

DRAFT REGULAR MEETING of the ROSS TOWN COUNCIL

THURSDAY, JULY 11, 2024

Held In-Person and Teleconference via Zoom

1. 6:00 p.m. Commencement.

Mayor Bill Kircher, Jr.; Mayor Pro Tem Julie McMillan; Council Members Teri Dowling; Elizabeth Robbins; Town Manager Christa Johnson; Acting Town Attorney Mary Wagner. Absent: Council Member Mathew Salter.

2. Posting of agenda/changes to agenda.

Town Manager Johnson reported that the agenda was posted according to government requirements, and there are no changes to the agenda.

3. Open Time for Public Expression.

None.

4. Mayor's Report.

Last week Ross celebrated the Fourth of July with its annual parade and picnic on the Common on a warm day under clear and sunny skies. The parade has been described as a one-of-a-kind event, and it has also been said that Ross may have the largest Independence Day celebration in the country on a per capita basis. Be that as it may, there certainly was no shortage of enthusiasm. The parade included the Ross Police Department and Ross Valley Fire, Council Members, floats of all shapes and sizes, vintage cars, Uncle Sam, and lots of other participants from Ross and surrounding areas. After a triumphant finish at the Ross common, we were treated to an afternoon of games and entertainment, including the much anticipated Second Annual Patriotic Pooch dog contest, as we enjoyed a picnic under the trees on the Common. Entertainment included our own Shady Ladies chorus, the Top Shelf Classics band, and the Marin Golden Gate Barbershop Quartet. I'm sure I speak for the entire Council in thanking all the participants, our Public Works Department, and especially the Ross Recreation Department for its months-long effort in planning and organizing the parade and celebration.

In addition to our parade and celebration, July also marks the beginning of our new fiscal year, which runs from July 1 of 2024 through June 30 of 2025. Thanks to sound and prudent fiscal management, Ross begins the year on a solid footing. We have sufficient resources to fund our operations and continue local infrastructure projects.

The one major issue still to be addressed at some future point in time, however, is funding for replacement of our aging public safety and administration buildings. We are presently awaiting a commitment from the Ross Valley Paramedic Authority to continue to station paramedics in our new buildings before we proceed to the next step, which is detailed architectural and other planning. Although we have already set aside a considerable sum to pay for the project, we will need to finance the balance of the project cost, and this will in turn require voter approval.

In the meantime, I hope you all have a safe and enjoyable summer and be sure to save the date for our next Town events, Live on the Common on September 6, and the annual Town Dinner on the Common September 27.

5. Council Committee & Liaison Reports.

Mayor Pro Tem McMillan reported she and Mayor Kircher attended the MWPA meeting with the ecologically sound practices group where Dr. Daniel Swain spoke about climate change and its influence on fires in the western U.S., particularly in California. His message was pretty grim. He used a term, aridification, which means everything is getting dryer and hotter.

Today, they held the MWPA Executive Committee meeting where the Executive Officer said the anticipated fire forecast for late summer and fall is bad because they had so much rain so there is a lot more fuel than normal. They have also had so much early heat drying out the fuel. So, everyone needs to be vigilant in preparing. One other thing to note is that nights are not getting as cool as they used to.

Mayor Pro Tem McMillan also reported that the Baywood Canyon project, which both RVFD and the Town of Ross have supported, is complete and looks great.

Council Member Dowling reported attending a TAM meeting on June 27 and a presentation was given by the Bay Area Toll Authority on a pilot for a breakdown/emergency lane on the Richmond-San Rafael Bridge by removing the bike lane on the East to West portion of the bridge Monday through Thursday (the heaviest commute days). A bike van will be available to transport bikes and their riders across the bridge Monday through Thursday.

Further analysis is in the works to explore utilizing this third lane (Monday through Thursday) for a carpool and transit lane. To accommodate this third lane for carpooling and transit, improvement will be required on the Marin side, especially the exit to Sir Francis Drake Blvd.

Mayor Kircher reported that he and Council Member Dowling attended the Badge Pinning ceremony at Station 19 in San Anselmo for the new Fire Chief Dan Mahoney, new Battalion Commander Jake Peterson who got his start in Ross, and Amanda Stettler. It was well-attended and followed with a celebration.

6. Staff & Community Reports.

a. Town Manager

Town Manager Johnson gave the following report:

I, too, would like to thank the Town Council, Town staff, and the community for the super festive Fourth of July event. A lot of effort goes into it and I think it pays off spectacularly.

The pedestrian pathway along Shady Lane is closed starting today through Monday between Ames Avenue and Southwood Avenue for repaving. The project is part two of the Town's 3-year phased rehabilitation of the pathway to comply with accessibility standards. The final phase between Southwood and Fernhill is expected to be completed in the Summer of 2025. The pathway will be reopened for use by the end of the day on Monday.

And finally, I'd like to thank our Town Clerk Cyndie Martel for her work every month putting together the Town's Morning After newsletter. She has made numerous improvements to it since she began her position here in Ross about 18 months ago. I was treated to a sneak peek at tomorrow's edition, and it is filled with valuable information and a page of photos from our fun July 4th event. Cyndie is working on implementing a suggestion made by Councilmember Dowling earlier this week which is to make some copies of the Morning After available at the Town's bulletin Board located outside of the post office. While the newsletter is sent electronically to many people, we may have residents without easy access to computers who would enjoy having access to a hard copy.

b. Ross Property Owners Association

No report.

7. Consent Agenda

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

Mayor Kircher stated he received a request to remove Item 7g. by a member of the public. There were no public requests or public comment.

Mayor Pro Tem McMillan moved and Council Member Dowling seconded, to approve Consent Calendar Items a, b, c, d, e, f, h, i and j. Motion carried unanimously (4-0-1; Salter absent).

a. Minutes: Regular Meeting, June 13, 2024

b. Demands for June 2024.

c. Town Council to waive the second reading, read by title only, and adopt Ordinance 726 amending the following Ross Municipal Code (RMC) chapters:

- **Chapter 18.41, Design Review. Zoning text amendments to Section 18.41.020(a)(8) pertaining to the removal or alteration of more than twenty-five percent of the exterior walls or wall coverings of a residence.**
- **Chapter 18.50, Demolition of Structures. Zoning text amendments to 18.50.020(a) pertaining to the alteration of more than twenty-five percent of the exterior walls or exterior wall coverings.**

- d. **Town Council to confirm the continued use of Resolution No. 2266 as there are no changes or updates to the Town of Ross Conflict of Interest Code.**
- e. **Town Council to approve the relocation and replacement of the Ross Recreation equipment shed.**
- f. **Town Council to adopt Resolution No. 2404 setting the dates/times for the regular Town Council meetings and annual Special Council meeting in 2025.**
- h. **Town Council to authorize the Town Manager to execute an Agreement with the County of Marin , to be implemented through the Marin County Office of Emergency Management for the period July 1, 2024 to June 30, 2027 for emergency services coordination, prevention, preparedness, response, recovery and mitigation efforts of the Marin Operational Area and Political Subdivisions; annual cost of \$7,500.**
- i. **Town Council to review and approve the Town's June 13, 2024 Investment Policy.**
- j. **Town Council to adopt Resolution No. 2430 for a one-year time extension for Design Review and a Variance to construct a new pool, associated terrace, retaining wall and renovate landscaping in the south side and rear yards at 98 Laurel Gove.**

Removed From Consent:

- g. **Town Council to approve the Town of Ross response to the Marin County Civil Grand Jury Report entitled *With Power Comes Responsibility; Youths Under Age 16 Operating Class 2 E-Bikes: A Safety Risk* and authorize the Mayor to sign the attached letter.**

Mayor Kircher opened the public comment period.

Bob Mittlestaedt, co-founder, introduced Jonathan Friedman of e-Bike Access which is a Marin non-profit dedicated to the safe riding of e-Bikes, presented photographs across the street of a Super 73 brand motorcycle marketed as an e-Bike which goes from 0 to 30 mph in about 10 seconds. Police all agree they are illegal and not e-Bikes. He cited quotes from local police, accident rates, speeds, and use of these e-Bikes and e-Scooters by Ross School students and asked that the Council agendaize this entire topic for the next meeting. He said Chief Pata made clear in his letter to school parents that he wants Ross School to enact a bike registration process to ensure all students are riding legal and safe e-Bikes and asked the Council to participate in a countywide joint task force on the broader issue of e-Bike regulation.

Jonathan Friedman, e-Bike Access, said there are many points of leverage on this subject for towns and cities to make Class II bikes illegal for kids under 16 and not allowed on school campuses. If the Council passes an ordinance it will serve as a form of enforcement which he will

push for. He spoke about the extreme danger of the Super 73 e-Bikes and asked the Council to draft an ordinance.

Dr. John Maa, general surgeon at Marin Health Medical Center, 2018 President of the San Francisco/Marin Medical Society, said he was the one who noticed the trend of increasing deaths in Marin County, cited a 49-fold rate of increase in head injuries in the last 5 years in America, and recognized that over 10% of the patients who have been brought to the Marin Medical Center after a trauma activation have died. This spurred action by Assemblymember Connolly and Supervisor Sackett. Dr. Maa said it was his patient who was the first child victim who really inspired legislation. He looks forward to the passage of AB 1778 by Governor Newsome in August of this year. He pointed out that many nations adopted restrictions of e-Bikes, with U.S. regulations lagging, and he asked the Town Council to be involved in regulations.

Ken Patrilla, Ross resident, endorsed speaker comments and asked that the Council take some bold action and a leadership role in this serious problem. He is also concerned with double tragedies that involve drivers, and described his Vespa that he drives around town which is as large as an e-Bike and which requires him to take a motorcycle driving test, hold motorcycle insurance, and wear a DOT-approved helmet.

Mayor Pro Tem McMillan asked staff for their thoughts on what has been proposed.

Police Chief Pata said he has held meetings with Mr. Mittlestaedt and Friedman and thinks this requires a bit more research in how the Town would take action. The Grand Jury is off to a good start; however, more work needs to be done.

Town Manager Johnson stated the draft response staff prepared attached to the staff report is still staff's recommendation. They must respond in one of four different ways and said the recommendations require further analysis. She sent the County Board of Supervisor's packet to the Council today for their meeting next week, and they have the same response in their draft being recommended to the Board of Supervisors. She did not see the Town needing to be out in front of the Board of Supervisors but will continue to participate in any task force or committee, as the Chief has taken a leadership role amongst County Police Chiefs and has been doing quite a bit in the Town of Ross and with schools. Therefore, she recommended the Council submit the draft response as currently written.

Mayor Kircher and Council Members described loopholes with licensing, danger to youth, work to be done at a State or local level, setting a minimum age for riding Class 2 e-Bikes, recommended a discussion between the Town Council and Ross School, and voiced support of the response to the Grand Jury.

Mayor Pro Tem McMillan asked if Chief Pata could communicate to residents and the schools about these dangers and risks prior to AB 1778's passage and work with the task force.

Chief Pata described his efforts over the last three years and agreed to send a communication out to Ross School. He noted the task force is out of the Marin County Police Chief's Association which is an advisory group. All cities are on the same page, but further discussion on implementation needs to be done. He agreed to continue to work on the matter and keep the Council updated.

Council Member Robbins moved and Council Member Dowling seconded, to approve Consent Calendar Item g. Motion carried unanimously (4-0-1; Salter absent).

End of Consent Agenda.

8. Public Hearings on Planning Projects – Part 1.

- a. **34 Poplar Avenue, Design Review, Variance, Minor Exception Permit and Town Council adoption of Resolution No. 2428 approving the project, subject to conditions.**

Jeff and Cassie Shouger, 34 Poplar Avenue, A.P. No. 073-272-05, Zoning: R-1: B-7-5, General Plan: ML (Medium Low Density), Flood Zone: AE (Floodway).

Project Summary: The applicant requests approval for Design Review, Minor Exception Permit, and a Variance. The project involves constructing an outdoor service bar/kitchen in the covered patio area between the garage and the main house. The outdoor kitchen will include a sink, dishwasher, refrigerator, and ice maker. Additionally, the project includes installing a 4-foot horizontal board auto gate on Redwood Drive and a new 6-foot entry pedestrian gate on Poplar Avenue. It also involves placing a new heat pump unit within the side yard setback and adding a skylight to the front of the house. A Variance is required to construct an outdoor service bar/kitchen within the side yard setback, and a Minor Exception Permit is required for an air conditioner/heat pump within the side yard setback.

Recused: Council Member Dowling recused herself from participating in the public hearing due to the proximity of her home, and she left the dais.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for adoption of Resolution No. 2428 for Design Review, Minor Exception Permit, and Variance for a project at 34 Poplar Avenue.

At the June ADR Group meeting, members supported the project and liked the location of the outdoor kitchen, noted it is well-hidden from neighbors, and placed next to a commercial building. It will also not contribute to an increase in noise. Staff received comments from neighbors at 36 Poplar and 38 Poplar with concerns of the outdoor kitchen's generation of noise as well as the number of kitchens on the lot. He pointed out on page AG-1 in the drawings, there are pavers encroaching into the neighbor's yard. The applicant has adjusted the plans and has removed the pavers.

Staff requests the Town Council consider adopting Resolution No. 2428 approving the Design Review, a Minor Exception Permit, and a Variance.

Tristen Warren, architect/applicant, echoed the comments of Mr. Lopez-Vega, said they had a great meeting with the ADR Group that approved the request, and he and the owner are present to answer any questions.

Mayor Kircher opened the public comment period.

Zane Morrissey, 36 Poplar, referred to his comments in his letter dated today pertaining to the noise.

Rebuttal – Applicant

Mr. Warren stated that as discussed with the ADR Group this is further away from 36 Poplar, is under the cover, is fully enclosed in an area underneath the ADU his clients are building, and they can build a fully conforming kitchen closer to their property but are trying to do something more sensitive for everyone involved, as well as something that meets his client's needs. He appreciates the noise concern, but the outdoor kitchen could be located within the setbacks and still conform.

Council Member Robbins thinks it is not unreasonable to approve this variance because what is being proposed is adjacent to a commercial building. If there were a home next door, she did not think the Council would approve the outdoor kitchen right at the property line, and voiced support of the request.

Mayor Pro Tem McMillan added that the noise ordinance restrictions would apply to any use of the outdoor kitchen, so she is also supportive and was ready to make a motion.

Mayor Kircher echoed Council comments, as well as the applicant's comments that this could all be done legally and not in the setback but closer to the neighbor's homes and voiced his support.

Mayor Pro Tem McMillan moved and Council Member Robbins seconded, to adopt Resolution No. 2428, approving 34 Poplar Avenue Design Review, Minor Exception Permit, and a Variance. Motion carried unanimously (3-0-1-1; Dowling recused; Salter absent).

- b. 118 Winding Way, Design Review, Variance and Town Council adoption of Resolution No. 2429 approving the project, subject to conditions.**
James and Mary Buie, 118 Winding Way, A.P. No. 072-091-13, Zoning: R-1: B-5A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate Risk).

Project Summary: The applicant requests approval of Design Review, and a Variance. The project proposes to construct two stone clad veneer retaining walls, one of the retaining walls will measure 10 feet in height. The project also includes expanding the approved gravel patio by 310 square feet, adding recessed step lighting, and two stone clad low seat walls. A Variance is required to construct retaining walls over 6 feet in height. A Variance is also required to construct a patio and retaining walls within the side yard setback.

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for adoption of Resolution No. 2429 for Design Review and a Variance for a project at 118 Winding Way.

At the June ADR Group meeting, all members supported the project. A variance is required to construct retaining walls over 6 feet in height and to expand the patio within the side yard setback. Staff requests the Town Council consider adopting Resolution No. 2429 approving Design Review and a Variance.

Ron Sutton, Architect, representing owners Mary and James Buie, clarified that the reason they are asking for the retaining wall in the setback is to connect the ADU to the yard, which requires only a four-foot setback, whereas the property requires a 45-foot setback for any other construction. The ADU is 25 feet from the neighboring property line, but it still exists in the setback. They are trying to connect the terrace to the pool and to the house and to do that, because of the steep site, the retaining wall needs to be tied into it; otherwise, dirt falls down the hill.

They are proposing a 300-square foot patio which is impervious surface but only four feet of it is in the setback. The rest is outside the setback. There is a sliver of the retaining wall in the corner that is 10 feet versus the 6-foot requirement because of the slope down the hillside where it meets the ADU.

When all retaining walls are constructed, they must measure the height from the lowest point, which is either the new grading or existing grade. The new grading will be higher so there will be only eight feet at the highest point exposed and five feet long, then it goes to zero. The neighbors, the Gamble's, have looked at the story poles and are supportive.

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

Mayor Pro Tem McMillan moved and Council Member Robbins seconded, to adopt Resolution No. 2429, approving 118 Winding Way Design Review and Variance. Motion carried unanimously (4-0-1; Salter absent).

End of Public Hearings on Planning Projects - Part 1.

Administrative Agenda

9. Town Council to approve the Town of Ross Annual Financial Report for the Year Ended June 30, 2023, with no findings.

Town Manager Johnson said each year the Town engages an independent auditor to prepare an audit of the Town's financial statements. Because the California Government Code requires a change in auditors every six years, she introduced Auditor, Nathan Edelman, partner with Eide Bailly, who is present to provide the Town Council a brief presentation and answer any questions regarding the Town's financial report for the year ending June 30, 2023.

Nathan Edelman, Eide Bailly, independent external auditor, provided a presentation on the Town's Annual Financial Report, opinion on the financial statements which is a clean or unmodified opinion, and reported there were no internal control deficiencies or audit adjustments, and said the Town complies with governmental accounting rules. There is a change in accounting principles that gets called out within the report, and there is nothing unusual for the Town. Significant estimates such as pension and OPEB are consistent with standards.

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

Town Manager Johnson recognized the Town's consulting accountant, Elizabeth Ford, and Town staff for assisting in the preparation of the work needed for the auditor's review.

Council Member Dowling moved and Council Member Robbins seconded, to approve the Town of Ross Annual Financial Report for the Year ended June 230, 2023, with no findings. Motion carried unanimously (4-0-1; Salter absent).

10. Town Council to receive a presentation from staff regarding existing field rental and special event fees; review staff recommendations for fee adjustments; and adopt Resolution No. 2431, listing field rental rates.

Recreation Manager Maureen Borthwick gave the staff report, presentation, and overview regarding existing field rentals, special event fees, as well as recommendations for fee adjustments. Staff recommends the Town Council enact the proposed fee adjustments through adoption of Resolution No. 2431 listing field rental rates.

Mayor Pro Tem McMillan asked what the annual revenue for Ross Rec is, and Ms. Borthwick stated revenue is approximately \$830,000 and the \$9,000 budgeted for FYE 25 would be less than 1% of Ross Recreation revenue.

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

Mayor Pro Tem McMillan moved and Council Member Robbins seconded, to adopt Resolution No. 2431, listing field rental rates. Motion carried unanimously (4-0-1; Salter absent).

- 11. Town Council to authorize the Town Manager to open a Town-administered separate general ledger account for the holding and tracking of residents' receipts and expenses related to the formation of a new utility undergrounding assessment district which would include certain properties along Upper Road, Woodhaven Road and Upper Road West.**

Public Works Director Rich Simonitch gave the staff report and PowerPoint presentation regarding staff's request to authorize the Town Manager to open a Town-administered separate general ledger account for holding and tracking of residents' receipts and expenses related to the formation of a new utility undergrounding assessment district, which would include properties along Upper Road, Woodhaven Road, and Upper Road West.

The Town will ask for a deposit release agreement (Attachment B) which will be required from each contributor to acknowledge that the deposit for district formation costs must be completed before any assessment district work can commence, which he described.

Mayor Pro Tem McMillan said in terms of hiring the initial consultant, she asked and confirmed that staff will hire the consultant and that Mr. Simonitch has received a proposal to do the preliminary work, with costs to pay the consultant coming out of this account.

Council Member Dowling asked for the number of households in the assessment district, and Mr. Simonitch deferred to the Committee Chair to answer this.

Council Member Robbins said the Town did not go through this process with the other undergrounding district and she asked what is different.

Mr. Simonitch explained that at that time the City did not have a policy in place. That group went directly to ILS Associates in 2019 who apparently are no longer doing this type of work. They had all of the consultant work done before approaching the Town. Staff tried to contact ILS, CSW ST2 who is the Town's current assessment district engineer, and they are too busy to undertake any additional work. He then spoke with Harris Associates that did a few assessment districts in Tiburon, and this firm would be the firm the Town could contract with.

Council Member Robbins said it seems there should be consideration for staff time, and she asked if this could be reimbursed.

Mr. Simonitch said staff can take this into account. Normally, staff tracks staff time to keep the district operational, and this can be included in the cost of the district when they finalize calculations for financing through a bond measure.

Council Member Robbins asked if the Town's legal counsel has reviewed the formation and progress of the district. Mr. Simonitch stated it was originally drafted by Town Attorney Ben Stock and former Town Manager Joe Chinn in 2020, as well as himself, and he sent the document to Mary Wagner for her review, as well.

Town Manager Johnson added that the vast majority of the work required is done by Mr. Simonitch. The consultant accountant keeps track of the account and reconciles it every month. She then presents it to the Town Manager, who must sign off on it. They estimate it takes about one hour of time, but the majority of time is Director Simonitch's time.

Mayor Kircher opened the public comment period.

Gina Nellison, representing Woodhaven Road and Upper Road West, thanked Mr. Simonitch for his time meeting with her since April and while she is happy to assist with some of the work, engineering firms typically do not want to work with residents. Given the amount of money needing to be raised initially of \$100,000+, this account would promote transparency. With the first district formation, she believes a single homeowner may have paid for all of this herself, but they have a collective group with motivated homeowners who would like to make this happen which is in furtherance of the Town's goals.

Council Member Robbins moved and Mayor Pro Tem McMillan seconded, to authorize the Town Manager to open a Town-administered separate general ledger account for the holding and tracking of residents' receipts and expenses related to the formation of a new utility undergrounding assessment district which would include certain properties along Upper Road, Woodhaven Road and Upper Road West. Motion carried unanimously (4-0-1; Salter absent).

End of Administrative Agenda.

There are no Public Hearings on Planning Projects – Part 2.

12. No Action Items: (Mayor)

a. Council Correspondence – None.

b. Future Council Items – Council Member Robbins requested an item for the August agenda to ask the Ross Valley Fire Board to consider postponing the closure of the Ross Fire Station for six to twelve months if there is not a lease agreement with the Ross Valley Paramedic Association. She noted the lease is up in September. Mayor Pro Tem McMillan said she believes the timing is such that this should be requested at the time the lease is expiring and objected to the request, and there was no second to Council Member Robbin's motion.

Council Member Dowling referred to Class 2 e-Bikes and asked for a future agenda item to discuss Class 2 e-Bikes, dependent upon the timing of the passing of AB 1778 which should be at the end of September.

Council Member Robbins agreed, and Mayor Kircher suggested it be agendized in the fall. Mayor Pro Tem McMillan asked also to obtain more input from Chief Pata's task force.

Town Manager Johnson suggested the Town Council also consider meeting with the School Board, given they have discussed issues of mutual interest in the past.

13. Adjournment.

The meeting adjourned at 7:32 p.m.

C. William Kircher, Jr., Mayor

ATTEST:

Cyndie Martel, Town Clerk