

To: Mayor and Ross Town Council
From: Gary Broad, Town Manager
Re: Shalavi Appeal of Time Limits for Completion of Construction
Date: January 7, 2008

I. Project Summary

Legal Owner: John and Sheri Shalavi

Location: 122 Winding Way

II. Project Description

Town Council consideration of the appeal of John Shalavi, 122 Winding Way, of the penalty for failure to complete construction under Ross Municipal Code Section 15.50, Time Limits for Completion of Construction, and adoption of Resolution 1635

III. Discussion

The attached October 2, 2007 letter from John Shalavi appeals the imposition of \$103,000 in penalties for failure to complete construction within the 18 months permitted under the Town's Time Limits for Completion of Construction.

This item was originally on the November 2007 agenda for Council consideration. Because of the lack of documentation to support the appeal, staff had recommended at that time that the appeal be denied and the penalty affirmed. Mr. Shalavi requested a continuance in order to provide written documentation to support his appeal.

The chronology of events for 122 Winding Way related to this project are as follows:

- 8-26-05. Building permit issued to John and Sheri Shalavi for eighteen months for construction of a 6,300 square foot residence and attached 2-car garage.
- 2-26-07. End of eighteen month period to complete construction.
- 3-28-07. End of 30 day no penalty period. Penalties begin to accrue.
- 9-07-07. Building permit finalized by building department.

Total penalties as outlined in the attached September 26, 2007 letter from the Town of Ross Building Department are \$103,000.

The Ross Town Council adopted Chapter 15.50, Time Limits for Completion of Construction on December 11, 2003 (see attached ordinance.) The ordinance was adopted in response to the ongoing problems within the community caused from construction projects not being completed within the permitted time period. The ordinance was also enacted to address ongoing frustration by Town residents with construction activity not being completed in a timely manner and the neighborhood disturbance and inconvenience extending well-past the allowable time period.

The ordinance is very specific about the grounds for appealing construction completion penalties. The ordinance allows the following grounds for an appeal:

(a) A penalty imposed pursuant to this section may be appealed to the Town Council on the grounds that the property owners were unable to comply with the construction time limit for reasons beyond the control of themselves and their representatives.

(1) For purposes of this section, the grounds for appeal shall include, but not be limited to: labor stoppages; acts of war or terrorism; and natural disasters.

(2) For purposes of this section, the grounds for appeal shall not include: delays caused by the winter rainy season; the use of custom and/or imported materials; the use of highly specialized subcontractors; significant, numerous, or late design changes; access difficulties associated with the site; failure of materials suppliers to provide said materials in a timely manner; or by delays associated with project financing.

The Council very consciously chose to limit appeals to circumstances beyond the control of the property owner. The December 10, 2007 letter from David Warner with Redhorse Construction details the slide at the rear hillside and the road subsidence and their effect on project construction. Mr. Warner indicates that the total construction delay from these two circumstances was 12 weeks and requests that the construction completion penalty be reduced by this 12 week period.

While the construction completion penalty does not exempt delays caused by the winter rainy season, it does allow for appeals based on “natural disasters.” Building Department staff and I believe the hillside slide more-closely represents a natural disaster rather than a standard “rainy season” delay and that the Redhorse Construction letter adequately outlines the delays resulting from the slide.

The project was finalized 193 days late with a resulting penalty of \$103,000. We recommend the penalty be reduced by the 12 weeks (84 days) attributed to the rear slide (which also included the delay due to the road subsidence), lessening the penalty period to 109 days. The penalty would be reduced as follows:

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| • February 26 through March 28, 2007 | No penalty for first 30 days late |
| • March 29 through April 27, 2007 | \$200/day for 30 days = \$6,000 |
| • April 28 through June 15, 2007 | \$400/day for 49 days = \$19,600 |

In upholding this appeal, the construction completion penalty would fall from \$103,000 to \$25,600, a reduction of \$77,400.

IV. Recommendation

Staff recommends that the Council approve attached Resolution No. 1635 to uphold the appeal and reduce the \$103,000 penalty to \$25,600.