

To: Mayor and Ross Town Council
From: Gary Broad, Town Manager
Re: After-The-Fact Construction Follow-Up
Date: July 9, 2007

I. Project Summary

Town Council discussion about after-the-fact construction.

II. Background

The Town Council considered an application seeking after-the-fact planning approval at its June 2007 Council meeting. In this particular case, extensive work had also been done on the residence without building permit approval for the work. Several Council members expressed concern with applicants coming to the Town after work had already been commenced for an after-the-fact approval. Mayor Hunter stated that

...the number of after-the-fact applications is ridiculous. Council spends a tremendous amount of time protecting the “small town” character. This is wrong in so many ways... In addition, he asked Director Jarjoura and Town Manager Broad to make recommendations to Council as to what can occur to stop these after-the-fact applications coming before the town. It might involve a fine on the contractor and homeowner, but directed staff to explore options because this is not the tradition in Town. In order to protect the Town, better tools must be established. He agreed a package must be provided and whatever penalties they can impose they should.

This item has therefore been agendaized for further discussion, so staff can present the Town Council with an assortment of possible tools for the Council to consider to discourage construction activity commencing without necessary approvals.

III. Problems with Unpermitted Construction

Construction projects that occur without necessary planning and building approvals are problematic in numerous ways, including the following:

- They are unfair to the majority of Ross property owners and contractors who play by the rules, obey the laws and go through the time and expense of going through the proper process.
- The building department is unable to verify that proper licensing and insurance is in place for work done without permits, therefore an unlicensed contractors without required coverage such as workers' compensation and insurance may wind up doing the work.
- The work may be inconsistent with community goals and objectives as articulated in the Town's new Town of Ross General Plan 2007-2025 and the Ross Municipal Code.

- They result in work built without the plans being reviewed and approved by the town building official and the work inspected by the town building inspector, so the work may not comply with building code regulations, which could create unsafe conditions related to health and safety.
- The work does not go through planning review, so it may not comply with planning regulations, which could be deleterious to surrounding property owners' enjoyment of their property.
- They deprive the town of revenue it should receive for planning review, building permits and they deprive the County of Marin, local schools, the Town of Ross and other public organizations of property tax revenue it may be due for any reassessment of new construction. Residents that receive permits for their projects are doubly penalized as they pay fees not paid by scofflaws and could pay lower municipal service taxes if the town captured revenue lost to illegal construction.
- They deprive the Town of drainage and roadway impact fees used for roadway and drainage projects that benefit all Ross residents.
- After-the-fact applications are more difficult to review, require more staff and Council time than projects that do through the appropriate permit process and reduce opportunities to consider alternative solutions.

IV. Potential Solutions for Town Council Consideration

Town staff has been brainstorming a host of options to discourage property owners, and contractors and builders, from construction activity without permits. The Council could consider pursuing some, or all, of the following alternatives:

Permits and Fees:

- Increased building permit penalties for after-the-fact permits.
(already addressed in agenda item no. 15.)
- Increase planning application fees for after-the-fact applications.
(already addressed in agenda item no. 15.)
- The proposed \$100 for planning review of building permit revisions, per revision, in agenda item no. 15 will hopefully focus attention on the need for projects under construction to receive approval in advance for desired plan changes.
- Any after-the-fact planning or building permit shall submit all mandatory application material, including existing and proposed conditions. In no case shall work completed without a permit be used to satisfy required application material or to supercede the need to submit required material.

Compliance-Challenged Contractors

- Contractor or other professions doing work in Ross without first obtaining necessary building or planning approvals shall have their business licenses revoked for one year following completion of unpermitted work for first offense.

No business license will be issued to any contractor or other professional following a second offense of working without necessary approvals and permits.

- Any licensed contractor found doing work without planning and building permit approvals shall, at staff's discretion, be reported to the Contractor's State Licensing Board.
- Upon issuance of a red-tag, the entire project shall be halted for at least 72 hours to allow staff adequate time to review the situation and determine the scope of unpermitted activity and the necessary remediation. At staff's discretion, the red-tag may remain on all, or some, of the project until all necessary planning and building approvals have been obtained.
- Consider mandatory fines for projects that are red-tagged or for projects that continue despite being red-tagged.

Building and Planning Inspections

- The Town should determine the role of the building department related to illegal construction and in particular, the role of the building inspector. Our half-time building inspector's time is filled doing requisite inspections each morning without making enforcement a priority. I would suggest that the public works subcommittee be tasked with meeting with me and the building official to consider the mission of the building department related to permit enforcement.
- Because of time limitations, once a project receives Council planning approval, after reviewing and approving the building, the project planner may not actually inspect the site until all construction is completed and a final requested. By this time, any divergence from the planning approval has been completed.

We are beginning a program of having periodic planning review of projects under construction. As time permits, project planner Christine O'Rourke will make periodic site inspections to review projects for compliance with the planning approval and conditions.

- Town staff could be cross-trained for heightened identification of building and planning compliance in a cost-efficient manner. In its simplest approach, this might involve a building inspector being alerted to key planning requirements for a project. Even more innovative is Senior Planner Elise Semonian's idea that she would be interested in receiving building code training and could do building and planning inspections on some small projects...or at least review plans with an eye toward both disciplines.

Construction Completion Ordinance Amendment

- Ironically, illegal construction also allows property owners to avoid having to comply with the town's construction completion ordinance. As an additional amendment to those referenced in agenda item no. 16., the construction completion ordinance could be amended to stipulate that for projects begun without necessary approvals, the date of the red-tag shall be considered as the date of project commencement and building permits shall be completed within 9, 12, 15 or 18 months of that date, dependent upon the project valuation. As such,

project begun without permits could be liable for penalties if they could not be legalized and completed within the actual time frame from start to finish.

Resident and Contractor Education

- The Town will review its existing literature, including building and planning department application materials, its resale inspection material, its Guide to the ABC's of Building in Ross and its website to make sure that residents and construction professionals are well-apprieved of the Town's commitment to adherence to building and planning code compliance.

Computerization of the Building Department

- Other communities have computerized building permit material available to the public through the internet. Increased use of computerization would allow staff and residents to readily check whether or not a building permit had been issued for a particular property or whether illegal construction was occurring.
- Building permits should be clearly posted on-site in a location where they can be publicly viewed. The description of permitted work should be specific enough to clearly identify the permitted scope of the project.

Accurate Property Assessment

- Staff believes that in some cases, proper permits are avoided in order to avoid the County of Marin Assessor's Office from reassessing the value to reflect the value subsequent to project completion. The Assessor's Office obtains copies of building plans from the town's building department so it can be aware of improvement made to properties.

Town staff does not know the nuances of the county assessor's office in terms of how property improvements lead to property tax assessment. However, we do believe it is "fair" that the assessor's office should be aware of the full scope of all construction activity in the town so they can then apply their rules to determine property tax levels. As a related step to the process of reducing after-the-fact construction, I would recommend that town staff and the county assessor meet and discuss coordination and cooperation between the two entities to ensure that town properties are properly assessed.

- Hand in glove with ensuring construction activity receives necessary permits and complies with these permits, is also ensuring the project valuation properly reflects the anticipated project cost. While the building official considers project valuation at the time of issuing the initial building permit, I would suggest the Town explore retaining a outside consultant to review completed projects to verify project valuation for larger-sized projects.

The above represent a number of possible ideas toward ensuring better compliance with town building and planning regulations. The Council could consider these ideas or could refer them to a Council subcommittee to evaluate and make a recommendation back to the Council. Other suggestions from Council members related to this issue are welcome.