

**REGULAR MEETING of the ROSS TOWN COUNCIL**  
**THURSDAY, OCTOBER 10, 2024**

*Held In-Person and Teleconference via Zoom*

*Mayor Kircher participated from his home, 24 El Camino Bueno, Ross, CA*

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

Mayor Bill Kircher, Jr.; Mayor Pro Tem Julie McMillan; Council Members Teri Dowling; Elizabeth Robbins; Mathew Salter; Town Manager Christa Johnson; Town Attorney Ben Stock.

**2. Posting of agenda/changes to agenda.**

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

**3. Open Time for Public Expression.**

Diane Rudden updated the Council on her alerting drivers once every week who drive through stop signs in front of 39 Willow Avenue at 8:30 a.m. and ask them to stop. She said most are women driving children to school who do not stop, cited close calls, and her work in asking kids riding their bikes to look to the right down Willow before proceeding. She thanked everybody for the Town Dinner and Anthony for his wonderful job.

Baird Connor said he took a walk downtown to the port-a-potty on the Common. He asked the Council to consider putting in a plumbed toilet there.

**4. Mayor's Report.**

You have no doubt heard the expression "We are not out of the woods yet." In Ross, we are usually not out of the woods for very long. We live in a kind of semi-urban forest. The tree canopy and closeness to nature, along with the small-town character and charm of Ross, are the reason many of us choose to make our homes here.

In September, we were reminded of some of the pluses and minuses of our life in this beautiful setting.

On the minus side, we find that, as much as we appreciate our trees, insurance companies increasingly do not. In reaction to the risk of catastrophic property loss from wildfire, insurers are continuing to withdraw from certain property insurance markets or to pare back their exposure by means of systematic non-renewals of property insurance policies, leaving residents to scramble for replacement insurance. Zip codes and other areas with what one insurer described as having "too many trees" appear to be particularly vulnerable.

In a program held at the Marin Art and Garden Center on September 18 entitled "Getting Ahead of the Insurance Crisis" the Barber-Winship Firewise Neighborhood, in association with the Town of Ross and Bald Hill Firewise Community, conducted a community forum on hazard insurance, defensible space and home hardening. Special thanks to Ned Purdom, Mark Brown, and Kathleen Cutter for this terrific program chock full of useful information and advice.

Please do keep in mind that the warm Fall months, coupled with the possibility of strong Diablo winds blowing in from the northeast, still pose a serious wildfire risk. Be on the lookout for red flag days and keep your to-go kits handy.

On the plus side, we again had the opportunity to enjoy the natural beauty of Ross when we gathered under the trees on the Ross Common on September 27 for our annual Town Dinner. Although the turnout was less than in previous years, it was a treat to get together with friends and neighbors for this fun event. Many thanks to Ross Rec and Public Works for their efforts in organizing the dinner.

As we continue into the Fall months, we can look forward to more outdoor activities before the beginning of the rainy season. Stay tuned for the next Live on the Common event on October 18, and then get ready for another annual tradition, Halloween on Shady Lane.

#### **5. Council Committee & Liaison Reports.**

Council Member Robbins reported on the Ross Valley Paramedic Authority meeting, stating they are continuing to discuss a deployment study to determine if the paramedic ambulance should remain in Ross. They will also be discussing the possibility of a long-term lease for the paramedic ambulance to stay in Ross.

Council Member Salter reported the Public Works Subcommittee met on September 17<sup>th</sup> and items were discussed regarding parking, public safety improvements, and downtown revitalization. Specific follow-up items can be addressed as potential future agenda items.

Councilmember Dowling reported attending the TAM meeting on September 26<sup>th</sup>. A draft Countywide Transportation Plan for 2025 is available on TAM's website and people can weigh in on it until November 1<sup>st</sup>. There was also an update on sea level rise and the variety of options for adapting to it in Marin that were presented, as well as an update on the two-year Redwood Bike Share Pilot Program where there will be 300 electric bikes in 7 cities from Santa Rosa to Larkspur along the Smart Corridor which will start soon.

She also attended the Age-Friendly Task Force for Ross and they remind everyone that October 9<sup>th</sup> was National Ageism Awareness Day. The Age-Friendly Task Force is planning a December 7<sup>th</sup> Breakfast for Ross residents for all adults focusing on dementia. They are also holding a Valentine's Luncheon on February 13<sup>th</sup> for older residents in Ross over the age of 80 years old at the Marin Art and Garden Center.

Mayor Pro Tem McMillan added that the Town of Ross sponsored the event called "Getting Ahead of the Insurance Crisis" on September 18<sup>th</sup> and more than 80 people attended.

**6. Staff & Community Reports.**

**a. Town Manager**

No report.

**b. Ross Property Owners Association**

Jeff Koblick reported on a variety of upcoming community events: 1) Live on the Commons on October 18<sup>th</sup>, 2) The Turkey Trot around Thanksgiving time, 3) Winter Fest at the Marin Art and Garden Center, and 4) Marin Art and Garden Center renovations discussion at their November 12<sup>th</sup> RPOA meeting.

Regarding projects, the RPOA met and discussed obtaining bids to upgrade the field, raising funds with the Ross School PTO, new lights at the Post Office, and improving the entrance to the Commons from the Post Office with consideration to be brought to the Town.

**7. Consent Agenda**

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

**Mayor Pro Tem McMillan moved and Council Member Dowling seconded, to approve Consent Calendar Items a, b, c, and d. Motion carried unanimously (5-0).**

**a. Minutes: Special Meeting Closed Session, September 12, 2024**

**Minutes: Regular Meeting, September 12, 2024**

**b. Demands for September 2024.**

**c. Town Council to authorize the Town Manager to execute a Second Amendment to the Lease Agreement with the Ross Valley Paramedic Authority and the Ross Valley Fire Department for a portion of Fire Station 18 located at 33 Sir Francis Drake Blvd. in the Ross Civic Center.**

**d. Town Council to approve Contract Amendment No. 4 with BKF Engineers after-the-fact in the amount of \$16,262 and authorize the Town Manager to execute Contract Amendment No. 5 for BKF in the amount of \$12,000 for additional scope of work items related to the Laurel Grove Safe Pathways Project Phase 2.**

**End of Consent Agenda.**

**There is no Public Hearing on Planning Projects – Part 1.**

### Administrative Agenda

8. **Town Council to waive the first reading, read by title only, and introduce Ordinance No. 727 amending Ross Municipal Code (RMC) Chapter 18.42 Accessory Dwelling Units (ADUs) to comply with updates to State Law regarding Accessory Dwelling Units and Junior Accessory Dwelling Units (JADUs) and direct staff to return for the second reading and adoption on November 14, 2024.**

Roberta Feliciano, Planning and Building Director, gave the staff report and provided an overview regarding introduction of Ordinance No. 727 amending the RMC Chapter 18.42 Accessory Dwelling Units (ADUs) to comply with updates to State Law regarding ADUs and JADUs and direct staff to return for the second reading and adoption on November 14, 2024.

Mayor Pro Tem McMillan stated at 4:32 p.m. today, the Town received a comment letter from the California Housing Defense Fund and asked if their comments affect the proposed ordinance.

Ben Stock, Town Attorney, replied their office received the letter and the Town believes that most of the grounds the group is raising as being defective are mistaken, either based on HCD guidance or based upon what the Town is doing with their amendments.

There is one issue they were unable to determine which relates to the foundation of a structure and whether the Town can impose that as a requirement. He believes they can if stated in the Building Code, but did not have enough time to verify that the Code requires a foundation. Therefore, if the Council is ready to move forward tonight, he suggested the Council's motion make clear that the Town Attorney will determine in between the first and second reading of the ordinance whether the item is pre-exempted by State law or not. During the second reading, staff will have an answer as to whether this can be included or not.

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

**Council Member Robbins moved and Mayor Pro Tem McMillan seconded, to waive the first reading, read by title only, and introduce Ordinance No. 727 amending Ross Municipal Code (RMC) Chapter 18.42 Accessory Dwelling Units (ADUs) to comply with updates to State Law regarding Accessory Dwelling Units and Junior Accessory Dwelling Units (JADUs), include the Town Attorney's comments regarding whether the foundation provision is legal, and direct staff to return for the second reading and adoption on November 14, 2024. Motion carried unanimously (5-0).**

9. **Town Council to conduct a public hearing to consider whether to adopt Resolution No. 2435 affirming the decision of the Town Planner based on an appeal filed by Jeff Lucas (22 Chestnut Avenue) for minor amendments to a project approved by the Town Council per Resolution No. 2313 on June 15, 2023. The amendments include the replacement of**

**a glass to cable railing system, spiral to straight run staircase, and the removal of podocarpus planting and decorative rock wall at 7 Willow Hill Road, APN 073-252-12.**

Roberta Feliciano, Planning and Building Director, provided the staff report and overview of the Council's consideration to adopt Resolution No. 2435 affirming the decision of the Town Planner based on an appeal filed by Jeff Lucas (22 Chestnut Avenue) for minor amendments to a project approved by the Council on June 15, 2023. She described the amendments as a glass to cable railing system, spiral to straight run staircase, and removal of podocarpus planting and decorative rock wall at 7 Willow Hill Road.

Mayor Pro Tem McMillan asked that in order to remove the podocarpus planting if staff took into account the report from the arborist and the Town arborist. Ms. Feliciano said yes; part of the staff analysis took into account the recommendation from the arborist not to include additional plantings in the area where the Redwood tree is currently located so as not to disrupt the root system.

Scott Grace, Owner/Applicant, discussed the changes and said they answered questions from Council Members who visited the property. In March 2023, they envisioned a resort style life in their backyard with the pool and their kids being able to play. During a storm, a large 180-foot Redwood tree fell on the house which was traumatic. They wanted to ensure safety and learned that trenching a decorative rock wall that would be 2 ½ feet high and maybe 5 feet wide would disrupt the root system of the Redwood tree, which was also confirmed by both arborists. Given they have a large space under the deck and to address the neighbor's concerns, they will extend screening over the concrete wall and piping, so it is hidden.

The arborist also recommended not planting along the rock wall and he described vines that cover the hill and lattice and do not disrupt the root system. The entire pool also has been built on 15-foot pillars and does not go below grade along the spot by the tree. Regarding the staircase, they proposed a spiral staircase to the deck down to the lower level and eventually recommended a linear staircase after not receiving support from the ADR or bids for a spiral staircase.

Lastly, as they were looking to implement the railing system, said they considered glass but described problems with it and decided to use a cable system. Regarding on-going dialogue with Mr. Lucas, they spent a lot of time upfront documenting exactly what was most important to him to be responsive, which included relocating an A/C unit to the front of the property with a sound-deafening, inclusion of an enclosure shed at the end of the pool to prevent any noise from the pool equipment, and they are looking forward to completing their project.

Jeff Lucas, Appellant, said he had asked the prior staff to look at emails from the ADR process. The Town created this process for neighbors to work things out. On January 16<sup>th</sup> he gave Mr.

Grace his issues of concern. The northeast corner of the structure looks like it extends and comes out of the soil. There is good foliage, but if knocked out it could create a visual big block. Multiple times people have said he has a lot of foliage, but his concern is for the long-term where they will look like a big block.

He also talked about the location and the encroachment. He understands Mr. Grace wants it as far east as possible for more grass and they would inherently want it as far west and lower as possible. They do not want encroachment into their setback at a minimum and would not want to waive that. So, from the beginning, they did not want the pool moved closer to them or any of the improvements.

Drainage and runoff have been ignored and their only concern is that their property does not take on more water onto their yard with the less permeable area above. He asked to ensure the architect and civil engineer capture all of this. They went back and forth with the architect and Mr. Grace and were getting jammed because Mr. Grace was trying to push it through. His biggest concern is getting jammed and being the bad guy, but then not having agreement. All of these issues were included in an email. He then read into the record an email received on April 26<sup>th</sup> from Mr. Grace providing an update where he indicates he is aligned with all requests. He then received a copy of a May 11<sup>th</sup> letter asking for a letter of support ahead of the ADR meeting which would help Mr. Grace's chances for approval. And, on June 12<sup>th</sup> Rebecca Markwick sent an email because he was concerned the ADR drawings were not picking up all of his concerns. Ms. Markwick sends an email: "The plans that are submitted are for building permit and will need to show the correct location of the pool equipment and those are the binding plans." Lastly, on June 27<sup>th</sup>, Mr. Grace sent him an email telling him he received Town approval and his architect is working on the final set.

He described the ADR process, and thinks that once deals and agreements are made between neighbors, projects get approved. He then asked Ms. Feliciano to display the detail showing the two stairs and asked if drawings were to scale. He believes it is a double size scale between the two of them. He questioned whether the arborist report was taken into account, whether a wall can be put on the same exact system Mr. Grace put the pool on, which has never been addressed. He also thinks there is another story to address of where the pool is relative to the trees. He said they talked about how Mr. Grace took meticulous care to put the pool on piles, protect the roots, and put it in. They can do that exact same thing with the wall. They can also cantilever it off of the pool structure. He suggested doing both of those things which were not considered because they said the arborist report does not qualify for it.

Regarding the encroachment issue in an e-mail he sent to the Town, Ms. Feliciano referenced a code section where she believes she has the right to approve amendments because they are minor in nature. In reading the specific language of what she is citing, it is everything against what she is doing. Finally, regarding the glass railing, he has put in \$8 to \$10 million worth of glass

railing in projects and they do not shatter from heat, and metal railings actually get hotter in the sun. So, they both had an agreement in the ADR process which was documented and approved, and he just asks that Mr. Grace follow the ADR drawings.

Mayor Kircher opened the public comment period.

Judy Lucas, 22 Chestnut, said she is here because she is trying to protect this process, its transparency, and accountability to follow the plans. It is a dangerous precedent for people to be able to change their plans after a large public forum has occurred. The applicant moved over the pool because she assumes they wanted a bigger pool. In the original plans, the pool was 5 feet from a very large Redwood tree and they moved it right next to the tree. So, if concern is over root systems she wondered what the large concrete structure will do to the tree roots. She asked the Council to protect neighbors against anyone who can make changes without having the awareness of the neighborhood.

*Rebuttal – Owner/Applicant*

Mr. Grace referred to the 180 year old tree and said it has been around for a long time. Regarding the pool in relation to the deck, the measurements and position of the pool from the end of the deck which is the same structure that has not changed is exactly in line with the plans. There has been no encroachment. For the tree, this is something they have been highly sensitive to from the beginning.

*Rebuttal – Appellant*

Mr. Lucas questioned the 180 year old tree that is not going anywhere but they are worried about getting rid of the wall because they do not want it to sever the tree. The Redwood tree's roots run at the top. Mr. Grace can absolutely do piles between the roots and this is what needs to be done. He agrees that a rock wall can be put on the tree but they just have to do it right. He has heard multiple times that the neighbor insisted on the pool equipment room being away from the surface.

There is another email where he said Mr. Grace can put the pool equipment exactly where he wants under their deck adjacent to his property, but he asked to make sure all noise and ventilation goes up the deck to Mr. Grace's space and not out the side to his house. When his pool was put in, they put it in what is equivalent to a cave and it is a sensitive issue, so all of these things just add up. He concluded that there was a lot of back and forth. Things were clear in the documents, there are multiple iterations, and it is all covered in the emails and the history.

Mayor Kircher returned the matter back to the Council for deliberation and discussion.

Mayor Pro Tem McMillan asked Ms. Feliciano to display the map that showed the Willow Hill project versus the Chestnut property. She also asked how often is there a need to change things for a project once construction begins.

Ms. Feliciano said it is not unique and there are amendments during construction that applicants can request. If the Town Planner deems those changes to be minor or incidental and compliant with the design guidelines and zoning ordinance the code allows the Town Planner to approve those minor amendments.

Council Member discussion ensued regarding the Council's opinion that the process was followed by the Town, ADR, and planning staff; that the changes made were minor and non-discretionary; that Council Members visited the project and there were neighbor interactions throughout the process. Council Members confirmed there are no drainage and runoff concerns, and specifically that Council Members should not be in the practice of second-guessing the discretion of the Town Planner unless something is egregious, unreasonable or outside the scope of the approved plans. Mayor Kircher commented that the appeal is a de novo hearing and emphasized applicants and neighbors to talk and enter into agreements with each other.

**Council Member Dowling moved and Mayor Pro Tem McMillan seconded, to adopt Resolution No. 2435 affirming the decision of the Town Planner based on an appeal filed by Jeff Lucas (22 Chestnut Avenue) for minor amendments to a project approved by the Town Council per Resolution No. 2313 on June 15, 2023. The amendments include the replacement of a glass to cable railing system, spiral to straight run staircase, and the removal of podocarpus planting and decorative rock wall at 7 Willow Hill Road. Motion carried unanimously (5-0).**

- 10. Town Council to consider directing the Town Manager to send a letter on behalf of the Ross Town Council to the Ross Valley Fire Department Board of Directors, in substantial conformance with the draft letter attached to this staff report, requesting that the planned closure of the Ross Fire Station 18 be delayed one year in order to allow the Ross Valley Paramedic Authority and the Marin County Local Emergency Medical Services Authority to determine the future of emergency medical services in the Ross Valley.**

Town Manager Johnson stated this item was placed on the agenda at the request of Council Member Robbins and Salter. She provided a chronological background and overview of the matter as outlined in the staff report, spoke about the anticipated closure of the Ross Fire Station, the decision to increase staffing on engines from two to three persons from Ross Valley Fire Department which are funded by all four fire department member agencies, the cooperation that had existed towards the station's planned closure; however, events and discussions unfolding at the Ross Valley Paramedic Authority (RVPA) have paralyzed Ross's ability to renovate its Civic Center campus with resulting cost increases of over \$800,000 annually.



She stated events and discussions at the Authority have compromised the foundation on which the Ross Town Council made its 2021 decision to close its fire station. The decision was based on the belief that the emergency medical function in Ross would continue to be provided by the RVPA. If the fire station closes and the RVPA reduces its jurisdictional boundaries as requested by the Larkspur City Manager or if the RVPA ceases to exist as a result of financial instability caused by the loss of the eastern portion of RVPA, no emergency response personnel will be based in Ross which could result in a 2-minute increase in response time for medical emergencies. A 10-minute response time is considered an edge suburban to rural level of response time and would be a significant decrease in service levels to the Town of Ross.

As recently as November 2023, the RVPA Chief Executive Officer Jason Weber stated the paramedics have operated out of the Ross Station for 40 years without problems and he, nor the RVPA Board have indicated their interest nor intention of relocating the Authority paramedics to another location. However, over the last 10 months it has become increasingly clear that the stated intention to remain in Ross may not be reliable enough to ensure that adequate paramedic ambulance service will be available to Ross residents if the Ross Valley Station 18 closes on June 30, 2025.

Therefore, it is recommended that the Town Council consider directing her to send a letter to the RVPA Board of Directors requesting a one-year delay in the closure of the station. This request would require that the Fire Department member agencies agree to amend the Ross Valley Fire Department JPA agreement. The one-year delay will enable the RVPA to complete its very comprehensive study and engage in a transparent Board discussion about the future of the JPA. Depending on the actions taken by the City of Larkspur and the Town of Corte Madera, the Marin County Local Emergency Medical Services Authority will become involved as this agency oversees the provision of emergency medical services in the entire county of Marin. This agency would need to approve any changes to the RVPA jurisdictional boundaries.

During this one-year timeframe, the 2019 Standards of Coverage Study could be updated to determine the Ross Valley Fire Department response times in the event that the RVPA dissolves or changes boundaries. Other options for ensuring that all of the Ross Valley Fire Department member agencies, including Ross, receive adequate emergency medical services could be explored.

In conclusion, in 2021, no one understood that the RVPA's jurisdictional boundaries or its entire existence were in jeopardy. Three years later, the fragility of the Authority JPA is clear and its viability is in question. It is reasonable to request a one-year delay in the closure of the Ross Fire Station 18 so that every member of the Fire Department and the RVPA can determine how best to maintain adequate levels of emergency medical response in the greater Ross Valley.

A draft letter to Mr. Thomas Finn, Chair of the Ross Valley Fire Department Board is attached to the staff report for consideration. The Town Manager recommended a small edit to the middle of the second page to delete a final phrase which describes the decision that was made by the Ross Council to benefit the Town and three other members of the Ross Valley Fire Department.

Mayor Pro Tem McMillan said she recalled when there were discussions about who was responsible for paying for the upgrade of various fire stations, there was language relied on in the preamble of the Ross Valley Fire Department JPA that they were all supposed to work together, collaboratively, supporting each other for the greater good and not as individual fire stations or jurisdictions. To the extent that exists on paper she thinks it would be helpful to add a sentence about that to the letter.

Town Manager Johnson said she read all JPA and its amendments and found in the original 2010 amended and restated JPA before Ross joined was E, which states, "Throughout its history, the Board has operated on a governance model based upon reaching consensus. It is the intent of all three members entering this agreement that future decisions of the Board be made by consensus whenever possible, and the governance provisions in this agreement have been designed to implement this long-standing tradition." She said she would be happy to work on adding cooperative language if this is the consensus of the Council.

Mayor Pro Tem McMillan stated when this subject was discussed a couple of years ago, there was discussion by other members of the Ross Valley Fire Board that we were all supposed to collectively do it together for the greater good, and she would like to look at that history.

Town Manager Johnson said she dated the letter October 14<sup>th</sup> and stated she could soften the language of the letter per Council direction and input.

Council Member Salter asked if Fire Chief Mahoney had any comments about the request from the fire perspective about delaying the closing.

Fire Chief Dan Mahoney, Ross Valley Fire Department, said he would defer the request in the letter to the Town Council, noting this is a policy decision that needs to be addressed by the Fire Board who are the ones, along with the other stakeholders and the member agencies' labor groups that were part of this agreement back in 2022. The RVPA is conducting a study right now and he received an email this morning that on November 7<sup>th</sup> there will be a special Board meeting for the RVPA. During that meeting, a presentation of the study will be given and the data presented will help drive decisions and help foster discussions among the RVPA Board.

Council Member Salter said there are many modifications having to be made for San Anselmo and Fairfax to accommodate staffing. He asked the Chief to provide an update on whether this delay would be helpful to make those accommodations.

Fire Chief Mahoney said they have already made plans to make temporary accommodations for the two fire stations that will be receiving these personnel. They are going through a fire station remodel about to break ground at Fire Station 20 hopefully by early Spring. They have a three-bedroom trailer to provide temporary sleeping quarters for personnel and, along with Fire Station 20, they have looked at temporary accommodations while going through the construction process. These are not ideal accommodations but there will be ideal staffing available.

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

Council Member Robbins then read a letter she prepared into the record, similar to the Town Manager's.

Council Member Salter cited the issue as very important and supported sending the Town Manager's draft letter.

Mayor Pro Tem McMillan said in the spirit of being in a JPA and two JPAs (RVPA and RVFD JPAs) they all need to work together to figure this out, solve the problem, and have the best emergency response they can have. The irony is the other jurisdictions in the Ross Valley Fire Department are getting first responders or have them already and Ross may be left with no one, and she asked members to look at the bigger picture and what will make the entire Ross Valley safe.

She knows from her work on the MWFPA that at certain points in time there is a bit of splintering, that is a 17-member board and certain larger jurisdictions are advocating against the smaller jurisdictions, and they have always come together and worked collectively for the greater good.

Council Member Dowling agreed and said she thinks the letter is appropriate, timely, and recommended moving forward in sending it.

Mayor Kircher echoed comments made, particularly about working together. Ross is a small town and basically are within a fire department with other relatively small towns. They need to work together with partners as well as the Paramedic Authority, have been able to do that, need the assistance of other members, and had hoped to have this all resolved a long time ago. They have been pushing all year to get a resolution of the paramedic issue and he supported sending the letter.

Town Manager Johnson asked and confirmed there was unanimous consensus from the Council for adding the modest language the Mayor Pro Tem McMillan suggested and to send the letter to the RVPA Board of Directors.

**11. Town Council to conduct a discussion and provide direction to staff on pickleball court regulation options.**

Roberta Feliciano, Planning and Building Director, gave the staff report and overview regarding pickleball court regulation options, noting this is a follow-up from the September 12<sup>th</sup> Town Council meeting. She described other jurisdictions' regulations, provided examples of noise barriers, public outreach, and options for the Town Council to direct staff to:

1. Amend the RMC to prospectively prohibit pickleball courts within 250 feet of residential property lines, or prospectively prohibit pickleball court uses in residential zones. She emphasized the word "prospective" as meaning moving forward for new pickleball court uses.
2. Amend the RMC to add pickleball courts as a use classification requiring a use permit. This would likely require a noise study and a noise mitigation along with other requirements and conditions of approval.
3. Keep the current RMC as is without regulation of pickleball courts.

Additionally, Ms. Feliciano reviewed a use permit, its definition, findings needing to be made by the Council, and the Town Council's and staff's overall process, noise study, and mitigation techniques.

Mayor Kircher said the Council has discussed restrictions that could be placed on properties with pickleball courts that have already been constructed and not being able to require a use permit or conditions that could be imposed. If they wanted to approach this in terms of a limit of hours of operation or a requirement that special equipment be used, he asked if this is something they could implement without taking into account the distinction between an existing property and a prospective property or, could this only apply to a prospective new property.

Ms. Feliciano said she believes the regulations that the Council would impose would apply to new pickleball courts and uses.

Town Attorney Stock added that hours of operation and equipment could be applied to existing courts, but not to courts that have a CUP, such as the Branson School and Lagunitas Country Club, given they have mechanisms that address certain usage and review to address any issues. Regarding individual mitigation for a court, this is the research that would need to be done for each individually approved existing court to see where they have a vested right where the Town could not require that. This is why the recommendation is for "prospective" uses.

Council Member Salter asked and confirmed with Mr. Stock that use of special equipment and hours of operation could apply to all courts, except for Branson and Lagunitas Club because they already have CUPs with reviews.

Council Member Robbins said since the Town has not received complaints about existing private residential courts, she asked if regulations could be added to the Town courts without having them apply to existing residential courts.

Mr. Stock said the Town can impose limited conditions to its own property. The Town's pickleball program at its location is also a pilot program so the Council could review it and conditions could be considered.

Council Member Dowling asked what would happen if there are noise complaints about Branson and Lagunitas Country Club's pickleball courts.

Mr. Stock said if the noise complaint violates the General Plan noise or other restrictions, the Town would have to determine first if, in fact, they are violating the General Plan.

Council Member Salter referred to the current RMC Chapter 9.20; Unnecessary Noise. He asked when the gas-powered driven machinery restrictions were added to the code and what the Town's enforcement plan is for the ordinance.

Town Manager Johnson said she believes the notes at the end of Chapter 9.20.030 indicate when the ordinance went into effect. The most recent one was 2000, and she recalled at that time in the Bay Area that cities were taking action on gas-powered leaf blowers primarily due to GHG emissions and pollution. She then described enforcement by the Police Department wherein officers must catch a person in the act of using gas-powered equipment. They also carry a card in English and Spanish instructing the operator that it is restricted within the Town. The officer will inform the property owner. Compliance has not been an issue.

Council Member Dowling clarified that the Town pickleball courts are open from 7 a.m. until sunset.

Council Member Robbins confirmed with Mr. Stock that the discussion tonight is whether there should be regulations for new or even existing pickleball courts and not to disallow pickleball or to change the CUPs at Branson and the Lagunitas Club.

Mayor Kircher opened the public comment period.

Lucy Miller, Perkins Coie, on behalf of Tom Weisel, 7 Upper Road, said they have submitted a letter to the Council seeking clarification regarding the scope of tonight's item. She asked if the Council tonight is only considering only whether to regulate pickleball courts and play on private

non-residential properties within residential zones. Under the current Town code, pickleball courts in play at non-profit social and recreational clubs in residential zones must be addressed and a facility's required use permit and any action or direction taken tonight would not have any effect on this requirement.

A resident (did not state his name) believes what he heard about regulating pickleball is not straight forward. People all think pickleball is a marvelous sport and are in favor of it. Almost all letters submitted are in favor of pickleball on public courts, in clubs, and there is consensus that pickleball is a loud sport with a different type of sound and it is a nuisance as described in the Town's ordinances. Therefore, there is consensus for some control of that. The mitigations are expensive, unenforceable, and contrary to the Ross design guidelines which try to encourage open landscape, and he does not want to see 12-foot barriers around private pickleball courts.

Tom Allen, Canyon Road, said he loves pickleball and tennis, as well as listening to kids and music, and thinks pickleball is not something that can be measured with a meter. It is the pitch and frequency of the play. There are no circumstances that warrant an approval and he questioned what problem the Council is trying to solve. He worries that regulation will not be strict enough, and problematic in the future and said the Town's General Plan talks about peaceful enjoyment of one's property. If there is a court next to him, he will lose his peaceful enjoyment of his property. He lastly cited an excerpt from the National Board of Realtors about pickleball courts and declining property values.

David Allen Hughes stated that he is currently in contract to purchase a home in Ross that includes an existing sports court which was marketed as being perfect for pickleball. His family loves pickleball and the court added value to the property for them. If restricted for existing private courts, it would not only reduce the home value but it would feel unfair to homeowners who purchase properties based on current recreational uses, and would also be highly controversial, as courts have been used under current regulations. He understands there is a proposal to potentially limit playing hours or mandate certain equipment, but these would be unfair to many homeowners, especially those that have had no complaints raised against their courts. He lastly asked that any new restrictions be focused on new courts than retroactively applied to existing ones. Grandfathering in current courts will protect the investments homeowners have already made while addressing future concerns in a fair and balanced way.

Tom Moselle, Bolinas Avenue, said he plays on various existing courts and he hopes people will be able to continue to play on those courts moving forward.

Tori Eichelay, Ross resident and teacher at Ross School, said she taught a pickleball elective to the Ross Middle Schoolers for a couple of years and it is tremendously popular. She would

encourage the Council to consider the infrequency with which people would play on a private court. In all likelihood, at the maximum it is 1.5 hours a day, a couple of days a week, limited by weather and other factors. While it might feel noisy for that amount of time it is not like a private court used from 8 a.m. until 6 p.m. She asked the Council to consider the extent to which a sweeping regulation of banning any use of pickleball on private courts really limits the recreation of people who own their homes. The sport is rapidly changing and manufacturers have not caught up with demand to quiet the sport and it is likely a year or two before they will see substantial widespread quieting of the sport, so she asked the Council not to take any drastic decisions since there have been no complaints to let the sport evolve, and to let people play.

Baird Connor, Lagunitas Country Club, Board of Directors and resident on Bolinas Avenue, said staff mentions much of what his comments are in the staff report, said he has seen the benefits of pickleball from many different age groups, and hopes the Council will consider these benefits when making its decision.

Zara Muren said she and Dennis spoke last month because they care about the quality of their neighborhood. There was a point made that softer balls and rackets could make this sport more acceptable. This is a minor change in sound levels but it is still twice as loud as the sound of tennis at 10 decibels less. Also, many players resist using the softer equipment and the Town cannot enforce this. She does not think this could be informally resolved between neighbors because the neighbor with the court will always have the upper hand and will be at the mercy of the owners' decisions. The American Society of Acoustics summarizes it as delivering chronic, persistent, repetitive exposure to noise that can be harmful to people. If not regulated, this could lead to courts being developed in all neighborhoods, even on moderately sized lots and peaceful enjoyment and nature sounds will be lost. She therefore asked the Council and staff to maintain a place for pickleball where already established in public places, but to protect quiet residential neighborhoods.

Ken Petrilla, Ross resident, said he spoke at the last meeting and is very much in favor of pickleball. He asked to leave what is in place alone because there have been no complaints or problems. Staff could review new applications as done normally and the Council could make its decision on facts, and the Council could also make changes or adjustments as necessary.

Dan Little, Ross resident, said he is not in support of any regulation at this stage, and would prefer the Town Council focus on other things such as climate and emergency services issues, and thinks it is not a problem now. Any problems that exist can be addressed between neighbors and hopes people can continue to enjoy the sport and asked the Town to address complaints on an as-needed basis.

Mayor Kircher returned to Council deliberation.

Mayor Pro Tem McMillan said she is in full support of residents being able to use their properties as they want to unless their use adversely affects other people. She cited the General Plan's requirement for residents' peaceful enjoyment of their property, the role of the Town Council in maintaining the Town's character and serving as stewards of the environment. She then compared the sound from tennis versus pickleball and its ten-fold increase in loudness or 24 times louder than what a tennis ball sounds like.

According to one pickleball proponent in some of her research she conducted, he suggested pickleball courts be built at least 500 feet away from residents. The Town's ordinance is broad and has preclusion for unnecessary sounds or noises that are annoying to persons of ordinary sensitivities, which are loud or which are so harsh or so prolonged, unnatural or unusual in their intensity as to occasion discomfort to inhabitants of this town or any number thereof. There are other examples where the Town regulates behavior causing noise. Most recently, the Ross Town Council adopted an Operation of Generators Policy to ensure generators would not exceed the Town's noise standard of 55 decibels at the property line, and she cited additional things the Town regulates such as musical instruments, amplified noise, roosters, and loud animals.

Some have said pickleball is like swimming pools or barking dogs, but swimming pools are at normal conversation levels which is around 60 decibels, and if kids are yelling and they can be quieted down by parents. The Town has an interesting document on the Town's FAQs list on the Town's website on barking dogs which states, "Please be considerate of your neighbors. If there is a chronic problem, contact the Ross Police Department and they will attempt to resolve the situation. The Marin County Animal Control Department will be contacted and a citation may be issued should the problem remain unresolved." She is encouraged that there is quieter pickleball equipment that is available which would reduce the sound to 60 decibels which should be encouraged. People should want to use that equipment to respect their neighbors and to keep things quiet in town. She also thinks people should only want to play during certain hours.

The Lagunitas Country Club restricts their hours from 9 a.m. to 6 p.m. to be considerate of their neighbors. She thinks the Town should explore sound barriers, but she does not think they are effective where there is a change in elevation because sound travels up. The bottom line thus far today is the Town has received no complaints about existing tennis courts being used as pickleball courts, has not received complaints about the Lagunitas Country Club, Branson School, Town courts, or private tennis courts. Instead, the Town has received overwhelming support from residents to allow pickleball to remain in town on existing courts and residents have cited recreation, mental health, physical, and social benefits of this emerging, popular, and fun sport especially for aging adults.



However, the Town has received concerns about proposed pickleball courts where no tennis or sport court currently exists and sound impacts that could be intensified by steep canyon walls. So, she thinks the Lagunitas Country Club and Branson School are fine. If there is an issue, when reviewing their use permits, the Town Council can impose conditions if necessary. The Town courts that are a pilot program have been wildly successful and no complaints have been received. The Town has also not received complaints about private courts. She thinks the Town should encourage people to voluntarily use quieter equipment and be respectful when they play so that their neighbors are not bothered by this noise. If the Town receives complaints, they should revisit this issue and explore either doing use permits for pickleball courts to ensure the balance of recreation and neighbors' needs are kept fairly even. However, she does not think they need to do that now.

In terms of the proposed courts where there are no sport courts now or pickleball or tennis courts now, this is where the real issue is and where the Council's discussion needs to be focused. We need to balance the needs and rights of the property owners with neighbor concerns. They should consider the location, grade, neighbor concerns, and look at new courts on a case-by-case basis. The Town allows gas leaf blowers if contiguous neighbors sign off on the proposed need for a gas leaf blower. She thinks the pickleball courts in undeveloped areas should be a similar sign-off, which she would like to explore as something to include as a requirement.

She thinks the Council could automatically allow new courts that are 250 feet or more from a property line and have a sliding scale of conditions for review for a new court in terms of equipment, sound mitigation, hours of use and that neighbors would sign-off on it. She thinks it is important to preserve the environment and character of the town and she does not think they want pickleball courts all over the town and there is a need to strike a balance.

Council Member Robbins said if neighbors sign off, she asked if it would be acceptable to put a pickleball court anywhere.

Mayor Pro Tem McMillan said she would like to explore this as an option of something they could do, similar to the gas leaf blower situation.

Mayor Kircher said if this is not possible, he asked if the Council should then consider the noise generated by the court as part of the approval process.

Mayor Pro Tem McMillan said she thinks courts should be approved where neighbors sign off. If they do not, then the applicant will have a higher burden to show they will meet the 55 decibels noise standard from the General Plan.

Council Member Dowling echoed Mayor Pro Tem McMillan's comments, thanked everyone who took the time to write and email the Council, said there are no complaints with the Town courts, Branson, or Lagunitas which have use permits and can be addressed if there are problems. There are no complaints with private courts and if there were, the Council would have to deal with them. She thinks new court applications may need a Use Permit, and she likes the idea of neighbors signing off for their support. Noise can be irritating, and there is a balance and finding a fair compromise.

Council Member Salter echoed the Council Members comments on the public comments received and said the Council needs to create good policy, laws and ordinances. The Town has the ability to enforce noise impacts, and the Town should be strengthening its noise ordinance. Banning pickleball on private property is an overreach by the Council, given no complaints have been received. He proposed starting small and setting hours, restricting play to certain equipment and then revisit this again.

Council Member Robbins said she would not do anything for existing courts, likes the suggestion that applications come before the ADR and Council, that there is neighbor sign-off on support for the court, and that they are not in the setback and should be at grade level.

Mayor Kircher agreed with leaving existing courts alone given that there are no complaints. He noted there are only two cities that regulate pickleball which are Park City, Utah and Centennial, Colorado. Therefore, not many examples exist related to regulating pickleball. He thinks people have a right to use their property any way they want, provided there is not some undue burden on neighbors who have expectations as well about the character of the neighborhood. The Town has a noise ordinance and that expectation for privacy and insulation from noise is already in the code, so he questioned what to do. He thought Mayor Pro Tem McMillan's proposal was very thoughtful, but was not sure it is definite enough as something to work with, so some upfront potential impacts could go through a use permit or variance process similar to swimming pools or decks in setbacks.

Mayor Pro Tem McMillan thinks the Council has given a lot of guidance in terms of the fact they are not doing anything for the Lagunitas Club, Branson, the Town courts, existing courts, and she suggested the Town's website under FAQs could be something to encourage residents to use quieter rackets and play at a suggested time from 9 a.m. to 6 p.m. and, in the meantime, they can continue to receive some guidance and draft language for future prospective courts.

Council Member Salter questioned why the Council should place restrictions on new courts when they already have the data that existing courts pose no problems.

Mayor Pro Tem McMillan compared this issue to hillside lots that have already been developed and believes that most courts have already been developed, but said it is the new areas where people could wildly disrupt neighbors on steep canyons where sound travels. The Town Council could impose conditions, require a noise study, ensure the noise as measured meets the noise ordinance, and this would be a fair balance of private individual property rights of all residents with and without the courts. She then asked Ms. Feliciano and Mr. Stock if they feel they have enough guidance and feedback from the discussion to craft something that strikes that balance and then bring it back to the Council.

Council Member discussion ensued regarding the difficulty in measuring noise, complaints, neighbor sign-off, applicants going to the ADR and Council, requiring a noise study, measurement from the property line, sound traveling up through steep canyon properties, burdening applicants with the cost of noise studies, the Town not doing anything now and the chance for many applications for pickleball or sports courts, the Town's existing noise ordinance as a tool to use for noise exceedances, the measurement technique for pickleball noise, agreement that no Council Member wants to regulate existing courts, whether to include neighbor approval and ADR review, regulating starting and stopping hours of play, whether to require review ahead of time and applicants coming before the ADR so as to address noise measurement, location of court, obtaining neighbor support, and working out issues in advance, vested rights once a court is built, requiring CUPs and conditions of approval, sound barrier walls and situations where they do not work for neighbors at a higher elevation, inclusion of an appeal process, and the applicant's burden to convince neighbors that sound will not be annoying or constant.

Town Attorney Stock said he would have to research whether you can allow neighbors to have the ability to say "yes" or "no" to a use on someone else's property which he will need to explore. Based on this conversation, one other option to capture comments is to have a process for neighborhood outreach as a factor but not the sole deciding factor of whether to issue the permit similar to where variance findings are made.

Ms. Feliciano spoke to outreach and said as it stands, during the ADR process, one of the checklist items is that the applicant conduct neighborhood outreach. There is no radius, it does not specify it must be only contiguous, and they can outreach to as many neighbors as they want or as few neighbors as they want. Part of the ADR's recommendation to the Town Council takes into account the comments that they get from their neighbors which is included in the packet as to whether neighbors support or oppose the project. Part of the conditions of approval for a project is that the project must comply with all requirements, standards, and policies of the RMC, General Plan, County of Marin, State and Federal laws. The condition of approval provides the Town Council with authority to either revoke or modify any permit the Council has approved if it does not meet or comply with the General Plan policy related to noise.

Mayor Kircher said when someone comes to the Council and are not seeking a variance and they are not seeking other permits, then they are talking just about design review, he asked if the Town could reject a project simply because they think it could be too noisy.

Ms. Feliciano explained the noise analysis provided for an upcoming project wherein the consultant calculates the weighted average based on a conservative 4 hours of pickleball play within that 24-hour weighted average. In that analysis they determined without mitigation, the noise would be over the 55 decibels. So, part of that analysis is the recommendation to mitigate with a barrier and to use the quiet paddles.

Council Member Robbins asked what if someone used it 2 hours a day she asked if this would exceed the noise ordinance.

Ms. Feliciano said she is not sure of how the analysis would change if 2 versus 4 hours, but this documentation was provided by the applicant so it seems they are willing to meet the mitigation and build a solid fence and use the softer noise paddles based on the noise analysis provided. It is voluntary, where the applicant is agreeing to make improvements to meet the noise ordinance standard.

Council Member Salter asked if it was based on 7 hours a week minimum and what that noise looks like. If it is above 55 decibels there must be mitigation plans.

Ms. Feliciano said based on the analysis for the sports court for 12 Canyon, it was conservative of 4 hours of play for a 24-hour period. She is not sure how consistently four people playing pickleball for four hours in the day would be. She would say based on the noise study it was adequate in capturing the maximum noise there would be in a 24-hour period. They analyzed they would be over the noise standard and agreed to build the barrier and use the quieter paddles. This is for the proposed sports court for 12 Canyon. She said the 4-hour standard was set by a noise expert called Salter Inc. out of San Francisco. They ran the analysis conservatively and they selected the 4-hour playing window to run their analysis.

Council Member Salter said it would be important to get input from the public, staff and the experts about setting that conservative standard to meet at the property line and give that to the ADR, and the Council can decide that everything can be set at that 4-hour conservative window for a pickleball court. Then, an applicant would have to show they could mitigate it. So, any new court would have to do a sound study that meets this minimum requirement based on a certain number of hours per day.

Mayor Kircher asked if this is not what they were talking about as 55 decibels at the property line and the variable here is how the Town determines the average.

Ms. Feliciano explained that she spoke to a representative from Salter Inc. to understand better the noise analysis. What the experts do is analyze the noise based on 4 hours of play and then they weigh that within the 24-hour average. If it is over 55 decibels which it was, then they say noise mitigation is necessary to meet the General Plan noise standard.

Council Member Robbins asked if there is a way to determine if the noise mitigation is effective or not.

Ms. Feliciano said one of the recommended mitigation measures is the Owl Paddles and there are specifications for that which show a reduction of 5 decibels. Then, the noise analysis also analyzes the noise at the property line so the barrier they are recommending would be to mitigate noise at the property line. This does not account for changes in elevation, and if there is a residence above the court that can see it, then presumably they would also be able to hear it, and the wall would not mitigate that noise.

Again, one of the conditions of approval is that the project must comply with the General Plan and if it does not and a complaint is received, it is within the authority of the Town Council to modify or revoke the permit.

Mayor Kircher said the Council is a bit stalled and uncertain now as to how to move forward partly due to technical issues. They are aiming at something that is as simple as it can be and the least expensive it can be while still containing this problem to the extent they reasonably can in a balanced way, but he is not sure if they would get there in another hour. He would hate to continue this again, but he did not know if there is enough specificity to ask staff to come back with an ordinance or something else to vote on.

Council Member Robbins said she does not mind hearing from the public over the next month if there are suggestions or comments on what is fair and what to do with new courts. The Council is fine as a group to say that everything existing is without complaints and to leave it, and there are some complaints about new courts so they are puzzled about what to do. They could have a noise study done ahead of time and ensure mitigation will really work, and maybe they hear what people think.

Council Member Dowling asked if the homeowner that did the noise study has gone before the ADR Group yet. Ms. Feliciano said they are going before the ADR Group next Tuesday on October 15<sup>th</sup> and they anticipated noise would come up, and this is why they did the noise study.

Mayor Pro Tem McMillan said the ADR Group is not going to know what to do because the Council has not come up with any guidance. She asked if the application will be continued. Ms. Feliciano said based upon the direction from the Council in the last meeting, staff would proceed with processing the sports court applications and add a condition that any future regulations related to pickleball would apply.

Mayor Kircher said he would be interested to know what the sound study shows, how it was conducted, and what their conclusion is.

Council Member Salter asked if staff could forward the Council the sound study and see how it is done. He thinks the Council has made more progress than we think. They can set a minimum standard of what the noise should be at the property line, consider using 4 hours and take input from people, as well as determine how much noise studies cost. If they can create a minimum standard and owners are mitigating it to the best they can do, this is the best the Council can do. It will help but will not be perfect.

Mayor Kircher said this might also eliminate projects that are a stretch. Maybe the court is within the setback but it might be too close to an adjacent structure. He suggested continuing this to the next Council meeting and asked if the agenda was full.

Town Manager Johnson said she would be happy to discuss this with Mayor Kircher and Mayor Pro Tem McMillan. Staff has really dropped everything to work on this item and they will not be able to do it continually. They expect to have three planning items that will come to the Council for the next meeting, as well as several other items including potentially some kind of response from the Fire Board that the Council will have to spend time on. Therefore, she cannot commit to this or the Mayor and/or Mayor Pro Tem will need to decide what will give in November to accommodate a third discussion regarding pickleball.

Mayor Pro Tem McMillan asked about the process, and Town Manager Johnson said the Morning After has been completed and the only change that can be made is what happened on the 7 Willow Hill appeal.

Council Member Robbins suggested drafting an email indicating the Council is still interested in comments which might help inform them when to meet and what to do.

Mayor Pro Tem McMillan said in terms of other applications regarding pickleball courts, she asked if it is 12 Canyon and the Bellagio property, or she asked if there were others in the queue. Ms. Feliciano said there is a sports court application for 160 Lagunitas. It is not clear whether, or not, they are interested in pickleball.

Town Manager Johnson said staff could send out an E-blast specifically for this issue regarding new private sports courts, and Council Member Dowling confirmed the Council is clear this does not relate to the two courts with use permits, the Town court, and the current private courts unless there are complaints which would need to be addressed.

Mayor Kircher thanked everybody for their input and thoughtful comments.

**End of Administrative Agenda.**

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

**13. No Action Items: (Mayor)**

- a. **Council Correspondence** – None.
- b. **Future Council Items** – Council Member Salter stated there were a number of items from Public Works and asked staff if the Sir Francis Drake and Winship intersection issues discussed at the Public Works Subcommittee come to be agendized on their own or not.

Town Manager Johnson stated two members of the Council would need to bring items forward. Mayor Kircher said after the Public Works hearing there were some things they would not be able to proceed with now. Other things seem more interesting, but his sense was that they were not ready to agendize anything yet as opposed to further information or discussion.

Council Member Salter stated there was a study by Parametrix that had three recommendations for the intersection of Sir Francis Drake and Winship which was tree trimming, improved signage, pavement markings, and periodic traffic monitoring to calm traffic at that intersection because it is dangerous.

Town Manager Johnson said she sent this issue to the Council via email and indicated in her cover email that staff will be working on the suggestions the consultant made in there so she has been working with the Public Works Director on replacing the raised beacons on the curb, looking at signage, and tree trimming as much as they can, given some is on private property. She did not intend to bring back the idea of installing a stop light at this intersection because it does not meet warrants. For the

other improvements recommended by the consultant, at the next Council meeting she can ask the Public Works Director to provide a report as part of the Town Manager's report on some of the things he has been working on to address that stretch of the road.

Council Member Salter said the second one was the field improvements issue. The request was whether there is a budget or number and proposal for fixing it because the RPOA wanted to know how much money they would have to raise.

Town Manager Johnson said as she reported at the Public Works Subcommittee meeting, staff met with RPOA folks on the Ross Common to get an idea of what they are considering. Staff has been working to obtain quotes from consultants. Some have been received and they need to ensure they are looking at the quotes fairly to compare apples to apples, so staff will be working on this. When it is ready, it will be brought to the Council.

Council Member Salter stated the last one was they had a proposal from someone in town to have bike markings put on Shady Lane for the children who ride their bikes to school to enhance safety. This was a new proposal from someone who lives in town.

Mayor Kircher said this was before Council Member Dowling and Salter were on the Council. He cannot remember the details but knows the Council did not approve that.

Council Member Salter said he would like the Council to discuss this again given safety concerns sometime in the future. Town Manager Johnson agreed to send the Council the staff report and adopted minutes for this item when it was discussed in the past.

**14. Adjournment.**

The meeting adjourned at 10:10 p.m.



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C. William Kircher, Jr., Mayor

**ATTEST:**



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Cyndie Martel, Town Clerk