

**REGULAR MEETING of the ROSS TOWN COUNCIL**  
**THURSDAY, JULY 9, 2020**  
*Held by Teleconference*

**1. 6:00 p.m. Commencement.**

Mayor Julie McMillan, Mayor Pro Tempore Elizabeth Robbins, Council Member Elizabeth Brekhus, Council Member C. William Kircher, Jr., Council Member Beach Kuhl; and Town Attorney Benjamin Stock

**2. Posting of agenda.**

Town Clerk Lopez reported that the agenda was posted according to government requirements.

**3. Minutes - June 18, 2020**

Mayor McMillan requested the following minor correction:

- Page 9, 4<sup>th</sup> paragraph from the bottom, "have the express" and delete the "ed".

There were no public comments.

**Council Member Brekhus moved and Council Member Kuhl seconded, to approve the June 18, 2020 Meeting Minutes, as amended. Motion carried unanimously (5-0).**

**4. Demands.**

The demands were met.

**5. Town Council recognition of Recreation Manager Mike Armstrong upon his retirement. (Chinn)**

Town Manager Chinn announced that Mike Armstrong, Recreation Manager, will be retiring at the end of July and he spoke at length about his background and his outstanding work with the Town in building high quality recreation services.

Recreation Manager Mike Armstrong thanked the Town for the perfect timing of when he started to work in Ross and opportunity to retire and he recognized the talents of Recreation staff.

Gretchen Castets, co-worker, stated all Recreation employees will be sad to see Mike go. She spoke about his impact on many programs and wished him well.

Mayor McMillan and Council Members recognized Mr. Armstrong for his commitment to the Town and to high quality recreation programs and wished him well in his retirement.

**6. Open Time for Public Expression.**

David Peterson spoke about the renaming of Sir Francis Drake Boulevard, did not believe it should be changed and encouraged the Council to consider this.

**7. Mayor's Report**

We continue through the COVID-19 pandemic. County Health Officer Matt Willis has slowed re-openings of several business categories to contain the spread. He implores us to *continue to be vigilant: Wear a mask. Wash your hands. Stay home. Practice social distancing.* Given this, it's gratifying to see so much work being accomplished in our Town by community members, Town Council members, and Town Staff. (Next month I will showcase Town Staff work.)

**Community members:** Last week Roger Dickerson and Gil Fleitas held a successful drill to test emergency radios with RossNet volunteers. Earlier this week, FireSafe Marin, with funding from the new Marin Wildfire Protection Agency (MWPA), sponsored two chipper days for residents. The Ross Property Owners' Association and Advisory Design Review Group continue to work to enhance our Town.

**Town Council:** Councilmember Elizabeth Brekhus finished as President of the Marin County Council of Mayors and Councilmembers (MCCMC). In late June, Councilmember Brekhus and I participated in a session regarding renaming Sir Francis Drake Boulevard with elected officials from the County, Larkspur, San Anselmo and Fairfax. Councilmember Bill Kircher attended the Association of Bay Area Governments General Assembly; he joined Marin Clean Energy, promoting sustainable alternative energy. Councilmember Beach Kuhl has been attending Transportation Authority of Marin and MCCMC Legislative Committee meetings. He and Councilmember Brekhus, both on the Ross Valley Fire Board, are working with the Fire Department on defensible space inspections and preparing for evacuation exercises. Councilmember Elizabeth Robbins serves on the MCCMC Economic Recovery Committee, formed in April, to help Marin towns recover from the COVID-19 economic devastation. I have been participating in MWPA board meetings and MCCMC Climate Action meetings.

Please stay safe, support one another and *be vigilant*. This too shall pass -- but it's going to take much longer than any of us originally anticipated.

**8. Council Committee & Liaison Reports.**

There were no reports

**9. Staff & Community Reports.**

**a. Town Manager**

Town Manager Joe Chinn reported that Chipper Days was held on July 6<sup>th</sup> and 7<sup>th</sup>. He spoke about areas served and stated the program will recur annually and is funded by the new Marin Wildfire JPA. An evacuation exercise will be held on Saturday, July 18<sup>th</sup> which will cover the southern half of Ross and he directed attention to information available on the Town's website under the emergency preparedness info link.

**b. Ross Property Owners Association.**

There was no report.

**10. Consent Agenda.**

Council Member Kuhl referred to Item C and stated he believes the letter should be addressed to the current presiding Judge Andrew Sweet, and Town Clerk Lopez agreed to make the necessary amendment.

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

- a. **Town Council response to Marin County Civil Grand Jury Report released April 28, 2020 entitled "Follow-Up Report on Web Transparency of Agency Compensation Practices".**
- b. **Town Council consideration of adoption of Resolution No. 2173 authorizing application for, and receipt of, Local Government Support Grant Program (LEAP) Funds.**
- c. **Town Council response to Marin County Civil Grand Jury Report released May 11, 2020 entitled "Cyberattacks: A Growing Threat to Marin Government".**

Mayor McMillan asked for a motion.

**Council Member Brekhus moved and Council Member Kuhl seconded, to adopt Consent Agenda Items a, b and c (as amended). Motion carried unanimously (5-0).**

**End of Consent Agenda.**

**Administrative Agenda.**

- 11. Presentation and discussion of the Corte Madera Creek Flood Risk Management Project, Phase 1 by the Marin County Flood Control and Water Conservation District staff and environmental consultants.**

Rich Simonitch, Public Works Director, provided brief background on the project and introduced Liz Lewis from the Marin County Flood Control and Water Conservation District who provided a presentation, and environmental consultant Susan Heim to answer questions of the Council.

Liz Lewis, Water Resources Manager, Marin County Flood Control, introduced environmental consultant Susan Heim of Panorama Environmental, Inc. She then gave a PowerPoint presentation regarding workshops held for the project, opportunities at Frederick Allen Park, review of key comments and feedback, and confirmation of the project schedule.

Susan Heim, Principle Planner, Panorama Environmental, Inc., spoke about deployment of a survey at the end of the workshop and feedback received relating to primary uses, opportunities and ways to use the park, creation of public education and field trips, participation at each workshop, key topics and comments raised, feedback and questions about mitigation measures regarding flooding and the EIR, interest in flood modeling and reduction benefits, polls and survey results from workshops, and future outreach efforts for additional feedback.

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She then reviewed the schedule of work tasks, public noticing and the start of the CEQA scoping process leading to the publication of the Draft EIR expected in February 2021. The FEIR is scheduled to be published in mid-2021 with meetings with the Town and District to make a decision on the project later in 2021. There is \$7 million of funding through the Department of Water Resources with construction to be completed by the end of 2022, and she lastly presented the project website and survey link.

Council Member Kircher asked when is the season for fish migrating and the relationship to the proposed schedule of improvements.

Ms. Lewis responded that adult fish are moving in winter months from December through April and at times can migrate in the spring with late season rains. The fish moving downstream to return back out to the ocean are typically moving out in the spring, as well.

Council Member Kircher asked and confirmed problems with the swift current during upstream migration where fish do not have enough places to rest.

Ms. Lewis indicated that preliminary work shows the current would increase by 60% to 70% in the concrete channel sections and the scoping session and EIR will go into more details about this.

Council Member Kircher asked if there were any other environmental enhancements.

Ms. Lewis explained that because of full sun there is a healthy algae growth over the top of the concrete now and the creek channel will interact with soil and vegetation, thereby filtering, cooling, and providing improvements in water quality and habitat.

Councilmember Kircher asked what the benefit is of the broad area that spreads out next to the tennis courts. Ms. Lewis stated it has some flood mitigation benefit but it also allows for a transition for flow and a natural resting area for the fish.

Council Member Robbins cited the safety issue along the creek during heavy rains, and Ms. Lewis explained how this will be addressed during review of the EIR through signage, physical barriers to keep people away from the pathway during a storm event, or other measures such as potentially touring the San Anselmo's Creek Park to see what is being built there.

Council Member Robbins said a point made earlier was that the sewer line was at risk and that boulders would be placed along the creek line or it would be moved. Ms. Lewis stated this is still being developed in preparation for the EIR and are also working closely with Ross Valley Sanitation District.

Council Member Robbins asked to see more visuals of what the park would look like, noting most of the flood benefit lies in removing the fish ladder. Ms. Heim explained that visual simulations will be prepared that will give a good sense of what it would look like as part of the EIR process.

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Council Member Elizabeth Robbins noted that the cost of the fish ladder is about \$1 million and the rest about \$10 million. Ms. Lewis said she was not exactly sure of the costs but agreed to follow-up.

Council Member Brekhus stated the Council has received emails about doing the fish ladder project and not the rest of the park and asked about obstacles and funding issues with respect to this.

Ms. Lewis stated obstacles include what physical space is needed for the transition as well as State and federal fishery agency requirements that would require permits for removal of the fish ladder. They would have to negotiate with the regulatory agencies for dimensions, mitigation and other requirements to remove the fish ladder. The District would provide funds for removal of the ladder but the permit to do that would need to be negotiated. In looking back to comments received during the EIR when this was an Army Corps project, it was the federal agency that was adamant that they wanted to see a transition there that incorporated the active flood plain component and natural creek bed restoration.

Council Member Kuhl thanked Ms. Lewis and her team and recognized that much of this is still preliminary, and thinks it is a great start. He referred to flooding benefits and asked if the target is to provide 25 year flood protection.

Ms. Lewis confirmed they are looking at a range from the 10 year flood event to a 25 year flow event.

Council Member Kuhl commented that it was proving impractical to try to get 100 year flood protection. Regarding the safety issue, which he disagrees with, the downtown is not pleasing because of concrete and fencing some of which will be removed in this plan. If a storm was producing serious conditions along the creek he doubts people would go near the creek even if there was no fencing. He then asked and confirmed with Mr. Simonitch that Phoenix Lake, other nearby reservoirs and most rivers have no fencing around them.

Council Member Kuhl asked if flooding would still persist at the Sylvan Lane area in a 25 year storm with the project. Ms. Lewis stated they would expect some flooding overbank but recall that the Army Corps was going to build flood walls and was trying to divert water at the Sir Francis Drake Bridge upstream. This was to carry away that additional water from the 100 year storm, but that is no longer a component of this project.

Council Member Kuhl noted that part of the problem is that they cannot enlarge the channel to accommodate all of the water that will come down in a 25 year flood, and Ms. Lewis confirmed.

Council Member Robbins read a correspondence from Jennifer Mota regarding mitigation to her home from raised water levels and asked that the project not negatively affect her home as well as neighbors' homes.

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Ms. Lewis clarified that Ms. Mota is within the scope of the San Anselmo Flood Risk Reduction project and she sent her the appropriate information to explain the process and contact information for that project.

Council Member Brekhus echoed thanks for the work and receptiveness of the team. She asked if there was any way around the restraint to plant trees within 15 feet of the flood walls.

Ms. Heim stated with respect to Frederick Allen Park, the Army Corps stated it depends on where they put the flood wall. It could be the element not next to the creek but rather set back, so this could be what become the flood wall as well as other areas where new opportunities will be to plant trees to shade the pathway.

Mayor McMillan recalled that the Army Corps of Engineers had different plan alternatives such that one could be to remove the fish wall or remove the fish ladder and have the transition and other elements contemplated.

Ms. Heim stated yes; they will be establishing a range of alternatives and going through and analyzing those alternatives and assessing their feasibility. They would have to reject any alternatives which they knew they could not get a permit to do based on their experience with the Corps of Engineers. She asked that the Council indicate what alternatives they specifically would like addressed during the process.

Council Member Robbins suggested using the Town's website to do a poll for community input, and Ms. Lewis stated she can work with Mr. Simonitch to do this.

Mayor McMillan opened the public comment period.

John Crane questioned in an email what the current fish population is above the fish ladder, asked to provide specific counts for trout, steelhead, salmon and identify how many have been observed, and asked to address how the plan will restore and benefit them.

Ms. Lewis said unlike the water district, survey and counts are not being performed of the stream itself, but assessments have been done. She described counts in the 1980's of Coho salmon and said Steelhead is difficult to count. Friends of Corte Madera Creek Watershed have a great website with information about the steelhead, and they will make sure to include that link.

Leslie O'Connell referred to the response regarding 15 feet on either side of the flood wall and stated they still must have a structure protecting the sewer underneath. She did not believe there could be deep-rooted trees on that side and noted there would be less shade for the fish. Neighbors with homes on the left bank will have worse flooding because of the park being proposed, and she asked who will be responsible for this.

Ms. Lewis stated they will be reviewing this as part of the EIR analysis.

Ms. O'Connell also asked how such a tiny area can accommodate the volume of water, and Ms. Lewis replied that modeling will take into account the limited storage.

Samantha Hobart, 78 Sir Francis Drake, said she has protected her home from complexities of the San Anselmo project, expressed concerns over mitigation measures for residents affected by the Corte Madera flood project, stated the District uses guidelines for the first finished floor as a measure to decide which residents would receive mitigation, and she strongly encouraged the Council require the District to use the first finished floor plus one foot, which is what FEMA requires for new projects, as well as the Town's flood ordinance No. 698 which provides the requirement for adding one additional foot above the 100 year base flood elevations for any new construction or substantial improvement.

Connor Kidd, 11 Sir Francis Drake, asked the EIR team to use the Town's email listing for public outreach and felt comments were suppressed at both meetings. He asked to ensure all concerns are heard and answered. He and three neighbors are most impacted from the widening of Frederick Allen Park and asked what level of setbacks will be achieved.

Mayor McMillan said she thinks the previous two meetings were run by the Flood Control District. She assured Mr. Kidd that the Town will do as much as possible to engage the public and ensure all commenters are recognized.

Council Member Kuhl mentioned that a large part of backyards of homeowners on the left side of the creek are owned by the Town or County and this complicates the process as far as what will be done for them.

Doug Ryan, 74 Sir Francis Drake Blvd., asked who makes the decision on the project moving forward or not, asked if any residents found to be affected would be on their own to address flooding, and asked when residents will know whether or not a very limited project could be proposed.

Ms. Lewis stated the District Board would be certifying the EIR and they would have to obtain the Town's authorization to move forward with any element that includes Frederick Allen Park and its lands. Any project impacts on any homes would be reviewed during the EIR process and mitigation measures will be included as needed. Lastly, they could bring a smaller project to the regulatory agencies but thus far their feedback has been that they are looking for more.

John Crane wrote an email and asked why Ms. Lewis did not answer the question regarding following FEMA guidelines and the Town's ordinance No. 698.

Ms. Lewis noted that the FEMA regulations are through the Town's flood plain ordinance. Mr. Simonitch explained that the Town revised its ordinance late last year and any new construction or substantial improvements to existing structures trigger the requirement for the lowest finished floor to be built one foot above the 100 year flood plain.

Mayor McMillan returned discussion to the Council.

Council Member Robbins thanked Ms. Lewis and Ms. Heim for their presentation and thoughtfulness in moving forward.

Mayor McMillan echoed thanks and verified with Ms. Lewis that next steps include a scoping meeting. Ms. Lewis agreed to follow up with staff on its logistics and public notification.

**12. Town Council consideration of adoption of Resolution No. 2169 establishing a Town policy on the operation of Generators.**

Patrick Streeter, Planning and Building Director, gave the staff report and overview of consideration by the Council to adopt a resolution establishing a Town policy on the operation of generators.

Council Member Brekhus referred to restricted hours for commercial versus non-commercial generators, and she asked for feedback from staff in terms of noise.

Mr. Streeter stated he believes while the non-commercial inverter for homes are more expensive, generates much less noise impacts and can keep some appliances running. The louder commercial generators could be limited to daylight hours.

Council Member Brekhus asked how often the gasoline must be replaced for a home generator, and voiced concerns with setbacks relating to noise as well as the smell of gas at night.

Mr. Streeter stated the draft policy recommends it be outside of the setbacks, with a switch. and in a location for the least impact to neighbors where there is already outside mechanical equipment.

Council Member Brekhus asked where people with little or no setback would locate generators.

Mr. Streeter stated people will place them where it makes the most sense but they are encouraged to incur the most minimal impact to neighbors. He recommended including stricter language in the policy and cited the potential for enforcement issues.

Mr. Simonitch referred to gasoline consumption for an inverter and said they use about two gallons to power lights so residents would have to fill it every day. However, an air conditioner will draw a lot and the inverter is only intended for small appliances.

Mr. Streeter referred to the quiet generators versus commercial and commented that the quiet generators are more fuel-efficient and have smaller tanks.

Council Member Brekhus spoke of the generator's role of saving food from spoiling and also the use of a stove top. Mr. Streeter stated the refrigerator will use around 2,000 watts and lights would require a 2,500 to 4,000 inverter so an upgrade would be needed when also using a stove top, microwave and other appliances. To fully power a house a fixed installed generator would be needed.

Mayor McMillan opened the public comment period, and there were no speakers. She returned discussion to the Council.

Council Member Kuhl said he thinks the Town is creating a problem that does not exist. He questioned if police would be able to enforce noise complaints and thinks this should just apply during a PSPS event as well as for other disasters such as an earthquake or storms. Thirdly, he thinks it is a mistake to limit hours. He has a heart monitor that he would like to be able to run 24 hours a day and not stop overnight.

Council Member Brekhus stated she originally wanted to discuss this because she did not want people to purchase generators and then incur problems and complaints after their significant purchase. She thinks commercial generators would pose an issue for someone with very close setbacks, did not like the limitation of the inverters.

Council Member Robbins voiced support for Option A, or the option that puts no time limits on generators given emergency situations.

Council Member Kircher stated he has an inverter and tried to use it during the last power outage and ended up using coolers with ice. People will not be able to get up throughout the night and fuel them and except those with medical needs, most people will not spend a lot of money for a larger permanent generator. Therefore, he is leaning towards Option A and recommended including earthquakes and other emergencies that affect power.

Mayor McMillan stated she was originally of the opinion that the Council should allow smaller inverters to operate 24/7. However, based upon comments, smaller generators will not work for homeowners and thought there should be no restrictions.

Council Member Brekhus voiced concerns about noise complaints and Mayor McMillan thought hopefully there will be fewer and shorter PSPS events than in the past.

Mayor McMillan asked for a motion.

**Council Member Robbins moved and Council Member Brekhus seconded, to adopt Resolution No. 2169 establishing a Town policy on the operation of Generators with Option A as their policy. Motion carried 4-1-(Kuhl opposed).**

**13. Town Council consideration of adoption of Resolution No. 2170 regarding a temporary prohibition of dogs upon the Ross Common to facilitate social distancing.**

Town Manager Chinn gave an overview of consideration to adopt a resolution regarding temporary prohibition of dogs upon the Ross Commons to facilitate social distancing.

Council Member Robbins asked and confirmed with Mr. Chinn that staff could look at adding something to provide shade across the street for those using the area.

Mayor McMillan stated most owners pick up dog waste and asked how often waste is found on the Common.

Recreation Manager Mike Armstrong stated staff deals with dog waste multiple times a week if not daily with recreation programs. He cited people not paying attention, spoke about the work involved with closing the park for events, recreation programs which utilize the area and said people sometimes leave dog waste bags on the landing or the stairs and do not throw them in the trash.

Council Member Brekhus stated there were comments made last month when the camps were not out there due to COVID as to non-use of the Commons and suggested requiring leashes around the sidewalks. The Town Manager had replied that people can use the outer perimeter and Post Office and she asked if the signage clearly indicates that they were still allowing it in certain areas.

Mr. Chinn stated he was not sure signage is clear and agreed there is daily dog waste. Now that classes are actively held it is not sanitary and staff spends a lot of time monitoring this. The school is also talking about using the shade area and he said dogs simply go when they need to and it becomes unenforceable by police. He thought the Post Office seems like an alternative to the Common.

Mayor McMillan announced that the Council has received significant correspondence on this issue and Council Members have read all correspondence received up until 5 p.m. today and she opened the public comment period.

Craig McCarty spoke about the grove area underneath the trees which has historically been a dog park, spoke about taxpayers dollars spent, and suggested establishing a sharing of time for use. He noted the area across from the Post Office has no shade, no seating and is inadequate and unsafe for dogs.

Leah Knight said she is at the Commons twice a day and does not see any dog waste there and kids and dogs have always co-existed there. Many Ross Rec programs do not use the dog area and she suggested sharing it versus not allowing its use. Also, picnickers using the Commons leave a lot of trash, do not social distance, and thinks dogs and their owners are responsible.

Robin Luhnig, 24 Allen Avenue, said she sent an email after seeing new, unattributed signage prohibiting on-leash dogs 24/7 inside the Ross Common and was told police would enforce this new measure. She saw no reason to change off-leash dog restrictions when Ross School does not have outdoor classrooms in place, thinks the new limitation of not allowing dogs on leash on paths at the Commons is completely nonsensical and asked the Council to engage the community to find solutions.

Mayor McMillan returned discussion to the Council.

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Council Member Robbins spoke about social distancing safely through outdoors, voiced support of staff's recommendation given there is a need for that space and cited sanitation issues with sharing the space.

Council Member Brekhus said the Council had discussed this in the past. Public comments are helpful and she supported dogs on leashes and dogs allowed before 9 a.m. and after 4 p.m. given Ross Rec programs are not present, some flexibility in winter months, and asked that the Council consider looking at other areas such as the field by the Post Office and the unused space across from the Town Hall.

Council Member Kuhl stated he thinks people should recognize we are in an emergency and it is important for Ross Rec to provide services for children and to do that they need more space. He also thinks there is a case to be made for limiting the hours the resolution would apply for prohibition during the pandemic such that the hours from 9 a.m. to 5 p.m. should be protected for use of Ross Rec and the school. He also suggested limiting the tossing of balls with dogs.

Council Member Kircher said he was not opposed to adjusting the resolution and providing some amount of dog access, but would be deferential to the school and to Ross Rec. He agrees with the fact this is an emergency and it was always intended to be temporary so long as children must be outside and socially distancing more than they might otherwise be.

Mayor McMillan asked Mr. Chinn to provide feedback on whether by closing the park from 9-5 would be sufficient to allow Ross Rec and Ross School to utilize the area.

Mr. Armstrong stated their camp programs have participants out by 1:30 p.m. and the camps last for 3 weeks for 4 hours a day. The problems they face are not with the 'regulars' who come to the parks but others who bring dogs to the park who are not behaving. The only other room they can use is the gym and they strictly follow the County Health's rules.

Mr. Chinn said the Ross School is looking to be there on a daily basis when they return and whether they will be doing the sweeps or not would be a question for them.

Mr. Armstrong noted in the afternoons they are seeing many families of young toddlers utilizing the area and laying down blankets and picnicking so it is getting more use as a result of parents wanting to get out of the house with their kids.

Council Member Brekhus suggested being flexible on the hours and voiced support for a modification of the resolution to look at the hours needed for Ross School and Ross Rec and also allow people with dogs on leash around the Commons for shared usage.

Council Member Robbins said she was persuaded by staff's concerns that it is not ideal due to sanitation issues and that there is the space across the street for now during COVID which will be temporary. She recommended following staff's recommendations, making other spaces function, and said hopefully COVID will end soon.

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Council Member Kuhl suggested the Director of Emergency Services simply modify their order and re-issue it.

Mayor McMillan said she feels conflicted and would like to make everyone happy and said she would be in favor of trying limited hours on a temporary basis for one month to see how it works and then staff can revisit the matter and determine if a ban is necessary. She cited the need to be flexible during the pandemic to accommodate Ross Rec and Ross School. She has empathy for residents who want to get outside with their dogs and socialize but on the other hand thinks the area across the street is probably okay and possibly they could serve as a compromise.

MOTION: Council Member Robbins moved to approve staff's recommendation and that the Council could revisit the matter in the near future if it does not work out. The motion died for lack of a second.

MOTION: Council Member Brekhus moved to adopt Resolution No. 2170 regarding a temporary prohibition of dogs upon the Ross Common to facilitate social distancing, as amended, by allowing some usage after Ross School and Ross Rec hours and also allow dogs on leashes on the cement portion of the park.

Council Member Robbins questioned who uses the area on the weekends, and Council Member Brekhus stated no one uses it but Ross Rec runs soccer programs in traditionally what are non-dog areas. She did not think they would run soccer through the trees and shaded area.

Council Member Kuhl suggested the Council first address Council Member Brekhus' motion.

Due to a lack of a second, the motion died.

MOTION: Council Member Kuhl moved to direct the Director of Emergency Services to amend the emergency order to permit dogs to use the area except between 9 a.m. and 5 p.m. and that the Council revisit this at any time.

Council Member Brekhus said this authority has been delegated to the Town Manager under a previous resolution.

Mr. Chinn clarified it is the Mayor and Town Manager. He clarified that if the Director issues an order it would return to the Council at the next meeting for ratification similar to tonight.

Council Member Kircher stated the emergency ordinance will expire by its own terms at this meeting and he asked what will be done moving forward.

Town Attorney Ben Stock explained that if the Council does not adopt the proposed resolution the emergency order expires and they would revert to the existing Municipal Code that allows dogs in that location.

MOTION/SECOND: Council Member Brekhus moved and Council Member Kuhl seconded, to adopt Resolution No. 2170 regarding a temporary prohibition of dogs upon the Ross Common to facilitate social distancing, as amended, allowing usage between 9 a.m. to 4 p.m., Monday through Friday, no restrictions on the weekend and with dogs on leash allowed on the outside loop of the cement portion of the Commons.

Council discussion ensued and Mr. Simonitch displayed a map showing the area proposed for dog use as the sidewalk pass, the outer loop and within the hedge, and limits would need to be defined; that dog walking should be restricted across the middle of this area with classes going on, and Council Members discussed not allowing dogs between 9 a.m. and 4 p.m. due to classes.

Council Member Robbins proposed a friendly amendment to the motion; that from 9 a.m. to 4 p.m. dogs be allowed only on the perimeter pathway all around the Common but not on the pathway that bisects the grove area.

Council Member Brekhus and Council Member Kuhl accepted this friendly amendment to the motion.

**Council Member Brekhus moved and Council Member Kuhl seconded, to close the public hearing and adopt Resolution No. 2170 regarding a temporary prohibition of dogs upon the Ross Common to facilitate social distancing, as amended, allowing usage between 9 a.m. to 4 p.m., Monday through Friday, with no restrictions on the weekend and with dogs on leash allowed on the outside perimeter pathway all around the Common but not on the pathway that bisects the grove area. Motion carried unanimously (5-0).**

#### **BREAK**

Mayor McMillan called for a brief recess at 8:50 p.m., and thereafter resumed the meeting at 9:05 p.m.

Mr. Chinn referred to the previous action taken and commented that when school is in session, staggering the time would be ideal from 7:30 a.m. to 4:00 p.m. versus 9:00 a.m.

Town Attorney Stock asked if Council Member Brekhus was willing to reconsider and make a new motion, with a second needed by Council Member Kuhl.

Council Member Brekhus noted that the Council must re-open the public comment period, and recognized all commenters were not on the Zoom meeting and recommended bringing back the item.

Council Member discussion ensued regarding adjusting hours to accommodate the school session, whether the Council can deliberate without violating the Brown Act to reconsider the motion and to return the item on the Consent Calendar to the August 13<sup>th</sup> meeting after finding out hours from the school.

Council Member Brekhus commented that many people and their children walk their dogs to school. She suggested posting a notice after the meeting that the Council will reconsider the matter and feedback can be received as to allowing dogs at the time when school starts and ending it at 4:00 p.m.

Council Member discussion ensued and the Council confirmed with Mr. Simonitch that August 20<sup>th</sup> is the first day of school, that noticing could be done to reconsider the matter, and Council Members agreed to continue to matter and limit the discussion to the start time based upon the Ross School calendar for the August 13<sup>th</sup> Council meeting.

**Council Member Kuhl moved and Mayor McMillan seconded, to reconsider the previous motion and return the matter to the August 13, 2020 Council meeting to reconsider the start time for the period of time when school is in session. Motion carried unanimously (5-0).**

**14. Town Manager update and Council discussion on Town activities in response to COVID-19.**

Town Manager Chinn reported on the spike of COVID cases throughout the county, state and nation, spoke about the halt on indoor dining and statistics of cases in Marin and at San Quentin. He also reported that the State passed another round of CARE Act funding and the Town applied and are eligible as it relates to costs incurred from the COVID-19 emergency.

Council Member Kuhl asked if the Town has any significant costs. Mr. Chinn stated the biggest impact on their budget has been the loss of revenues, and from purchasing additional cleaning products and staff time addressing the COVID needs.

**End of Administrative Agenda.**

**Public Hearings on Planning Projects.**

**15. 5 Madera Avenue, Nonconformity Permit and Town Council consideration of adoption of Resolution No. 2172.**

Ann & Chuck Stevens, 5 Madera Avenue, A.P. No. 072-072-31, R-1:B-20, L (Low Density), X (Minimal risk area outside the 1% and 0.2%-annual-chance floodplains).

**Project Summary:** The applicant is requesting approval to construct a new shade structure over an existing house deck within the existing deck footprint. The proposed new open wood-frame deck cover would include a partial roof of wood louvers and three side panels of adjustable roll-down screens. A Nonconformity Permit is required to allow for the improvement of an existing deck which is nonconforming with respect the minimum required yard setbacks.

**Recusal:**

Mayor McMillan recused herself from participating in Item 15 due to the proximity of her residence within 500 feet of the applicant's property and left the teleconference meeting.

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Matthew Weintraub, Planner, gave the staff report and overview of the project request and recommended approval.

Council Member Robbins asked for questions of Councilmembers and there were none, and she called upon the applicant.

Stacey Ford, Architect, stated she was available to answer questions.

Council Member Robbins confirmed there were no questions of the applicant and returned discussion to the Council.

Council Member Brekhus commented that this is another item which is perfectly acceptable and one she would like staff's authorization to approve with noticing provided to neighbors.

Council Member Kuhl commented there had been a lighting request with the application; however, it was ultimately withdrawn.

Council Member Brekhus stated this is a fair point and she suggested certain items be identified for review by the Council.

**Council Member Brekhus moved and Council Member Kircher seconded, to adopt Resolution No. 2172 approving 5 Madera Avenue Nonconformity Permit. Motion carried (4-0-1-McMillan recused).**

Mayor McMillan returned to the teleconference meeting.

**16. 70 Ivy Drive, Design Review, Nonconformity Permit and Variance, and Town Council consideration of adoption of Resolution No. 2171.**

Charlotte & Doug Sweeny, 70 Ivy Drive, A.P. No. 073-143-23, R-1:B-10, ML (Medium Low Density), X (Minimal risk area outside the 1% and 0.2%-annual-chance floodplains).

**Project Summary:** The applicant is requesting approval to construct a new pool and spa located within the minimum required front yard setback of an existing single family residence. The proposed project also includes a new 7-foot tall fence along Ivy Drive; new and reconfigured patios, walkways, stairs, and decking located within minimum required yard setbacks; new low fences and retaining walls; driveway and hardscape replacement; and new landscape plantings. A Variance is requested to allow for the proposed new pool, patio, and walkways greater than 4 feet in width, and 7-foot tall fence to be located within the area between the setback line and the street line. A Nonconformity Permit is requested to allow for the construction of a new return to an existing deck which is nonconforming with respect to the minimum required rear yard setback. Design Review is requested to allow for fences greater than 48 inches in height adjacent to the street, and a project resulting in over 1,000 square feet of new impervious landscape surface.

Matthew Weintraub, Planner, gave the staff report and PowerPoint presentation for the item.

Council Member Brekhus asked if staff recommends approval with Condition 11.

Mr. Weintraub stated yes; Condition 11 would have an engineer provide a report on the numerical calculations and the Town Engineer would review the analysis.

Council Member Kuhl referred to the turf areas and asked if these were permeable or impermeable.

Mr. Weintraub stated the turf areas were no longer proposed to be turf as the applicant has switched them to be plantings and natural grass.

Council Member Kuhl pointed to areas to the right of the pool and confirmed this is a stone patio which accounts for some of the square footage increase. He also clarified the turf adjacent to the patio was no longer turf.

Mayor McMillan referred to the ADR meeting and based upon the minutes it was her impression that two of the ADR members strongly recommended the applicant further move the pool to the east, and the Chair summarized and agreed with those two members. There was also a recommendation to move the spa to the other side further to the east. The applicant chose not to do either one of these things and she asked why.

Mr. Weintraub deferred this question to the applicant, stating that the ADR members did indicate their preference for moving the pool further east and for switching the pool/spa configuration so the spa was further east and away from the western property line. In analyzing and reviewing the ADR's comments, while varied, staff isolated comments that relate to the design standards and criteria in the code and this is what staff has presented this evening.

Council Member Kuhl referred to the screening with 102 Ivy and asked and confirmed that the elevation of 70 and 102 Ivy Drive were relatively the same and Mr. Weintraub presented a Google Map view.

Mayor McMillan opened the public hearing and called upon the applicant.

Charlotte Sweeny, Applicant, gave a presentation on the proposal and summarized that the ADR had two specific recommendations: 1) to move the spa farther from the setback; and 2) to consider flipping the location of the spa to the opposite end of the pool, which she described in detail.

She then spoke of the outreach conducted via email and delivery of plans to all neighbors and stated they have made three rounds of revisions to make accommodations to Mr. Ching who attended the ADR meeting. She described Ross's history of pool approvals, some of which have smaller setbacks and lastly spoke of stormwater management and how they positively address additional impervious areas with their bio-retention basin. She said Architect Brad Eigsti could

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answer further questions and Attorney Sloan Bailey was also on the call and could address the Council, as needed.

Brad Eigsti, Architect, stated he was available for questions and commented that the PowerPoint presentation was quite thorough and they have made significant effort to accommodate the neighbor.

Council Member Kircher stated he watched second ADR meeting video and a couple of the members were quite concerned about the privacy aspects of this. They could support the project if it was moved further to the right and/or flipping the spa to the other end which has not been done. He asked what the issue is with moving the spa down closer to the deck in front of the house as opposed to where it is now.

Mr. Eigsti explained that the front door is immediately across from the pool so it would be awkward to have a spa by the front door where anyone visiting would intrude on privacy as well as having a pool in the front yard which is also very awkward. They were trying to create a sense of entry and privacy with the planter between the entry gate and the front door so they are not staring into the pool. He noted this is also the only location the pool can fit on the site.

He also stated the patio space from the door out of the master bedroom to the pool patio would be 3 steps up so getting into a spa would be very difficult and awkward from there. He reiterated that they moved the spa an additional 10 feet from the west property line which is a much more desirable location.

Council Member Kircher asked and confirmed with Mr. Eigsti they are leaving the fence between the two properties and are not planning on replacing it and cited the Town's policy against solid walls or fencing and asked if this was a possible solution for privacy issues.

Mr. Eigsti stated this is an existing wood fence. If replaced with a solid wall to deaden more sound is inconsistent with the Town's policy as well as a financial consideration. He said it also might damage existing trees and shrubs there, but was amenable to talking with the neighbor to share in costs.

Ms. Sweeny added that the ADR were satisfied with that part of the revision they made in the last round where they increased screening and depth of plants along the side fence.

Council Member Kuhl asked and confirmed that the fence between the properties is solid.

Mayor McMillan opened the public comment period.

Ward Ching, neighbor, voiced opposition to the project specifically building a pool and spa within the required minimum setback. He described opposition expressed at the ADR meetings of June 4 and June 16, 2020 as a loss of privacy and quiet to their property. He encouraged the Council to watch the videos of the meetings to get a true sense of what the ADR expressed and said the minutes and staff report might not provide a complete picture of what was recommended.

He then provided background on the applicant's home when sold in 2017 with unapproved plans for a pool and spa, commented on tree removal in 2018, voiced concerns with new trees planted which would shade his orchard and garden. He stated if a pool and spa were to be built, the noise in the area would increase dramatically and believes the current project does not respect the advice given by the ADR at both meetings when members advised that the pool be moved another 5 to 8 feet to the east and the spa moved to the east side of the property.

*Rebuttal – Applicant*

Ms. Sweeny, Applicant, stated she appreciates comments from Mr. Ching but think they have tried their best to move the pool entirely out of the side setback and make changes to the project.

Mayor McMillan returned discussion to the Council. There are two main issues: 1) location of the pool and spa in light of the ADR hearings; and 2) the impervious surfaces. She asked that the Council focus their discussion first on the pool and spa, and then go to impervious surfaces.

She said it seems three members of the ADR requested further movement of the pool to the east of 5 to 10 feet. She recognized the patio close to the front yard but also recognizes pools as noisy and she would support moving the pool further to the east.

Council Member Robbins said she attended the second ADR meeting and left with the sense that there were suggestions but it was not an absolute requirement. She did not think moving it 5 to 10 feet would be any less noisy and recognized they flipped the spa around and cited difficulty with the amount of room on the site. She therefore voiced support of the current plan.

Council Member Kuhl recalled if the pool were moved 5 feet further away, the entire pool would be right in front of the house entry and agreed with comments made by the applicant. As to noise, almost everyone has pools in the neighborhood. While concerned about noise and privacy, on balance in this case he recommended and supported the plan proposed by the applicant.

Council Member Brekhus stated this is a difficult project and commented on the precedent set by other pool applications. She was not sure if moving the spa 3 or 5 feet would be of any benefit. She also sensed that the ADR was split and it was not a firm recommendation. Pools are not used year-round, but hot tubs can be. Therefore, if there was further compromise a fountain structure might be located between the pool and the neighbor but she was also open to Council Member comments.

Council Member Kircher noted how conflicted the ADR was in the second hearing. They were hoping for some way to move this further to the right. He visited the property last week and thinks not discussed was whether it was feasible or whether it would interfere with another plan. He sees the problem with the spa being at a different level and was conflicted as well.

Council Member Brekhus asked to hear from the applicant or their landscape architect about shifting the spa in front of the small bench and then also whether another fountain structure could be placed between somewhere in the side yard.

Council Member Robbins reiterated that she did not think 5 feet would make any difference.

Ms. Sweeny said when the ADR asked them to move the pool, they moved it. They were then satisfied and then they talked about moving the spa which they did 6 feet over. They asked them to consider moving the spa to the front door, but because of the elevation of the pool it does not make sense from a design standpoint. She noted that the real noise is from pool equipment which is way on the other side of the house.

Mr. Eigsti reiterated there is a fountain next to the master bedroom and at the end of the stairs. The goal was to create white noise and more of a privacy effect between the properties. The setback is 15 feet and they are 23 feet from the property line so they do not understand why it is such an issue. He also noted that Mr. Ching has a patio right along the fence line, so he questioned why he is allowed to not conform to the setback yet they are required to meet and exceed it by 8 feet and then are asked to do more.

Mayor McMillan voiced support for keeping pool where it is with the spa shifted as shown on the diagram. She thinks there is a majority of Council Members who support keeping the pool where it is. Regarding impervious surface issue, she has issues approving a project that will be 36% impervious surface despite the proposed retention basin.

Mr. Eigsti clarified that it was mentioned the patios were impervious and they are meant to be pervious, set on sand with an appropriate sub-base, so he believes there is confusion about this.

Mayor McMillan asked and confirmed with Mr. Weintraub that the percentage in the staff report is correct. The Town Engineer reviewed the plans and indicated there was not enough detail to determine that the stone patios would be considered pervious.

Mr. Eigsti stated the stone patio is meant to be pervious, and Council Member Brekhus asked how it is pervious.

Mr. Eigsti explained it is drawn as a running bond pattern which can be set on a sand base. They would butt-joint the stones and the subgrade would be prepared by a civil engineer to meet all of the permeability requirements. He agreed to a condition of approval that all patios will be permeable.

Council Member Brekhus asked for additional description about permeable pavers and Mr. Eigsti stated the stone patio is approximately 250 square feet and suggested making a condition of approval that it will meet all permeability requirements.

Mayor McMillan asked and confirmed with Mr. Eigsti that he was referring to the stone patio by the chaise lounges by the pool.

Council Member Kuhl cited Mr. Eigsti's comments as making sense and in good faith, but thinks the Town wants to see people reduce permeable surfaces in projects as well as impacts from

runoff. On the other hand, the bio-retention basin would easily address any added runoff. Therefore, he was inclined to approve the project by the fact it is not increasing its runoff.

Council Member Robbins agreed with Council Member Kuhl's comments and could support the project.

Council Member Kircher stated he believes the recommendation includes further mitigation for the runoff and he asked if this would still be in place if approved.

Town Attorney Stock stated the current recommendation would be to amend the resolution to add the condition staff presented tonight as well as adding a condition that the applicant has agreed to which is that all patios be permeable.

Council Member Brekhus voiced support of the project with conditions, and suggested staff educate the Council on bio-retention basins and their benefits in the future.

Mayor McMillan asked for a motion.

**Council Member Brekhus moved and Council Member Robbins seconded, to adopt Resolution No. 2171, approving 71 Ivy Drive 43 Nonconformity Permit and Variance, as amended to include Condition 11 with respect to the stone patio be permeable. Motion carried unanimously (5-0).**

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

**17. No Action Items:**

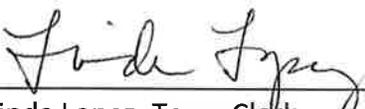
- a. Council correspondence:** None
- b. Future Council items**
  - Reconsideration of the dog park issue with Ross School hours.
  - Mayor McMillan requested the Council consider restricting the use of artificial turf in the future. Council Member Brekhus voiced her support.

**18. Adjournment.**

Mayor McMillan adjourned the meeting at 10:34 p.m.

  
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Julie McMillan, Mayor

**ATTEST:**

  
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Linda Lopez, Town Clerk