of Consent Agenda.

10b. **Town Council consideration of adoption of Ordinance No. 686, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 12.24 "Planting, Alteration, Removal, or Maintenance of Trees", to clarify what constitutes a hazardous condition, and providing additional options for expenditure of in-lieu impact fees by the Town.**

Mayor Robbins opened the public hearing on this item.

Nancy McCarthy, Wellington Avenue resident, reviewed the Town's tree ordinance and the tree protection plan, and felt notification to an adjacent land owner should be required when a trenching permit is being issued. The Town must make sure the trees are not destroyed and the definition of "*alteration*" should be modified. Also, the penalties for such violation should be enhanced.

Council Member Russell asked staff to point out the definitions of "*significant*" or "*protected*" trees. Ms. McCarthy pointed out the areas for the Council's consideration, which are in the old ordinance. Public Works Director Simonitch explained the Wellington case was supposed to be a directional drill process for the sewer lateral and a tree permit is not required, but it changed to an open trench operation without staff being notified of that change, which would trigger a tree permit.

Mayor Pro Tempore Kuhl clarified that the contractor or landowner should have come in when he decided to change the method and applied for a tree protection permit. Public Works Director Simonitch responded in the affirmative. It was reported and a stop work was ordered and an after-the-fact tree permit. Planning Manager Heidi Scoble noted that fines would be applied along with an after-the-fact tree permit. Mayor Pro Tempore Kuhl believed there is no need to change the ordinance in order to address such a situation. Public Works Director Simonitch agreed to keep the ordinance as presented.

Peter Nelson, Circle Drive resident, pointed out that all starts out well and good, but when a tree root is hit it is trenched out and there is a need for change. When a tree root is hit there is no advance instructions that this will trigger a violation in the Town's ordinance. It is not uncommon

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at all to start without a trench and then hit a tree root. There should be a conditional tree permit if a root is hit otherwise trees and roots will be damaged.

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

Mayor Robbins asked for a motion.

Council Member Russell moved and Mayor Pro Tempore Kuhl seconded, to adopt Ordinance No. 686, an Ordinance of the Town of Ross amending Ross Municipal Code Chapter 12.24 "Planting, Alteration, Removal, or Maintenance of Trees", to clarify what constitutes a hazardous condition, and providing additional options for expenditure of in-lieu impact fees by the Town. Motion carried unanimously.

Administrative Agenda.

11. Town Council discussion on Right-of-Way Encroachment Permit Regulations and Enforcement.

Public Works Director Richard Simonitch summarized the staff report and requested that the Council provide policy direction to staff as to whether the right-of-way encroachment regulations should be modified, in addition to policy direction on the enforcement and abatement of unpermitted encroachments.

Council Member Brekhus pointed out that there is a procedure in the civil code in regard to notice to consent to use and it speaks to use by a private party or by members of the public. The argument that it was approved with no such conditions or limitations would be an issue. Public Works Director Simonitch responded that staff must investigate in order to act on such parcel.

Council Member Brekhus stated that the recent amendment of that code section came out in 2013, and during that process it went back and forth to the Public Works committee to discuss, which was a very controversial discussion. One component it contemplated was to pay an annual \$50 improvement permit fee. Town Manager Joe Chinn responded that charging an annual fee never happened and he had no desire to have that happen in regard to paying annually. The adopted fee schedule did not include an annual fee. Council Member Brekhus wished they had the historical minutes on this discussion to understand what the Council was thinking at the time.

Council Member McMillan asked if not indemnified then the Town would be at risk? Planning Manager Heidi Scoble responded that there is a provision in the zoning regulations that has a blanket indemnification for the Town. Mayor Pro Tempore Kuhl added that some cities require landowners to maintain the public right-of-way in front of their property. Planning Manager Scoble responded in the affirmative and indicated that it is included in the Town's municipal code.

Town Attorney Trisha Ortiz discussed liability and the Town generally cannot be held liable for failure to enforce its ordinances. The Town would only be liable in the public right-of-way if a dangerous condition existed that the Town had knowledge of.

Mayor Robbins opened the public hearing on this item.

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Peter Nelson, Circle Drive resident, pointed out that Ross has several private roadways and streets and wanted to clarify that this only pertains to the public right-of-way, not private right-of-way. Also, rather than Marin maps and aerial photography there is a limited number of streets and roads in Ross, so a preliminary list where there are possible violations would be helpful. He explained that the roadway on Circle Drive is 12 ft. wide and does not conform to fire department requirements. Public Works Director Simonitch stated that encroachment permits are only regulated for the streets the Town maintains, not the private roads.

Nancy McCarthy, Wellington Avenue resident, received a complaint about two years ago from the Public Works Department about her boxwood encroaching onto the sidewalk and she had to chop it down, so she cannot understand how someone can have no sidewalk at all and not be required to do what she had to do. This should be enforced throughout the entire Town and should be uniform for everyone otherwise it is unfair and discriminatory.

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.

Council Member Russell pointed out that there is a big difference between a hedge growing over a period of time and where someone has deliberately obstructed the right-of-way.

Council Member Brekhus believed if someone wants to make the right-of-way beautiful it adds to the beauty of the Town and to just take it back when it is not needed, is not good policy. She did not like the idea of going to a resale and saying that vegetation should be removed and torn out as that is punitive. If there is a safety hazard in the right-of-way, then it should be addressed. And there should be an appeal right to Council in this ordinance so it is clear. She thinks this could be amended in some fashion.

Mayor Pro Tempore Kuhl stated that there are encroachments and then there are encroachments and outlining the differences will be difficult. This is a difficult problem to legislate in some meaningful way. He is not satisfied at the moment that we have a good solution, but felt staff should have first crack at it to use their judgment about when something should be prohibited or required to be removed, with the homeowner having the right to appeal to the Council if they don't like the decision. Council Member McMillan agreed with staff having discretion especially if there is a safety component involved. She wanted to know the history on Wellington Avenue in regard to those walls, and if it was a permit issue then it is a completely different can of worms. When there is a resale or another permit or construction, that is a great opportunity to look at the existing right-of-way and encroachments, and if there is a safety issue then staff should have the ability to exercise discretion, or determine if it's just beautification.

Mayor Robbins felt in general the Town should not allow any encroachments if it affects parking, sidewalk or a road. The timing of enforcing existing encroachments is a little bit harder. If this is being enforced then it has to be fair and enforced with everyone. Council Member Russell stated that the policy has been to do nothing whereas the policy should be to enforce. He felt strongly they should all be treated equally. Public Works Director Simonitch indicated he wanted to increase enforcement.

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Council Member Brekhus stated it becomes a tit for tat between the neighbors, she sees that a lot. The Town's focus should be about the terms of the right-of-way, what does the town need and want? What are the pros and benefits here? It's a zoning decision where you're looking at these nebulous concepts and coming to a conclusion. It should be explained to people that they have an appeal right.

Council Member Russell stated that all residents have the right to apply for an encroachment permit and they should be encouraged to do so and then make the decision whether they should be granted or not. Why create a regulation if it is not going to be applied equally? Mayor Robbins agreed that is a key point. There should be reasons for not allowing those encroachments and those encroachments then should not be allowed across the board. It should be fair and the same for everybody.

Mayor Pro Tempore Kuhl suggested that perhaps the ordinance should state that staff shall consider whether it affects pedestrian safety, vehicle safety or parking. Council Member Brekhus indicated if you want to go the route of issuing a permit, the best way to combat it is to record and title it as a revocable permit. There is one she has in a case in Sausalito that she could share that seems to do the job. It is not subject to a review and covers liability to the extent we want to go down that route.

Mayor Robbins inquired what are the types of encroachments where a permit is required. Public Works Director Simonitch replied a good example is a narrow street and a steep slope on one side, and the owner wants to build a bridge to their garage structure or house from the roadway. They need to build a bridge and an abutment in the right-of-way that was a necessary encroachment. Mayor Robbins commented that that is a driveway or access issue and not the same as planting shrubbery, and that would be something we would not want to limit.

Mayor Robbins asked Public Works Director Simonitch if he had enough information to work on this. Public Works Director Simonitch replied in the affirmative and indicated the information received was very helpful.

12. Town Council discussion and consideration of establishing Council Ad Hoc Committee on the Branson School.

Town Manager Joe Chinn asked the Council to discuss and consider establishing a Branson School Ad Hoc Committee. Staff added that a ballot is required to change the enrollment cap.

Council Member Russell explained that there are a series of issues that must be discussed such as whether Branson School should be making contributions to the Town for using their roads. They need some sort of structure and process to negotiate between the Town and Branson School. Mayor Robbins felt Branson School should come before the Council at a Council meeting in order to have a full discussion with all members in order to have transparency. Council Member Russell agreed with that suggestion. Council Member Brekhus wanted to avoid the perception of lack of transparency. She has no objection to Branson School having a meeting, but an Ad Hoc Committee in her view is premature.

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Council Member McMillian believed Branson should be treated like any other applicant. They should not be giving them advisory opinions on concepts. Branson should be figuring out the limitations. The gatekeeper should be staff.

Mayor Pro Tempore Kuhl stated that Branson is important enough to this community that the entire Council should be involved.

Council Member Russell did not want to talk to Branson until the Council has a specific proposal to review.

Mayor Robbins opened the public hearing on this item.

Peter Nelson, Circle Drive resident, believed Branson is a very important institution and presence in the Town. The idea of having an Ad Hoc Committee would serve as a practical interface and would be beneficial.

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

There was no consensus by the Council to form an Ad Hoc Committee.

End of Administrative Agenda.

Mayor Pro Tempore Kuhl recused himself from Item 13 because he is a member of the Lagunitas Country Club.

Public Hearings on Planning Projects.

13. 205 Lagunitas Road, Use Permit Amendment No. 2017-041, and Town Council consideration of adoption of Resolution No. 2035.

Lagunitas Country Club, 205 Lagunitas Road, A.P. Nos. 73-211-40, 73-221-01, R-1:B-A (Single Family Residence, 1-Acre Minimum Lot Size), RC: Limited Specialized Recreational/Cultural. Public hearing for the Town Council to consider an amendment to the January 2017 Use Permit for the Lagunitas Country Club to allow a reduction of amplified music events from nine (9) events to six (6) events and to require a biannual review of the Use Permit in perpetuity, in addition to conducting an annual review per the February 2017 Use Permit amendment.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council approve Resolution No. 2035 approving a use permit amendment to reduce the Lagunitas Country Club's (LLC) indoor amplified music events from nine events to six events and to require a biannual review starting February 2021 after the annual review in February 2019.

Deborah Quick, Attorney for Thomas Weisel, discussed staff's proposed amended condition in regard to Condition 1m by striking the last sentence as follows: *"The Town Council would then determine the appropriate length of review after the second annual review. Furthermore, at any time, the Town Council may revoke and modify the Use Permit for non compliance with the conditions of approval"* and their understanding is that it is a power that exists in the code

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because this is a conditional use permit and wanted the record clear and have staff confirm that is their understanding as well. Planning Manager Scoble responded that the language is redundant and it is very clear in the use permit and zoning regulations.

Ken Petrilla, Lagunitas Country Club, noted agreement with the issue Attorney Quick just addressed and urged the Council to pass this amendment to their use permit. He felt they reached a reasonable compromise that is in everyone's best interest.

Mayor Robbins 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 Robbins asked for a motion.

Council Member Russell moved and Council Member Brekhus seconded, to approve 205 Lagunitas Road, Use Permit Amendment No. 2017-041, and adopt Resolution No. 2035. Motion carried unanimously. (Kuhl abstained)

Mayor Pro Tempore Kuhl resumed his seat on the dais.

End of Public Hearings on Planning Projects.

14. No Action Items:

a. Council correspondence

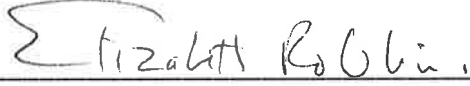
- Council Member Brekhus has been requested to meet with residents to discuss their concerns on flood issues.
- Council Member McMillan has been requested to meet with residents on flood issues.

b. Future Council items

- Branson School
- Disaster plan and notification to residents

15. Adjournment.

Mayor Robbins moved to adjourn the meeting at 8:04 p.m.



Elizabeth Robbins, Mayor

ATTEST:



Linda Lopez, Town Clerk