



**Staff Report**

**Date:** September 8, 2016  
**To:** Mayor and Ross Town Council  
**From:** Sal Lucido, Contract Building Official  
Joe Chinn, Town Manager  
**Subject:** 27 Upper Road, Appeal of Construction Penalties Assessment

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**Staff Recommendation**

Town Council approval of Resolution 1965 accepting the reduced penalty of \$25,000 as negotiated between Town staff and the appellant for the appeal of construction penalties-against the real property at 27 Upper Road.

**Project Summary**

Owner:	Eric Greenberg
Location:	27 Upper Road, (APN 073-11-11)
Project:	Basement Exception Application and Hillside Lot Permit
Town File Number:	Planning File Number 1876
Permit Number(s):	Building Permit Number 17908
Project Valuation:	\$1,000,000
Permit Issued Date:	12/12/13
Construction Completion Deadline:	6/12/15 (18 months)
Construction Substantially Complete	12/3/14 (less than 12 months)
Project final date:	5/11/16 (the date of RVFD Conditional Approval Letter)
Calculated Penalties:	\$251,500 (334 days past deadline)
Negotiated Penalty:	\$25,000

**Background**

Construction projects in Ross are covered by the Time Limits for Completion of Construction Ordinance (Ross Municipal Code, Chapter 15.50). Under the Ordinance, a project of this building permit valuation has 18 months to complete construction.

In 2012, the applicant applied for a basement exception to legalize a basement area that had

been improved as a theater, storage and wine cellar (cave) without permits sometime before 2003, under the Town’s amnesty program of the attic/basement ordinance (RMC §18.46.040).

On July 3, 2013, Council approved the Basement Exception Application and Hillside Lot Permit 1876 for the subject project, with Conditions (see list of referenced documents on the Town’s web site at the end of this staff report). Staff recommended that the Town Council require the applicant to obtain a building permit by December 31, 2013 to legalize the work and allow the applicant 18 months from the date of permit issuance to complete any necessary work. The applicant submitted plans for plan review and approval and Permit 17908 was issued 12/12/13.

Work began in February of 2014 and was substantially completed by December, 2014. The Building Department performed 10 inspections during that period of time, however, final approval was not granted on 12/3/14 due to outstanding Fire Department requirements.

Between the end of December, 2014, and the final walkthrough conducted on 6/1/16, the appellant’s contractor and design team worked diligently in an attempt to properly document and legalize the fire suppression, alarm and communications systems to the satisfaction of Ross Valley Fire. This proved to be a difficult task due to numerous circumstances beyond the appellant’s control (e.g. the death of the design professional in charge of the fire suppression system and the unique nature of the fire suppression system in the house).

On May 11, 2016, Ross Valley Fire issued a letter outlining their Final Determination and acceptance of the pre-existing system with limitations (Attachment 2). For the purposes of the penalty determination, staff utilized the date of this final determination letter as the formal completion of the project. A final walk through was conducted on June 1, 2016.

The project completion of construction was 334 days beyond the 18 month time limit specified in the Ordinance and thus is subject to construction penalties. On June 30, 2016, the Town sent a letter to Mr. Greenberg (Attachment 3) advising him of construction penalties in the amount of \$251,500 with the following breakdown of the calculation:

Tier	Days Past Deadline	Start Range	End Range	Days	Daily Fine	Penalty
1	1st 30 Days (grace period)	6/13/2015	7/12/2015	30	\$ -	\$ -
2	Day 31 to the 60th Day	7/13/2015	8/11/2015	30	\$ 250	\$ 7,500
3	Day 61 to the 120th Day	8/12/2015	10/10/2015	60	\$ 500	\$ 30,000
4	Day 121-Completion	10/11/2015	5/11/2016	214	\$ 1,000	\$ 214,000
				<b>Totals: 334</b>		<b>\$ 251,500</b>
					Less Remaining Deposit:	\$ -
					<b>Total Amount Due to the Town:</b>	<b>\$ 251,500</b>

On July 7, 2016, the Town received a properly filed letter of appeal from the appellant’s architect (Attachment 4). Staff contacted the appellant to schedule a council meeting date for public hearing and set up a meeting between staff and the appellant to discuss the points outlined in the appeal and to review the supporting documentation referenced.

On Tuesday, August 9<sup>th</sup>, 2016, Town staff (Chinn & Lucido) met with the appellant (Greenberg), his contractor (Steve Selover w/ SASCO), his architect (Jared Polsky), and with Ross Valley Fire (Bastianon) to go over the appeal letter.

### **Discussion**

An owner may appeal a construction completion penalty, “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.” The grounds for appeal include, but are not limited to, “labor stoppages; acts of war or terrorism; and natural disasters.” Grounds for appeal do 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 such materials in a timely manner; or by delays associated with project financing.” (RMC §15.50.090(a))

The construction completion ordinance further provides, “When appealing penalties ... the appellant shall submit documentary and other evidence sufficient to establish that design decisions, construction drawings and documents, bids and construction contracts, permit applications, and compliance with all required permit conditions were undertaken in a diligent and timely manner. Required documentary and other evidence shall demonstrate to the town council's satisfaction that construction delays resulted from circumstances fully out of his or her control and despite diligent and clearly documented efforts to achieve construction completion within those time limits established in this chapter. Penalties made pursuant to this section shall not be modified or cancelled unless the evidence required in this section is submitted at the time of appeal.”

Town staff reviewed the appellant’s letter and supporting documentation during the 8/9/16 meeting. Staff generally concurs that compliance with the time limit was beyond the control of the appellant. In addition, there was very little construction that occurred after December 2014 – the construction consisted of a portion of a day’s work adding insulation and weather stripping as requested by the Fire Department. The main activity after December 2014 was providing documentation, calculations, and other information related to the fire suppression system that was installed roughly a decade earlier. In the end, the Fire Department’s final determination on May 11, 2016, is that they will accept the pre-existing non-conforming fire suppression system, but will limit access to all emergency personnel within the wine cellar and storage area, home theater, and projection room due to the unique entrance and egress to these areas.

There were only occasional meetings and little construction on-site after the 18 month period that could impact the neighbors and neighborhood quality of life. Although a construction penalty is warranted due to the completion of construction being late, staff believes that that given the circumstances described above only a low percentage of the calculated potential construction penalty is appropriate given the purpose of the Ordinance which is to prevent

excessively long construction activity. Staff and the appellant believe that \$25,000 is a fair amount of construction penalty in this very unique case.

The Town Council must hold a hearing on the appeal and may affirm the negotiated penalty or otherwise modify or cancel the penalty. If Council chooses to modify the negotiated penalty, it will likely be necessary to continue the hearing so that Council can review the full breadth of documentation provided by the appellant and in addition have the Town and Fire Department staff provide additional information.

#### **Fiscal, resource and timeline impacts**

If the Town Council upholds the penalties, a portion of the penalties will be deposited into the General Fund to offset the additional staff costs associated with processing the appeal and the much larger remaining portion will be deposited into the Facilities and Equipment Fund.

#### **Alternative actions**

The Town Council may increase or reduce the construction completion penalty though any modification to the agreed to amount will likely require a new hearing date for the full breadth of documentation to be presented by the appellant, Town staff, and Fire Department staff.

#### **Environmental Review**

Not Applicable.

#### **Attachments:**

1. Resolution No. 1965
2. Ross Valley Fire Letter of Determination dated 5/11/16 (R. Martin)
3. Town letter of Construction Penalty Determination dated 6/30/16 (S. Lucido)
4. Greenberg letter of appeal dated 7/7/16 (J. Polsky)

#### **Referenced Documents:**

1. RMC §15.50 – Time Limits for Completion of Construction Ordinance:  
[http://www.townofross.org/sites/default/files/fileattachments/administration/page/247/15.50 time limits for completion of construction.pdf](http://www.townofross.org/sites/default/files/fileattachments/administration/page/247/15.50%20time%20limits%20for%20completion%20of%20construction.pdf)
2. RMC §18.46 – Exceptions for Basements and Attics:  
[http://www.townofross.org/sites/default/files/fileattachments/administration/page/249/18.46 exceptions for basements and attics.pdf](http://www.townofross.org/sites/default/files/fileattachments/administration/page/249/18.46%20exceptions%20for%20basements%20and%20attics.pdf)
3. Council Meeting minutes 6/14/12 - Basement Exception and Hillside Lot Permit No. 1882 – continued to next public hearing:  
[http://www.townofross.org/sites/default/files/fileattachments/town\\_council/meeting/604/june-14-2012-adopted-minutes.pdf](http://www.townofross.org/sites/default/files/fileattachments/town_council/meeting/604/june-14-2012-adopted-minutes.pdf)

4. Basement Exception Application, 27 Upper Road Staff Report dated 7/3/13:  
[http://www.townofross.org/sites/default/files/fileattachments/town\\_council/meeting/636/agenda-item-13-27-upper-road-staff-report.pdf](http://www.townofross.org/sites/default/files/fileattachments/town_council/meeting/636/agenda-item-13-27-upper-road-staff-report.pdf)

## ATTACHMENT 1

# TOWN OF ROSS

## RESOLUTION NO. 1965

### A RESOLUTION OF THE TOWN OF ROSS DETERMINING THE FINAL AMOUNT OF CONSTRUCTION DELAY PENALTIES FOR 27 UPPER ROAD, ROSS, CALIFORNIA (APN 073-11-11)

The Town Council of the Town of Ross hereby finds, determines, orders and resolves as follows:

#### Section 1. Findings.

1. Ross Municipal Code, Chapter 15.50, Time Limits for Completion of Construction requires property owners seeking to improve their properties to complete construction in a reasonable amount of time as provided in the Code in order to ensure that neighborhood quality of life is maintained and that activities associated with construction, such as increased noise, traffic and associated impacts, are managed in a reasonable way.

2. There exists certain real property within the Town of Ross known as 27 Upper Road, Ross, California 94957 (APN 073-11-11) (the "Property") which is owned by Eric Greenberg (the "Owner").

3. In 2012, the Owner applied for a basement exception pursuant to Ross Municipal Code Section 18.46.040 to legalize a basement area that had been improved as a theater, storage and wine cellar without permits prior to 2003. On July 3, 2013, the Town Council approved the Basement Exception Application and Hillside Lot Permit No. 1876 (the "Project") with the requirement that a building permit to legalize the improvements be obtained by December 31, 2013. The required building permit was issued on December 12, 2013. Based on the valuation of the Project at \$1 million, construction was required to be completed within 18 months under Chapter 15.50 of the Municipal Code. This deadline was June 12, 2015.

4. Construction work began in February 2014 and was substantially completed by December 2014. Final approval of the completion of construction was not granted at that time primarily due to Ross Valley Fire Department requirements that remained unsatisfied. The unsatisfied conditions related to the adequacy of the fire suppression, alarm and communications systems. The only physical construction work performed on the property after the December 3, 2014 inspection was the installation of insulation and weather stripping requested by the Fire Department which took about ½ day of work. The remaining issues related to providing adequate documentation to ensure that the fire suppression, alarm and communications systems met Fire Department requirements.

5. On May 11, 2016, the Ross Valley Fire Department provided its final determination and acceptance of the fire safety systems in the basement area. Staff has accepted this determination as the date of final completion of the Project which was 334 days beyond the 18 month construction completion deadline.

6. On June 30, 2016, the Town sent a letter to the Owner advising him that the construction penalties under Chapter 15.50 amounted to the sum of \$251,500. On July 7, 2016, the Town received a timely filed appeal of this penalty determination.

7. Staff has concluded that the sum of \$25,000 is the appropriate construction delay penalty amount. Except for the installation of a minor amount of weather stripping and insulation which took ½ day to install, the construction work was substantially completed by December 3, 2014. The delay in final approval of construction completion was caused by the need for adequate documentation to be received, reviewed and approved by the Ross Valley Fire Department related to the adequacy of the fire suppression, alarm and communications systems in the basement area. This delay did not adversely impact the surrounding neighborhood. The Owner agrees that the proposed penalty amount of \$25,000 is appropriate and it is willing to pay this amount without objection.

8. The appeal hearing before the Town Council was properly set for the September 8, 2016 Town Council meeting. The Owner agreed that the appeal could be heard on the consent calendar if the Council determined after reviewing the staff report and related documents that the appropriate amount of the penalty is \$25,000 as recommended by staff and agreed to by the Owner.

**Section 2. Decision.**

1. The facts and findings set forth in Section 1 of this Resolution are true and correct and hereby adopted by the Town Council.

2. The Town Council hereby determines that the construction delay penalties shall be in the sum of \$25,000 for the Project.

3. The Town Clerk is directed to certify to the adoption of this Resolution and transmit copies of this Resolution by certified mail, return receipt requested to the Property Owner, and to cause a certified copy of this Resolution to be placed permanently in Town records.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 8<sup>th</sup> day of September, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Elizabeth Robbins, Mayor Pro Tempore



**ATTEST:**

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Linda Lopez, Town Clerk

## ATTACHMENT 2



# Ross Valley Fire Department

777 San Anselmo Avenue, San Anselmo, CA 94960

Mark Mills  
FIRE CHIEF

May 11, 2016

Steve Selover  
Site Security USA, Inc  
P.O. Box 1758  
Lafayette, CA 94549

RE: 27 Upper Road, Ross CA 94957

Dear Steve,

In September of 2012, the Ross Valley Fire Department began the plan review process, at the request of the applicant, to legalize an after the fact addition of a 1414 square foot control room, a subterranean wine storage room and wine cellar, a new hallway, and a home theater. Along with the aforementioned construction, there was an unpermitted (installed in 2003) non-conforming clean agent fire suppression system (FM 200) protecting the control room and home theater projection equipment.

During a Fire Department walk through of the residence, it was discovered that the emergency radio coverage signal was not able to transmit in or out of the wine cellar and storage rooms, which is a safety concern for responding emergency personnel.

The following Conditions of Approval were given to the property owner:

1. Submit plans for the FM 200 fire suppression system.
2. Install Emergency Radio Coverage system (to boost the emergency radio signal).

### FM 200 Systems

1. In November of 2015, plans were submitted for the FM 200 system for review and approval by the Ross Valley Fire Department. The plans were approved on February 3, 2016, after plan resubmittals. On March 16, 2016, I witnessed a final inspection on the FM 200 system, which was conducted by Sabah International. The final inspection did not pass because of several visual air gaps within the room. A second final inspection, which included, a room integrity test, was conducted in the control room and protection/AV room on April 27, 2016, by Sabah International. The projection/AV passed the integrity test (see attached report); the control room did not pass the integrity test (see attached report). Sabah International and AAA Fire Protection (the

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**SAN ANSELMO • FAIRFAX • ROSS • SLEEPY HOLLOW**



# Ross Valley Fire Department

777 San Anselmo Avenue, San Anselmo, CA 94960

Mark Mills  
FIRE CHIEF

installers), have both reassured that the amount of clean agent (FM 200) protecting the control room is approximately 2 times the amount needed for the size of the room, which in turn should extinguish a fire in the control room.

### **Emergency Radio Coverage**

2. The emergency radio system has not been installed, which causes communication problems within the wine cellar and storage areas. Being unable to communicate to the exterior of the building, along with the unique construction features and layout of the residence poses a significant risk to emergency personnel.

### **Final Determination**

1. The Ross Valley Fire Department will accept the pre-existing non-conforming Clean Agent (FM 200) Fire Suppression System.
2. The Ross Valley Fire Department will limit access to all emergency personnel within the wine cellar and storage area, home theater, and projection room due to the unique entrance and egress to these areas, which increases the potential risk for firefighter entrapment and/or injury.

Regards,

Ruben Martin  
Fire Inspector

Committed to the protection of life, property, and environment.

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HEADQUARTERS: 777 San Anselmo Avenue, San Anselmo, CA 94960 TEL: (415) 258-4686 FAX: (415) 258-4689 [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

## ATTACHMENT 3



June 30, 2016

Mr. Eric Greenberg  
27 Upper Road  
PO BOX 1023  
ROSS, CA 94957

SENT BY CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RE: 27 Upper Road, Ross CA 94957 (APN: 073-111-11) – Permits: 17908  
Time Limits For Completion of Construction Penalty Determination

Dear Mr. Greenberg;

Per the Town’s “Time Limits for Completion of Construction Ordinance” (Ross Municipal Code, Chapter 15.50, attached), you were allowed **18 months** to complete the project based on a project valuation of **\$1,000,000**. The permit was issued on **12/12/13**, which means that the deadline for completion was **6/12/15**. However, your project received final approval on **5/11/16** (the date of the Fire Department Conditional Approval letter), a total of **334** days past the completion date. Accordingly, a penalty in the amount of **\$251,500** is due the Town based on the following calculation, less your deposit of \$0 as follows:

Tier	Days Past Deadline	Start Range	End Range	Days	Daily Fine	Penalty
1	1st 30 Days (grace period)	6/13/2015	7/12/2015	30	\$ -	\$ -
2	Day 31 to the 60th Day	7/13/2015	8/11/2015	30	\$ 250	\$ 7,500
3	Day 61 to the 120th Day	8/12/2015	10/10/2015	60	\$ 500	\$ 30,000
4	Day 121-Completion	10/11/2015	5/11/2016	214	\$ 1,000	\$ 214,000
				<b>Totals:</b>	<b>334</b>	<b>\$ 251,500</b>
					Less Remaining Deposit:	\$ -
					<b>Total Amount Due to the Town:</b>	<b>\$ 251,500</b>

This penalty may be appealed to the Town Council within 10 days according to the process specified in Ross Municipal Code Section 15.50.090. Please note that an administrative fee of **\$1,598** is required to appeal this determination and must be paid prior being scheduled for a regular Town Council meeting.

Please contact us if you have any questions.

Sincerely,  
TOWN OF ROSS

Salvatore A. Lucido, P.E.  
Contract Building Official

CC: Joe Chinn, Town Manager (jchinn@townofross.org)  
Simone Jamotte, Building Department Secretary (sjamotte@townofross.org)  
Steve Selover <steve@steveselover.com>

Encl.: Time Limits for Completion – Chapter 15.50 Muni. Code

## ATTACHMENT 4

July 7, 2016

Sal Lucido  
Building Official  
Town of Ross  
P.O. Box 320  
Ross, CA 94957

Dear Mr. Lucido,

On behalf of Mr. Greenberg, we would like to appeal the penalty assessed on Mr. Greenberg's property at 27 Upper Road. The final sign off of the construction permit was delayed for reasons beyond Mr. Greenberg's or his representatives' control. We want to point out that in fact, the CONSTRUCTION was completed within 10 ½ months of the start of construction---well before the 18 month period allowed for the construction of this project. The only reason for the late sign off from the building department was the untimely and ultimately inapplicable requests for information from the Ross Valley Fire Department.

The following is a timeline for the construction of the Greenberg Amnesty project:

After much deliberation from 2012 to the end of 2013 the planning approval was granted and the building permit was ready for pick-up on December 12, 2013. The contractor, Mr. Steve Selover of SASCO took out his Town license and picked up the building permit on February 18, 2014. Construction started shortly thereafter.

The first inspection was called on February 24, 2014 and passed on February 27, 2014. The second inspection passed on March 19, 2014. Building inspections passed on March 21, April 4, April 23 and June 13, June 25, July 9, 2014. The Fire Department asked for a roll down fire door on the March 20<sup>th</sup> then reversed their decision on July 14 realizing it would be unsafe and asked for swinging fire doors instead. It took almost 5 months to get the fire doors because they had to be custom made to meet the Fire Department's requirements. These doors were installed and the penultimate final inspection was approved on December 3, 2014.

To be clear, all building items were approved and signed off on December 3, 2014. At this time the only remaining item for final sign off and approval was the Fire Department sign off. On December 4, 2014 the town manager Mr. Braulik noted that there was no requirement for the town planner to sign off on the work. On February 10, 2015 Mr. Selover again called Simone, the building inspector, and the town manager asking for a final inspection but could still not get the Fire Department to sign off on the permit.

From December 3, 2014 to the final sign off from the Fire Department on June 1, 2016 NO construction work was performed on the site except for an approximate ½ day of insulation and weatherstripping as requested by the Fire Department. The almost 2 ½ year delay was caused by Fire Department requests for more information. Throughout this process Mr. Selover kept Mr. Braulik informed notifying him of further requests for information from the Fire Department. Mr. Selover kept detailed notes and logs and can demonstrate the nature of the process to finally gain the Fire Department sign off. We will produce documents to show the requests for information and the responses to these requests.

The following quickly summarizes the information requests from the Fire Department:

1. The contractor received disparate requests for information from the Fire Department throughout the project. Instead of receiving one comprehensive list of additional information, he would be asked for



bits and pieces of additional items throughout the process. There would be long delays, sometimes as much as four or five months between requests for information and adequate responses to questions from the contractor.

2. The Fire Department asked for full documentation of the existing CEMCO fire suppression system-- wet stamped sign offs from AAA, the company that had supplied and installed the fire suppression system. They also requested complete drawings of the suppression and alarm systems. The company that installed the system no longer installs this system so Mr. Selover hired another company to fully document this process. Ultimately the Fire Department agreed that the massive amount of documentation that was gathered at great expenses-- both time and money-- was not necessary for their sign off. Again Mr. Braulik was informed of the stop and start nature of the requests.

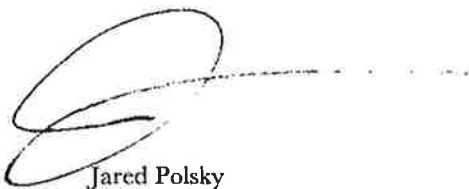
3. The Fire Department also delayed their sign off noting that their radio system would not work throughout the underground building. After much investigation and expense, Mr. Selover found out that a supplemental radio system would be complicated and extremely expensive. After a long delay he noted to the Fire Department that this requirement seemed more applicable to a commercial or institutional buildings. Upon further review the Fire Department agreed that they should not have required this radio upgrade for a residential facility and that this would no longer be mandatory or delay the final sign off.

Again, all these Fire Department requests for information were given piece meal with long delays between requests for information. Ultimately none of the documentation requested was applicable or used for the final sign off. The request for this information caused an almost 2 1/2 year delay.

For construction projects of this size, applicants and contractors are allotted 18 months to complete their projects. The Town wants construction finished in a timely manner. Clearly the intent of this ordinance is to minimize the impact of construction on neighbors. It is our strong contention that in this case the intent of the ordinance was met. The construction was entirely interior work with no noise impacts to the neighbors. Ultimately all the construction work was performed and signed off within 10 1/2 months from the start of construction. In fact the contractor essentially performed NO construction work for almost 2 1/2 years from the final building department sign off in early December, 2014 to the final sign off from the Fire Department in late May, 2016. All the delays were for reasons beyond Mr. Greenberg's or his contractor's and representatives' control.

We are therefore appealing this penalty and feel that no penalty should be assessed.

Yours truly,



Jared Polsky  
Polsky Perlstein Architects  
CA License 14125