

**MINUTES OF MARCH 2, 2020**  
**REGULAR MEETING**  
**OF THE**  
**CORTE MADERA TOWN COUNCIL**

Mayor Andrews called the Regular Town Council Meeting to order at Town Hall Council Chambers, 300 Tamalpais Drive, Corte Madera, CA on March 2, 2020 at 6:30 p.m.

**1. CALL TO ORDER AND ROLL CALL**

Councilmembers Present: Mayor Andrews; Vice Mayor Beckman; Councilmembers Bailey, Kunhardt and Ravasio

Councilmember Absent: None

Staff Present: Town Manager Todd Cusimano  
Town Attorney Teresa Stricker  
Director of Planning and Building Adam Wolff  
Senior Planner Martha Battaglia  
Town Clerk/Assistant Town Manager Rebecca Vaughn

**SALUTE TO THE FLAG** – Mayor Andrews led in the Pledge of Allegiance.

**2. OPEN TIME FOR PUBLIC COMMENTS**

DON WILBURG, 13 Seminole, stated he was before the Council 4 weeks ago regarding the project on Baltimore and afterwards he spoke to the applicant who was very emotional and who thanked him for his comments at the hearing. He questioned the process which tears apart the community. He is a landscape architect and has been through the process several times, and he asked that the Council discuss and address this in the future.

**3. PRESENTATIONS** – None

**4. CONSENT CALENDAR**

Mayor Andrews asked and confirmed there were no public comments or requests for removal of items from the Consent Calendar.

- A. Authorize Introduction and/or Adoption of Resolutions and Ordinances by Title Only.  
(Standard procedural action – no backup information provided)
- B. Adopt Resolution No. 10/2020 Reaffirming Designation of the Town Manager as Primary Representative to the Marin Emergency Radio Authority (MERA) Board of Directors and Designating the Public Works Director As Alternate Representative
- C. Approval of Minutes of the February 18, 2020 Regular Town Council Meeting

MOTION: Moved by Ravasio, seconded by Bailey, and approved unanimously by the following vote: 5-0 (Ayes: Bailey, Beckman, Kunhardt, Ravasio and Andrews; Noes: None)

To approve Town Consent Calendar Items A, B and C.

**5. PUBLIC HEARINGS**

- A. Public Hearing to Consider Introduction of Ordinance No. 993 to amend Chapters 18.18 (Special Purpose Overlay District) and 18.31 (Accessory Dwelling Units) related to Accessory Dwelling Unit regulations to (1) Make

Accessory Dwelling Units (ADUs) converted from existing floor space, and all Junior Accessory Dwelling Units (JADUs), subject to the existing ADU capacity limitations in the Christmas Tree Hill Overlay District, (2) Provide an option for discretionary review to allow non-clerestory windows in ADUs, and (3) Make non-substantive clean-up changes and clarifications to Chapter 18.31

Recusals:

Vice Mayor Beckman recused himself due to a conflict of interest with his business which sells pre-fabricated ADUs. Councilmember Kunhardt recused himself as well due to a conflict of interest as a resident of Christmas Tree Hill. Both Councilmembers left the Council Chambers.

Town Attorney Teresa Stricker reported that she has advised Councilmember Kunhardt that based upon his ownership of a home in Christmas Tree Hill, he may under an applicable FPPC regulation return and provide public comments on the item, stay in the Chambers during public comment, but during all other portions cannot remain in the Chambers.

Senior Planner Martha Battaglia gave an overview of the staff report and background regarding amendments to Chapter 18.18 and 18.31 related to the Town's ADU regulations. Staff recommends the Council hold a public hearing, provide direction to staff regarding further amendments, and decide whether to take action on adoption of the ordinance.

Councilmember Ravasio asked if this puts the Town at odds with State law.

Town Attorney Stricker stated there is a provision that allows for the Council to pose some limitations on ADUs based upon public safety concerns, parking capacity and other utility type capacity issues. There is some language added recently to the State law that seems to suggest that certain types of ADUs may not be restricted under that public safety exception; however, it is unclear at this time as to how those provisions will be construed. As discussed when Ordinance 992 came forward, the process is for all amendments to the ADU ordinances must go through California Department of Housing and Community development (HCD) and HCD will review and provide findings if HCD determines the ordinance does not comply with State law. Anything adopted here would move forward to HCD and the Town would potentially receive input regarding whether any amendment(s) is consistent with State law.

Councilmember Ravasio asked if any other agencies in Marin were experiencing this issue and were pursuing it.

Ms. Battaglia noted staff is aware that the City of Larkspur has raised concerns with allowing ADUs in certain portions of their community and their ordinance limits ADUs in Madrone Canyon. They have also submitted their ordinance to HCD and have received no comments back.

Mayor Andrews opened the public comment period.

Public Comments:

MICHAL HARLOCK, Christmas Tree Hill homeowner, stated there is no question there are hazards on Christmas Tree Hill and Chapman Hill and was happy to hear about the requirement for the State to review ordinances. He cited unequal ADU restriction treatment under the law for certain neighborhoods, said the allocation formula developed many years ago is arbitrary, and his two clients of his would be prevented from adding an ADU within the existing structure which he believes is illegal. He also noted there are 12 illegal apartments in the vicinity, each barely having one parking space which results in additional impacts from additional residents and reduced parking.

CHARLES VORHEES, Crescent Road, said his family purchased their home in 1985 and have witnessed many natural disasters through the lens of concerned homeowners on Christmas Tree Hill. He echoed comments of the previous speaker and said they take safety and fire concerns seriously. The overlay district was inspired by the Oakland Hills fire and he described actions to make it safer and considered the ordinance to be a taking of property rights.

DAVID KUNHARDT, speaking on behalf of himself as a citizen and his wife Susan, Christmas Tree Hill residents, said he has served on the Board of the Christmas Tree Hilldwellers three times as President and safety has always been a priority. He also volunteers on the NRG for the hill given the Board is now defunct. He said the Planning Commission's recommendation for safety is to prohibit any new ADUs or JDUs even if they are within the existing envelope of a structure, which contradicts State law. He spoke of outdated findings describing the Hill which are no longer true and he cited reduction of vegetative fuels, improvements with ingress/egress, cited this as an uncompensated taking, and voiced opposition to complete prohibition of ADUs in Christmas Tree Hill.

LOUISE BROWN, 9 Summit Drive, cited her previous comments and correspondence on her concerns with public safety and adding density on the Hill and said housing is needed but needs to be done in a way that protects residents where densities are already in risk of safety, should more people be added. Improvements made on the Hill are not sufficient, given road widths, impassible areas, high vegetation and fuel loads, wooden structures, ingress/egress issues, and fire and life safety risks. Limiting ADUs and JDUs on the Hill is not the only answer to resident's fire danger and safety but it is one thing that can be done now, given its timeliness and she urged the Council to move forward with proposed revisions.

LUCINA SMITH, Alta Way, asked the Council to consider adding the similar conditions for Christmas Tree Hill to the Chapman Hill, cited significant difficulties with circulation and traffic issues from Camino Alto around through Chapman, Alta Way and Sausalito. The infrastructure will not support adding density to the area, said nothing has been done or considered, voiced her opposition to ADUs and JDUs unless the Town imposes controls on density, and she urged the Council to address these concerns.

MIKE ANDERSON, East Corte Madera, voiced concerns and spoke about the discretionary review allowance for clerestory windows, stating they live next door to someone proposing to build an ADU on top of his garage which looks directly down into their bedroom and bathroom. He cited privacy issues and requirements for clerestory windows to be put into additions within 15 feet of the property to protect privacy. The Council is considering an option for discretionary review when someone does not meet those requirements and said his architect neighbor created a plan that would not comply with building codes without having non-clerestory windows, so he asked that he not be able to obtain this exception given significant privacy issues to his family.

INGA MORRISON, 27 Lakeside Drive, referred to the ADU ordinance and voiced concerns with tax assessment changes, provisions for additional parking, noise, increase in traffic, people, school kids, cars, privacy and setbacks and questioned levels of rents, limits on ADU rentals as they relate to vacation rentals, and requirements for owner occupancy. She also asked about requirements for separate meters, sewer lines, and other utility additions and impacts.

Mayor Andrews asked staff to briefly outline State law regarding ADUs.

Ms. Battaglia said per State law, an ADU must be allowed if there is an existing residence. It establishes minimum sizes of at least 850 square feet for a one bedroom and up to 1,000 square feet for a two bedroom unit. It allows for the ADU to be within 4 feet of a side and rear yard setback and if the property is at its maximum lot coverage and floor area it allows for at least an 800 square foot ADU. It removes many restrictions that may have been in

place previously with the intent to encourage them throughout communities.

It had requirements relating to owner occupancy for either the primary residence or the ADU which has been eliminated, so it is now possible to rent out both residences without owners being on premises. In certain instances, there could be an ADU and a JADU which can exist when the JADU is created within the existing residence. A JADU is no more than 500 feet created in an existing home's bedroom. A JADU can be added as well as a detached ADU as well. It also allows for ADUs in multi-family properties and it limits many requirements cities can impose.

Standards need to be objective standards and it is removing any discretionary review from an ADU. The Town has had some conversations with HCD about meeting the minimum size of an ADU and then having an option for discretionary review to be larger than that, so this is something the current ordinance does do.

Lastly regarding parking, there are certain instances where no parking spaces are required to be provided, for example, if the ADU is within an existing structure or within one-half mile of a transit stop, and also if a garage is converted to an ADU.

Councilmember Ravasio asked if most ADU applications would simply be an over-the-counter process.

Ms. Battaglia said for many of them, yes. A person would submit a building permit application which is routed to all Town departments to ensure standards are met. If it is an attached ADU the permit would be the first step, but if it is a detached ADU less than 800 square feet or conversion of existing space, the applicant would submit directly for a building permit.

Mayor Andrews asked if the Town cannot require applicants to apply for a separate water meter or sewer hook-up.

Ms. Battaglia said no, but in some cases for a detached structure, people may elect to get a separate meter especially if they are expecting to rent it out but it is not required.

Director of Planning and Building Services Adam Wolff noted that applicants do need to meet requirements for adequate sewage and water capacity the same way an expansion of an existing house must do the same thing. He also clarified that this has actually been a non-discretionary process since 2001 for most ADUs but there were noticing requirements and aspects of ADUs that had standards tied to them. Staff has been getting rid of what were supposed to be objective standards but read more like subjective standards in the past. The ordinance has very clear direction as to whether or not applicants meet standards or not.

He said regarding numbers, in 2018 the Town had 7 ADUs that received building permits and in 2017 there were less. The Council will review the Housing Element and Annual Report at its next meeting where the number of ADUs in 2019 which he believes total 7.

Mayor Andrews asked if that includes the Preserve, and Mr. Wolff stated these will be counted in the following year because they are just getting their building permits now.

Councilmember Bailey referred to process and said he saw in the report that it was submitted for State comments.

Ms. Battaglia stated staff submitted the ordinance to HCD on February 3<sup>rd</sup> and have not received any comments from them. The Town is required to send the ordinance within 60 days and there is nothing that requires the State with a timeline for comments and they may choose not to provide comments.

Councilmember Bailey asked if it would be prudent to wait and receive comments from HCD and asked if there was any urgency with the ordinance's adoption.

Mr. Wolff replied there are two different ordinances and staff is currently waiting response from HCD on the first ordinance and this ordinance will be more restrictive. HCD will not officially opine unless there is an actual ordinance adopted but are offering technical assistance with respect to staff submitting draft language but they are not going to officially weigh in until they are required to. They are inundated with a backlog of ordinances throughout the State, but this is an option staff and the Council could consider—developing draft guidance on this particular ordinance.

Councilmember Bailey asked if the Town Attorney has conducted an analysis of objective standards as to whether the Town is violating State law with the iteration of the current proposed ordinance as it applies to Christmas Tree Hill.

Ms. Stricker responded that with respect to the piece of the ordinance relating to Christmas Tree Hill, she thinks there is a question about whether it is consistent with State law. At times, questions are asked that are attorney-client privilege and this would be if she was being asked for a legal opinion. She can say as to this particular question there is language in the new State law that would suggest that what the Town is trying to do may be problematic. But, HCD has not yet determined how it will construe this provision and the Town has received some initial, informal conversations from HCD staff that suggest the Town can do this.

Mr. Wolff said informally staff has had conversations with HCD staff on this particular issue regarding allowing or precluding ADUs within an existing structure and the conversations he has had with this staff member said it was not permitted. But again, it is difficult to receive an official opinion from HCD given the Town is hearing different answers from different people but this is the answer he heard directly from the person in charge at HCD relating to the ADU ordinance discussion.

Councilmember Bailey asked if there were volumes of 4 to 6 JADU applications per year and asked what this number relates to.

Ms. Battaglia said the Town has never received an application for a JADU. As far as the ADUs since 2017 when State laws went into effect that removed many barriers, the Town received 27 ADU applications. This includes the 8 at the Preserves.

Councilmember Bailey asked if there was any reason that the Town was reaching a threshold here or he asked if the pace was consistent.

Ms. Battaglia said the pace seems pretty consistent over the last couple of years and staff receives public questions inquiring about ADUs.

Mayor Andrews asked if staff has a sense of whether those applying for ADUs have been owners who will occupy the property or someone else.

Ms. Battaglia said most common is for owners who reside at the property and they create ADUs for a variety of reasons—to create space for a parent or child graduated from college, people who are aging and looking to downsize and interested in living in the ADU and renting out the primary residence. Given Marin County is very expensive, she did not think it made sense to purchase a property and not live there. She has generally seen people residing on the property and it makes sense for them to add an additional unit.

Mayor Andrews said of the three options, number 3 is to take no action at this time. He asked what would be the implication of this and he asked if people on Christmas Tree Hill might get vested rights a future Council would have problems removing.

Ms. Battaglia said if there is no action taken at this time, the interior ADUs and JADUs on Christmas Tree Hill would not be limited and someone could convert a basement or existing accessory structure. If they wanted to add a detached ADU or an attached ADU and create floor space, these are subject to the existing capacity limitations. As part of Ordinance 992 recently adopted, the Town created the 5 year rule which would require someone to live there for 5 years before converting it to an ADU.

Councilmember Bailey asked if the Fire Chief, Police Chief or Public Works Director have weighed in on whether the conditions are so intense that they have an opinion about this ordinance.

Mr. Wolff said this has not been presented to them in this way. He believes they are always concerned about adding more vehicles, people and homes in areas with current fire danger, but he did not want to specifically speak for them. They recognize much of this as coming down from the State, so they are not weighing in legally.

Councilmember Bailey said one of the policy concerns he is struggling with is the relative immediacy of fire danger as opposed to basic property rights to develop land.

Mr. Wolff said they would widen the scope and say to reduce density, period, in those fire areas.

Councilmember Ravasio said he had a conversation with the Fire Marshal about this and he also toured Christmas Tree Hill recently and viewed vegetation removal. He said he would restrict the number of units and he said increasing density was not a good idea because it is already very dense and the roads are incredibly narrow and tight which creates greater risk.

Ms. Stricker said the Mayor asked a question as to whether the Council might create a vested right if they do not act now. She clarified the Council would not and a future Council would be free to consider the same issue before the Council tonight in understanding how to weigh the policy in light of State law.

Mayor Andrews said the Town has no idea of when they might or might not hear back from HCD regarding the ordinance that current exists, and Ms. Stricker confirmed.

Councilmember Bailey asked if there was a State-wide database that will provide a continuum of objective standards being permitted and those that are not.

Ms. Battaglia said she has not heard of any such database and thinks it makes sense to post other ordinances and staff can visit other town websites and look at their ADU ordinances and have follow-up conversations with their staff about it. Also, HCD will be putting out a memo that clarifies many of the questions, the timeframe of which is unknown but they are working on it.

Mr. Wolff added that staff is discussing this at the County's Planning Director groups along with all jurisdictions, as well. But, he is afraid there may even be different responses from people at HCD when they get back on this, but he knows there are others very interested in receiving a definitive interpretation of State law, how it applies and whether cities have the ability to restrict ADU for fire or other reasons as indicated by HCD.

Mayor Andrews said he vaguely recalls that when cities submit their General Plan or Housing Element for review, they could track which cities have submitted theirs and which have been approved and asked if something comparable was done here.

Mr. Wolff said he thinks there are many nuances with the State law and it comes back to the overall approach to ADUs in the first place in achieving housing goals, as well. But, staff is part of other Marin County jurisdictions and posting all of their ordinances and links on a

county website which is a project they are working on this year with some grant funding and they are following this on a monthly basis with other jurisdictions and responses they are getting.

Ms. Stricker said there are cities across the State grappling with what to do and many jurisdictions have passed emergency ordinances to get something on the books to comply with State law and then have taken a slower approach. HCD is most likely being inundated with ordinances at this time and it is very difficult to know from a staffing perspective how fast they can go through it. They also must implement policies on how to construe new State law once ordinances are received, so it will take some time.

Mayor Andrews said if the Council just outright restricts ADU in violation of the State law, he asked what the penalty would be.

Ms. Stricker stated HCD would come back and likely tell the Town it violated State law. There is a period of time the Town would have to hold a Meet and Confer with HCD. If HCD determines at the end of the process, the Town is still not in compliance it can be referred to the Attorney General for enforcement action against the jurisdiction and private parties may have some recourse, as well.

Mayor Andrews asked what the enforcement action consists of.

Ms. Stricker replied the Attorney General would essentially sue the Town.

Councilmember Bailey asked for the understood load on a per unit basis for an ADU and a JADU.

Ms. Battaglia said the Town does not have a metric per se, but with a JADU it is limited to 500 square feet so it is essentially conversion of a bedroom for one to two people. The Town has not been tracking the number of people living in the ADUs but the ordinance includes a provision for annual surveys and rents charged, so this will be done in the future but it not information they have at this time. She confirmed the expectation would be one to two people and an additional vehicle.

Councilmember Ravasio said this is an incredibly difficult and complex issue for the Council and for him, their job as an elected official is to protect public health and safety. This is what he always comes back to whenever he is in question as to whether how to proceed.

He then quoted Ford Greene, San Anselmo Councilmember and CMPA Board Member, "It is March right not but June as far as the weather is concerned." He said weather is changing, fire danger is increasing and it is not getting better. The issue he is concerned with if the Town does not adopt the ordinance is that they have the opportunity to dramatically increase density on Christmas Tree Hill which could happen very easily and quickly without much public input.

One of the comments made by a public member is that this is taking away property rights, but he does not see this because this is an existing ordinance and application that has been in place for years and the Council is simply extending it into new State law. He spoke with the Fire Marshal and he thinks the fire danger on Christmas Tree Hill is huge and, increasing density will dramatically increase that danger. He thinks there will be other towns with the same situation. He spoke with Marc Levine about this and he is willing to coordinate with other towns in Marin County to help them work with this because any town that has hills will have this same issue. Therefore, for all of these reasons he voiced support with moving forward with introducing Ordinance 993.

He would also ask staff to talk about adding Upper Chapman Hill as well, stating he walks the area and sees the congestion. The app, Waze, is directing people through there during rush hour to get them off of the main roads.

Mayor Andrews said he was thinking back when the Council first heard about these ordinances and talking to various people from Sacramento. He kept raising environmental risk as something the State needed to consider which went right over their heads. Someone from Tiburon raised the issue as well with dangerous parking along narrow roads, and a response from someone in San Francisco was to paint their curbs red and it was then state that many of Tiburon's roads did not have curbs.

Therefore, he thinks the Town needs to start pushing back against State mandates like this that ignore health and safety risks of increasing densification and he voiced support to introduce the newly slightly more restrictive ordinance.

Councilmember Bailey cited the persuasive comments and said he starts from a place where a homeowner has the right to do what they want under the Constitution. He gets concerned when mixing broader philosophical concepts with very local policies which are what they must do today. They are sensitive to the catastrophic fire danger here and he questioned how to weigh basic Constitutional rights against overwhelming fire risks.

He said State law is also not clear to him so he was also apprehensive about doing anything until they could wait and see. He was not like this generally but this is a situation where he is tempted to wait and see about what is permissible by the State. That said he agrees with Councilmember Ravasio to err on the side of protecting their residents, given they are also approaching another drought year and imminent fire risk.

He added that the quantum is important, and asked if the Town could reasonably anticipate 8 or 10 more ADUs in the entire town.

Ms. Battaglia clarified that within Christmas Tree Hill there have been 5 ADUs; 4 have been interior and one was a new structure over the last 3 years.

Councilmember Bailey said he thinks the number is therefore small, but he also asked how many people it would take to have a choke hold on people trying to escape if there are only 2 or 3 additional people which seem light. But, it depends on where they park their car.

He also thinks the JADU load is very light but the question is whether the Town is doing what it can to mitigate the risk of fire by widening streets, providing other parking places, having escape routes, thinning of vegetation, and he was supportive of introducing the ordinance.

Councilmember Ravasio said he would feel different if he knew an answer would be received from the State in 30 or 60 days.

Councilmember Bailey noted the difference would be 5 people at most but Councilmember Ravasio said what could happen is that there may be a rush of people pushing units through and this is what he would do while the law has not yet changed.

Councilmember Bailey agreed that the only reason not to do this is one of fire and safety danger. He recognizes the Town is fully built out, but they must also recognize rights to modestly improve properties.

Councilmember Ravasio noted the Town will be asked to add many more units through the RHNA process over the next few years, and this area has special danger.

Councilmember Bailey said also important is that they are trying to blunt what is otherwise a purely ministerial review. People can still add an ADU or JADU going through the normal planning restrictions so it is still possible, except for certain zone(s) in Christmas Tree Hill.

Ms. Battaglia replied the majority of zones in Christmas Tree Hill are at their maximum

capacity. There are 11 districts and 8 of those are at the maximum. Therefore, she confirmed those in the 8 districts cannot add more density, and this law has been in place since the 1990's.

Mr. Wolff clarified that there were capacity zones in place since 2001 or earlier which were with the overlay district of 1994. In 2016 when the Town went through the ordinance changes for the first round of State legislation relating to ADUs, the Town exempted interior ADUs and JADUs from that capacity limitation at the end of 2016. So over the last 3 years, those interior units have been allowed in excess of the capacity.

Councilmember Bailey noted that when he was on the Planning Commission, they saw multiple applications for ADUs and it must have been districts not in capacity or new construction.

MOTION: Moved by Ravasio, seconded by Andrews, and approved unanimously by the following vote: 3-0-2 (Ayes: Bailey, Ravasio and Andrews; Noes: None; Recused: Beckman and Kunhardt)

To introduce Ordinance 993 amending Chapters 18.18 (Special Purpose Overlay District) and 18.31 (Accessory Dwelling Units) related to Accessory Dwelling Unit regulations to (1) Make Accessory Dwelling Units (ADUs) converted from existing floor space, and all Junior Accessory Dwelling Units (JADUs), subject to the existing ADU capacity limitations in the Christmas Tree Hill Overlay District, (2) Provide an option for discretionary review to allow non-clerestory windows in ADUs, and (3) Make non-substantive clean-up changes and clarifications to Chapter 18.31.

Noted Present:

Vice Mayor Beckman and Councilmember Kunhardt returned to the dais to participate in the remainder of the meeting.

**6. BUSINESS ITEMS**

A. Discussion Of How The Town Currently Evaluates View Impacts In The Review Of Residential Development Projects, And Direction To Staff Regarding Whether To Initiate A Work Program To Develop Further Policies To Guide The Town's Evaluation Process

Mr. Wolff referred to the staff report and said this item is a discussion of how the Town currently evaluates view impacts in the review of residential development projects and direction to staff as to whether to initiate a work program to develop further policies to guide the Town's evaluation process.

The issue of views and what constitutes a significant view impact crops up periodically and often can create controversy in neighborhoods and consume Town resources. As a result, this was one of the areas identified in the Council's strategic planning meeting for consideration and staff seeks feedback.

He then provided an overview of when view issues occur during the Town's review of various applications and Finding 3 and whether or not it can be made, a lack of criteria that can be used in striking a balance, and what information should be included in the case-by-case assessment of view, other jurisdictions and how they regulate view issues. He spoke about what is in place today with an option could be for Town staff to continue to strive to improve processes to help minimize the number of view impacts and concerns, take direction to the Council to develop further policies and work with the Planning Commission on these, or the option to drill down into a more rigid ordinance, which is something that can be further researched and discussed.

Vice Mayor Beckman referred to the options and asked if it was fair to say that those jurisdictions that have view ordinances see fewer view-related Planning appeals at the Council level.

Mr. Wolff said from those he spoke with, he did not have specific data. He was speaking with Sausalito and Tiburon and thinks Corte Madera has about one per year which is similar to other jurisdictions.

Mayor Andrews referred to page 2 of the report it states, "A view is a scene from a residence and/or its active use area and includes both upslope and downslope scenes." He asked if staff ranks where the scenes are such as a picture window in a living room versus a view from a clerestory in the bathroom, etc.

Mr. Wolff said there is no official ranking. All of that is part of the evaluation process by staff, the Planning Commission or Town Council. There is a hierarchy they fall back on, but because there are no rules, if staff, the PC or Council changes that could change with it.

Mayor Andrews asked and confirmed that in 2A and 2B, they are trying to determine primary and secondary views, whether it is heavily utilized areas of the property or is the impacted view from the area of the property that is designed oriented to take advantage of the view, so these are up for interpretation because some people heavily utilize portions of their house more than someone else. This is where the flexibility allows that to be considered on a case-by-case basis.

Councilmember Kunhardt referred to items on page 8 in the present guidelines, and he asked if it was staff's view that the current language is ambiguous and invites appeals.

Mr. Wolff said he thinks it does invite more technical claims than otherwise, but there are things that could be done to just categorically restrict and state a view is not a view if outside the house, or another alternative which would take certain claims off of the table. If the Council wished to get further restrictive, they could remove the word "view" from that finding itself. It may not necessarily address an issue neighbors may have about actual impacts to people.

Councilmember Ravasio said the Council's desire would have something black and white, simple, and clear and staff is saying this should not be done because it will create more problems; that they should keep some flexibility because there will be judgement involved and that is how they will have to deal with this matter.

Mr. Wolff said yes, he believes so, although others may think differently. It is a difficult process but one that can be improved based on the emotional aspect of it while addressing people's concerns. He thinks if they are really trying to address view impacts, more subjectivity and flexibility is a better approach than creating hard and fast rules.

Councilmember Ravasio stated in the appeal the Council dealt with a few weeks ago, one of the Planning Commissioners said there was a Mt. Tam view and a Mt. Tam view must be preserved above all else. He asked if there was anything in the ordinance that states that.

Mr. Wolff said there is nothing that states that other than there is some discussion in the General Plan about the fact Corte Madera has some of the most beautiful and captivating views of any Bay Area community on page 8, with a backdrop of Mt. Tam to the west, etc. But there is no hard and fast rule that states someone cannot block a Mt. Tam view of any kind.

Councilmember Ravasio said if the Council was to adopt guidelines he asked if it would ultimately result in fewer appeals.

Mr. Wolff said he was unsure and thought it is hard to say creating guidelines would result

in additional or fewer appeals. Often, he feels appeals happen because of personality differences amongst the neighbors or somehow the communication began in the wrong fashion and noted 223 Baltimore as a good example. The applicant did not have one comment in opposition until the day of the PC hearing when they first found some neighbors were concerned. They tried to reach out early but people misinterpreted the information they received and it just unfortunately happened. These tend to lead into entrenched feelings that ultimately result in factors leading to an appeal rather than if they are working through it and work things out with small changes here and there.

Mayor Andrews referred to the Planning Department Guidelines for Evaluating Views and asked when this was developed and asked if it was the latest iteration.

Mr. Wolff said staff added these questions most recently after discussions with the last application they saw. They first began a few years ago and began drafting this document. When they had conversations with the millimeter lens and how to gather evidence consistently, it is a living document where he will at times go in and tweak it a bit, but something more to give staff help in how they go about evaluating and gathering information.

Mayor Andrews said if this was done years ago, he could see it addressing a number of controversies, and Mr. Wolff concurred.

Mayor Andrews said when talking about view evaluation he asked if it would make sense to add a question #5 to ask, "What view mitigations are available?" This might be useful in thinking about moving buildings over a certain distance, and others.

Mr. Wolff said yes, and he believes in another draft it was not worded exactly like this but they could ask what opportunities might be available or considered to reduce or minimize view impacts.

Mayor Andrews opened the public comment period.

#### Public Comments:

CHRISTINE MARTIN said she very recently went through the PC and remodeled their house. They then had cause to have some concern with their neighbors that were doing a remodel and felt it impacted their house negatively. They could have appealed it but she said the entire process was very denigrating, biased from the beginning and spoke about pictures taken from all over their house and posted publicly. There was also a letter from their neighbors that discussed her husband's disability and where they could go and what was important, etc. She suggested a pre-planning session where final plans could be reviewed, suggested staff lay out what was important, identify those affected and that a summary be provided of what went into the decision-making.

She only learned today that the upstairs small bedroom which does not have a bathroom has a seasonal water view which went into their considerations because her house had a water view. She believes staff tries their best but they are people with biases. She did not want to codify the entire process and asked to ensure pictures are from specific angles, and said the overall experience was horrible but did not want to make a big deal about it and complain or appeal to the Council to expose her husband's disability. Therefore, she asked that the Council take this into consideration and for a clear process to be developed.

JENNIFER LARSON, Willow Avenue, echoed comments of the speaker and agreed this sort of thing divides a community. She thanked Mr. Wolff for taking on the matter and spoke about a guy who suggested the PC use graph paper to achieve an objective look of what a view impact is, noting that if someone has a 10 foot view and all of a sudden it looks like the development will take up 80% of that view, they could simply graph it out.

She also asked that sign-off be obtained from neighbors up front, that information be sent to neighbors about the development plans, supported the idea about story poles, recommended neighbors take a quick tour of the inside of the home to identify any view issues or impacts and said views are important to everybody.

Councilmember Kunhardt agreed with the importance of having an initial conversation for any and all developments which is helpful as well as story poles. He thinks the existing standards as shown on page 8 are so general that someone can interpret it many ways. Given the fact that most properties have a front, back and sides, most sides do not have views and they could start identifying primary views, main living areas, and likes 1<sup>st</sup> and 3<sup>rd</sup> suggestions on page 4 and thinks judgements are unique to circumstances.

Councilmember Bailey asked if there was a situation where a prime view is being impacted he asked if the new construction could not happen.

Councilmember Kunhardt thought every circumstance could be unique. It would be a matter of whether there is any development space on that property other than what is being used, or if there is a shape of that new development that would allow the main views to be preserved. He also did not think views should be protected by people who must crank their neck around the side of a deck.

Councilmember Bailey said he comes down on the side of staff's view. He respects Councilmember Kunhardt's comments but he thinks there are too many laws and words already and that in trusting the decision-makers, it is better to give him/her latitude to make a decision based upon the circumstances. So, under the guise of making something very objective, you can introduce such a heightened level of specificity that it does not allow for the flexibility of every situation.

He said the reason he asked about the "prime" view, it became most significant during the most recent application which the view being impacted as not the primary view. The Council was able to find their way around it so he was not sure he was in favor of adding language, so he thinks they are better off not trying to put too much additional clarity or words into it.

Therefore, he would not ask staff to do anything at this time except possibly to continue to make process improvements. He agreed with Ms. Larson's points as well as Ms. Martin's, and he recognizes how important the pre-planning and overall processes are. Regarding having neighbors sign off, some neighbors will never do this, but at least they can confirm they received a copy asking about the sign off. The requirement to visit neighbor's windows makes sense as well.

He would not ask staff to initiate any work program to develop additional policies or change the ordinance. He would rather change the way his process works before it makes it to the PC and thereafter to the Council. He said Option #2 states, "Direct staff not to initiate a work program to develop further policies, but continue to make design review process improvements aimed at minimizing view impact concerns." This would capture public comments but would not introduce additional laws.

Vice Mayor Beckman noted that when they were actually having the Planning appeal two meetings ago, he said it seemed to illustrate the fact that they needed more regulation. He was hoping it would take some of the contention out of this process for homeowners and neighbors. The fact this might be counter-productive is new to him, especially in light of the fact that more strict and hard and fast regulations will really have any material impact on the number of appeals makes him open.

He would defer to staff's judgement and his colleagues that have been doing this longer than him. The planning appeal two meetings ago was his first ever so he did not want to over-react to it. If it seems to be the consensus that more regulation is not necessary, it

makes sense to him.

Councilmember Ravasio voiced support for Option #1 but basically the Council supports no change to the ordinance but to continue develop policies and guidelines that will help guide the process and to try and add more clarity to it. He understands the point about the law, and Belvedere has a very clear view ordinance regarding a primary view that should be protected. He understands the point to purposely leave it vague but providing some guidelines is helpful for everyone to help work through appeals relating to views in the future.

Councilmember Bailey said Belvedere, Tiburon and Sausalito are ripe for lawsuits related to views all the time, so he sees it in his office and part of this is because you give some weight to a challenge when there is a hard and fast regulation to point to. Alternatively, the kind of discretionary review making is not ordinarily challengeable. So, when the Council makes on findings based on facts as they apply to the law, an appeal of that is virtually impossible.

Mayor Andrews said in terms of the planning document on page 106 or 17, Step 2, View Evaluation, he would ask staff to think of more questions as to what mitigations are available such as rotating buildings or other things. He was unsure about marking down whether it is primary or secondary, and lastly, he hopes the Town will avoid calling out Mt. Tam views and Bay views.

Lastly, he asked if staff could discuss photographing homes and views for hearings and first talking with applicants and neighbors prior to taking them to preserve their privacy.

Mr. Wolff said he thinks once of the things staff reviews which is in their internal policy is he takes a literal reading of that finding which states "views" in the plural, given the focus on certain images and impacts. While he understands this raises privacy issues, he feels it is important to take pictures and give the full context of the properties which should be incorporated into the decision. However, if someone does not allow staff to take pictures, they will not and they will note that in the staff report.

Mayor Andrews asked if staff could simply walk through the rooms with the person and explain fully about the photography process and public process to ensure they are willing to allow them for privacy concerns. Mr. Wolff agreed and said staff can explain their reasoning behind it and if someone does not want pictures taken of their home, he can respect this but he pointed out it may create challenges and it gets personal.

If decisions are based upon evidence, it must be in the record but staff does not have to provide all of them. Staff has taken another process seriously which is to go through the findings and spend a lot of time explaining what evidence was used to make those findings and the rationale behind it, and it takes a lot of time to put them together.

Mayor Andrews confirmed that there was Council consensus that there be no ordinance at this time but to continue and improve the process based upon comments from the public, staff and the Council.

#### B. Consideration And Possible Action To Assign Councilmembers To Subcommittees For Board, Commission And Committee Interviews

Town Clerk/Assistant Town Manager Rebecca Vaughn stated the item is to consider whether the Council would like to reappoint committees that will be interviewing vacancies to the Planning Commission and to the Parks and Recreation Commission. Tomorrow is Election Day and the two candidates for Town Council, when seated on April 7<sup>th</sup>, will be vacating their respective terms on these Commissions, and both terms expire June 30, 2021.

There is an open application period for the regular appointments commencing July 1, 2020 and expiring 2022, but this is further down the road, with interviews most likely scheduled for May. In the meantime, next week or the week after before the March 17<sup>th</sup> meeting, staff is hoping to hold interviews for applicants interested in being appointed for the shortened terms to the Planning Commission and Recreation Commission.

Currently, the Council subcommittees for those interviews are: Mayor Andrews and Councilmember Kunhardt for the Planning Commission and Mayor Andrews and Councilmember Ravasio for the Parks and Recreation Commission.

There was a question as to whether it would make sense the Councilmembers assigned to those subcommittees be continuing Councilmembers and she would like the Council to discuss this and make new appointments if they wish.

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

Councilmember Bailey said the issue came up because he thought he was serving as the Planning Commission subcommittee liaison, but he was replaced. His opinion remains that same—he thinks the decision for determining the next Planning Commissioner or Parks and Recreation Commissioner should be the continuing Councilmembers. He suggested Councilmember Kunhardt remain on the PC and Councilmember Ravasio remain on P&R and the remaining Councilmembers should disperse themselves such that there are two subcommittee members just for the interim terms.

Mayor Andrews questioned whether the interviewers must be on the Town Council.

Ms. Stricker said this is the Council prerogative. The Council can appoint an individual who is not currently seated on the Council to any standing committee.

Mayor Andrews voiced his preference to have Charles Lee and Councilmember Kunhardt interview for the PC and to have Fred Cassisa and Councilmember Ravasio interview for the P&R Commission to provide continuity. He confirmed that they would interview and then make a recommendation to the seated Council on March 17, 2020 and would like the upcoming Councilmembers to be able to participate if they are willing to.

Vice Mayor Beckman said he believes that breaking from what has been done for decades, the Council should have a great reason to sway from that.

Councilmember Ravasio said his concern is having an existing Planning Commission member interview and choose a replacement when he is still on the PC or vacating it, especially because a PC member is the most difficult position in Town.

Ms. Vaughn stated in looking at the calendar, she anticipates convening interviews on either March 12, 16 or 17<sup>th</sup> in the afternoon before the start of the Council meeting and both Councilmember elects would have their final PC meeting on March 24<sup>th</sup> and their final P&R Commission meeting on March 23<sup>rd</sup> so they would not yet be done with their service.

Vice Mayor Beckman suggested and there was Council consensus for the Mayor to approve keeping the interviews to current and continuing Councilmembers; for Councilmember Ravasio to interview for the PC members, and Vice Mayor Beckman to interview for the P&R Commissioner.

- C. Discuss And Consider Adoption of Resolution No. 11/2020 Approving Reinstatement Of Recreation Coordinator Classification, Revisions To Job Description And Establishment Of A Salary Range Of \$5,200 To \$6,321 Per Month – Two Meeting Business Item Per Council Policy. This Item Was First Reviewed By The Town Council At Its February 18, 2020 Regular Meeting

Town Manager Cusimano stated this item requires two meetings per Council policy. The item was reviewed at the Council's February 18<sup>th</sup> meeting and was supportive of the requested action. Staff was directed to bring back a resolution for additional discussion at this meeting for possible adoption. No facts have changed from the last meeting and he was available to answer questions.

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

MOTION: Moved by Ravasio, seconded by Bailey, and approved unanimously by the following vote: 5-0 (Ayes: Bailey, Beckman, Kunhardt, Ravasio and Andrews; Noes: None)

To Adopt Resolution No. 11/2020 Approving Reinstatement Of Recreation Coordinator Classification, Revisions To Job Description And Establishment Of A Salary Range Of \$5,200 To \$6,321 Per Month.

## 7. COUNCIL AND TOWN MANAGER REPORTS

### - Town Manager Report

- Update on Brush Clearing in Open Space: Ms. Cusimano stated staff is taking an aggressive approach to vegetation management. Per the recommendation of Martha Orth and Ruben Martin is to hold a stakeholders meeting with PG&E, Caltrans, City of Mill Valley, and the Marin County Open Space District.

Much of the Town's threatened areas are right outside their jurisdiction, which he described. Staff will return with a plan to use goats if possible or an alternative plan, receive approval from those jurisdictions to do some work upfront, and share the cost. The Town may be spending money outside of its jurisdiction and this may come as a budget amendment in the very near future.

### - Council Reports

- Councilmember Kunhardt gave the following report:
  - Tony Cavaras, Caltrans Regional Director, attended the TAM Board meeting and he took note of the fence near Nordstrom's and he reported Caltrans will commence widening of the Bike/Ped Crossing of Corte Madera Creek on the side of the bridge.
  - He reported that 300 e-bikes will be acquired from Gotcha which is advancing and serving both Sonoma and Marin. They need hubs, one of which will be the ferry terminal, SMART train stations and the Town may choose to identify a hub space which requires one or two parking spaces for locking spaces.
  - They held considerable discussion on EV vehicles and TAM is continuing its policy of promoting EVs and working with agencies to leverage dollars.
  - The County committee of Bay Wave met and Route 37 planning was discussed. The Marin segment is the lowest and has been flooding over the last 3 years, and agencies are working to solve that problem.
  - Safe Routes to School had an audit session near Lucky Drive and TAM is looking at potential improvements for bikes, pedestrians and sea level rise.
  - MCCMC's Climate Action Committee held their first meeting and focused on advancing green building codes.
- Vice Mayor Beckman gave the following report:
  - The Chamber of Commerce held its February Mixer at the newly opened Fieldwork Brewing Company in Town Center which has been the most successful mixer he has attended.

- They held their first meeting of the Climate Action Committee with Councilmember Kunhardt, himself, Ms. Vaughn and 12 members of the public with many great ideas brought to the table.
- He reached out to the School District regarding the Coronavirus and check in with their plans and needs. They have the situation under control and are working with the County Health Department.
- Councilmember Bailey gave the following report:
  - He serves as the Vice Chair of the MCCMC Legislative Committee meeting and he will be leaving shortly. He reported 3,360 new bills were introduced this year and this is significant. SB 50 has experienced difficulty but it is largely being morphed into a new AB 1279 with substantive parts and continuing with the need for vigilance moving forward.

He spoke about follow-up reports from various legislators and Marc Levine's agenda indicated much to do about the PSPS events and trying to harden the system and survive better with at least 4 new Assembly bills. Senator McGuire's new bills include things like the TOT revenues, a new commission on home hardening and preparation for fires and school meals. The League of California Cities is working on funding for infrastructure as well as housing.

- There were no meetings for Marin Clean Energy or others he serves as liaison.
- Councilmember Ravasio gave the following report:
  - He attended the Disaster Preparation Council Meeting today and he had no report.
  - A BPAC meeting was held last week and people spoke about the proposed roundabout near Town Center near Tamalpais and Madera, and R.J. Suokko gave an incredible to show how it is part of a Complete Streets project which goes from Tamalpais to Fifer and makes improvements along the entire corridor. The entire roundabout project for the corridor is approximately \$3.7 million and the roundabout is \$700,000 to \$900,000 with a lot of information presented as well as public comments.

Councilmember Bailey asked and confirmed with Ms. Vaughn that staff takes the Council comments from the end of each meeting and reiterate them in the week's newsletter on Fridays. Councilmember Ravasio noted Mr. Suokko's presentation can be seen on video and he noted there is an increase in traffic safety, a huge increase in pedestrian and bike safety, reduced emissions and most interesting, whenever a roundabout is proposed, 75% are against it and within one year about 75% thinks it is fantastic. Vice Mayor Beckman cited the improved look of roundabouts with landscaping.

Mr. Cusimano agreed to send the link to Councilmembers and will ask him to post a notice alert on the website. He reported that he and Mr. Suokko met today with the core group of concerned citizens and they have asked for a broader group with follow-up in three weeks. It has resulted in statistics and facts which drove them to choose a roundabout rather than a 4-way stop.

- Mayor Andrews had no report.

## **8. REVIEW OF DRAFT AGENDA FOR UPCOMING TOWN COUNCIL MEETING**

### **A. Review of Draft Agenda for March 17, 2020 Town Council Meeting**

Mayor Andrews stated with the brush abatement program, Ms. Orth noticed that contractors do not want to give up their gas-powered blowers and think the electric blowers are less efficient. He asked if there was a way to allow these contractors to use gas-powered blowers and questioned if there was support to place this item on a future agenda, and Councilmembers voiced their support.

Mr. Cusimano reported that he will be on vacation and not in attendance at the next Council meeting.

## **9. ADJOURNMENT**

The meeting was adjourned at 9:10 p.m. to the next regular Town Council Meeting on March 17, 2020 at Town Hall Council Chambers.