



**Agenda Item No. 4b.**

**Staff Report**

**Date:** August 13, 2015; updated October 6, 2015

**To:** Mayor Katie Hoertkorn and Councilmembers

**From:** Amanda Charne, Assistant Town Attorney

**Subject:** 90 Sir Francis Drake Boulevard - Construction Penalties Assessment and Lien

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**Recommendation**

Hold public hearing and adopt Resolution No. 1911 assessing the construction penalties, late charges and interest against 90 Sir Francis Drake Blvd. and authorizing the filing of a lien on the Property.

**Background and discussion**

On May 29, 2015, the Town Building Official provided Mr. Michael Board, owner of 90 Sir Francis Drake Blvd., written notice that the construction delays at the subject property had incurred penalties in the amount of \$163,000 and demanded payment of said penalties, less the deposit of \$6,169, in the remaining amount of \$156,831. Mr. Board was further notified that said payment was due within 30 days to avoid late payment penalties and interest and that if payment was not received within 45 days, the total amount would become a lien on the property. Cal. Gov't Code § 54988(b).

Ross Municipal Code § 15.50.100(b) provides that any unpaid construction delay penalties, including late charges and interest, is not only a personal debt owed to the town by the owner(s) of the subject property but also an obligation that runs with the land and all subsequent owners of the property pursuant to Section 15.50.030. In addition to all other means of enforcement and collection, any unpaid penalties and interest may be collected through the placement of a lien against the subject real property in the manner provided by law for the collection of costs related to the abatement of a nuisance.

Approval of the attached resolution will assess the construction delay penalties, late charges and interest determined by the Council in the preceding public hearing upon the property and will authorize the filing of the lien against the property.

**Fiscal, resource and timeline impacts**

Staff time in filing and enforcing the lien.

**Alternative actions**

If the Town chooses not to authorize the lien, the Town could file a civil debt collection action in superior court or send the debt to a collections agency. The Town could also require payment of the penalties as

a condition of future discretionary zoning permits and approvals for this property pursuant to Ross Municipal Code § 15.50.030.

**Environmental review (if applicable)**

Exempt per 14 Cal. Code Regs. § 15061(b)(3).

**Attachments**

- Resolution No. 1911
- Public Hearing Notice with enclosures

## **TOWN OF ROSS**

### **RESOLUTION NO. 1911**

#### **A RESOLUTION OF THE ROSS TOWN COUNCIL ORDERING THE ASSESSMENT OF CONSTRUCTION DELAY PENALTIES, LATE CHARGES AND INTEREST UPON 90 SIR FRANCIS DRAKE BOULEVARD, ROSS, CALIFORNIA AND AUTHORIZING THE FILING OF A LIEN**

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

##### **Section 1. Recitals.**

1. Ross Municipal Code, Chapter 15.50, 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 90 Sir Francis Drake Boulevard, Ross, California 94957 (APN 072-151-06) (the "Property"), which according to the tax records of the Town, is owned by Michael Board (the "Owner").
3. The Ross Building Official determined that the deadline to complete construction on the Property pursuant to permit nos. 17716 and 17796 was July 23, 2014; however said construction was not completed until April 2, 2015.
4. On May 29, 2015, the Town Building Official provided the Owner written notice that the said construction delay had incurred penalties in the amount of \$163,000 and demanded payment of said penalties, less the deposit of \$6,169, in the total amount of \$156,831.
5. Said notice further provided that payment was due within 30 days to avoid late payment penalties and interest, and if payment was not received within 45 days, the total amount would become a lien on the Property.
6. Pursuant to Resolution No. \_\_\_\_\_, the Town Council of the Town of Ross found that the construction on the Property violated the construction time limits and thereby caused a public nuisance, and the Town Council determined the final amount of construction delay penalties, late charges and interest in the amount of \$\_\_\_\_\_.
7. On Tuesday, October 6, 2015, the Town Council held a duly noticed public hearing and considered all objections to the assessment of such penalties and filing of a lien on the Property.

**Section 2. Decision.**

1. The facts set forth in Recitals, Section 1, of this Resolution are true and correct. The construction delays on the Property constituted a public nuisance pursuant to Ross Municipal Code § 15.50.070.

2. Pursuant to Ross Municipal Code § 15.50.100 and California Government Code § 54988, the Town Council hereby orders the assessment of construction delay penalties, late charges and interest in the amount of \$ \_\_\_\_\_ upon the Property.

3. The Town Council hereby authorizes the filing of a lien on the Property in the amount of the assessment pursuant to Ross Municipal Code § 15.50.100 and California Government Code § 54988. The Town Manager, or his or her designee, is hereby directed to take such steps as are necessary or convenient to collect the costs set forth above, including but not limited to recording a notice of lien against the Property and foreclosing on the lien if necessary.

4. 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 passed at a special meeting of the Town Council of the Town of Ross held on the 6<sup>th</sup> day of October, 2015, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Kathleen Hoertkorn, Mayor

**ATTEST:**

\_\_\_\_\_  
Linda Lopez, Town Clerk



July 29, 2015

Michael Board  
101 Randall Avenue  
Vacaville, CA 95687

SENT BY OVERNIGHT FEDEX AND BY  
CERTIFIED MAIL RETURN RECEIPT  
REQUESTED

Leonard Rifkind  
Rifkind Law Group  
100 B Drake's Landing Road, Suite 260  
Greenbrae, CA 94904

Re: **NOTICE OF PUBLIC HEARINGS TO DETERMINE THE EXISTENCE OF A  
PUBLIC NUISANCE RELATED TO CONSTRUCTION DELAYS,  
CONFIRMATION OF PENALTIES, ASSESSMENT OF PENALTIES AND  
AUTHORIZATION OF LIEN**  
90 Sir Francis Drake Boulevard, Ross, CA 94957  
Assessors Parcel Number: 072-151-06

Dear Mr. Board:

This notice is to inform you of a public hearing to be held before the Ross Town Council on Thursday, August 13, 2015 at 6:00 p.m. at the Ross Town Hall, 31 Sir Francis Drake Boulevard, Ross, California, to determine that the construction delays occurring at 90 Sir Francis Drake Boulevard, Ross, California (referred to as the "Property") from July 23, 2014 until April 2, 2015 constituted a public nuisance pursuant to the Ross Municipal Code § 15.50.070, to confirm the amount of the penalties, late charges and interest, and to consider your appeal of the demand for monetary penalties relating to the time limits for completion of construction, dated June 4, 2015.

The Ross Building Official made a preliminary determination that the construction time limits stated in Ross Municipal Code § 15.50.050 had been violated and ordered the payment of penalties in the amount of \$163,000, less the deposit of \$6,169, for a balance of \$152,831 pursuant to Ross Municipal Code § 15.50.070. The Building Official further gave notice that if unpaid within 45 days, the amounts due would become a lien on the Property.

A second hearing, to be held immediately following the first hearing, will authorize an assessment and lien against the Property pursuant to Ross Municipal Code § 15.50.100 and California Government Code § 54988 in the amount of the penalties, late charges and interest determined by the City Council at the first hearing.

You may bring any witnesses, pictures, photographs, reports, or any other exhibits to these hearings which you feel will establish that the penalties should not apply and/or that the lien should not be imposed. You may be represented by an attorney. You will have an opportunity to testify, present and examine all evidence and question witnesses testifying against you.

If the Ross Town Council determines at the end of the hearing to authorize the lien, your Property will be assessed the construction penalties, interest and costs. This assessment will result in a lien upon your Property until paid and the Property may be sold after three years by the tax collector for any unpaid delinquent assessment.

Sincerely,

  
Dianne Thompson  
Interim Town Manager

CC: Salvatore Lucido, Contract Building Official  
Greg Stepanicich, Town Attorney  
Amanda Charne, Assistant Town Attorney

Enclosed:

Proposed Notice of Lien  
Letter from Mr. Lucido to Mr. Board, dated May 29, 2015  
Notice of Appeal, dated June 4, 2015

**RECORDED AT REQUEST OF  
AND WHEN RECORDED RETURN TO:**

TOWN OF ROSS  
Linda Lopez  
Town Clerk  
P.O. Box 320  
Ross, CA 94957

**INQUIRIES REGARDING THIS LIEN  
SHOULD BE DIRECTED TO:**

TOWN OF ROSS  
Salvatore A. Lucido,  
Building Official  
P.O. Box 320  
Ross, CA 94957-0320  
(415) 453-1453, Ex. 106

Space above this line for Recorder's Use Only

**EXEMPT FROM RECORDER'S FEES PURSUANT TO GOVERNMENT CODE SECTIONS 6103 AND 27383**

**NOTICE OF LIEN FOR ABATEMENT OF PUBLIC NUISANCE  
(Claim of the Town of Ross)**

Pursuant to the authority granted by Government Code Section 54988 and Ross Municipal Code ("RMC") Section 15.50.100, the Town may impose a lien to recover its costs for abating a public nuisance, including penalties, late charges and interest, on the property located within the boundary of the Town of Ross at 90 Sir Francis Drake Boulevard, Ross, California ("Subject Property"), more particularly described as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA,  
COUNTY OF MARIN, WITH A SITUS ADDRESS OF 90 SIR FRANCIS  
DRAKE BOULEVARD, ROSS, CA 94957; ALSO KNOWN AS ASSESSOR'S  
PARCEL NUMBER (APN) 072-151-06.

Owner(s) of Record: Michael Board  
Owner's Street Address: 101 Randall Avenue, Vacaville, CA 95687

The Ross Building Official made a determination that the time limit for completion of construction under Ross Building Permit Nos. 17716 and 17796 was July 23, 2014. Construction under said Building Permits was not completed until April 2, 2015, until which time, said construction caused a public nuisance pursuant to RMC Section 15.50.070. By letter dated May 29, 2015, the Building Official ordered the payment of a penalty amount of \$163,000, less the deposit of \$6,169, for a balance of \$152,831 in accordance with Ross Municipal Code § 15.50.070.

On August 13, 2015, in accordance with Chapter 15.50 of the Ross Municipal Code, public hearings were held to determine whether conditions on the Subject Property in fact constituted a public nuisance and to confirm the amount of the penalties. Following the hearings, the Town Council adopted Resolution No. \_\_\_ and \_\_\_ in accordance with Chapter 15.50 of the Ross Municipal Code, which (i) set forth the Town Council's findings and determination that the conditions on the Subject Property constituted a public nuisance, (ii) confirmed the amount of the penalties, late charges and interest, (iii) assessed these costs upon the Subject Property, and (iv) authorized the filing of a lien on the Subject Property in the amount of the assessment.

Pursuant to Resolution No. \_\_\_, the Town of Ross does hereby impose a lien on the Subject Property in the amount of the assessment: the sum of One Hundred Fifty-Six Thousand Eight Hundred Thirty One Dollars (\$156,831.00). This assessment shall be a lien upon the real property until paid in full and discharged of record. The property may be sold after three (3) years by the tax collector for unpaid delinquent assessments.

\_\_\_\_\_  
Joseph J. Chinn, Town Manager  
TOWN OF ROSS

\_\_\_\_\_  
Date

\*\*\*\*\*  
State of California                    ) ss  
County of Marin                        )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared Joseph J. Chinn, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public





May 29, 2015

Mr. Michael Board  
101 Randall Avenue  
Vacaville, CA 95687

SENT BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

RE: 90 Sir Francis Drake Boulevard – Time Limits For Completion of Construction  
Permits 17716 & 17796 (APN 072-151-06)

Dear Mr. Board;

*This is a follow up to our letter dated January 15, 2015 from Town Manager, Rob Braulik, to you regarding the subject project and permit activity.*

As we stated in our previous letter, the deadline to complete construction for your project at 90 Sir Francis Drake Boulevard per the Town's "Time Limits for Completion of Construction" (Ross Municipal Code, Chapter 15.50, attached) was determined to be April 23, 2014, based on a valuation of \$350,974. During construction, the scope of your project was increased and the valuation of the finalized project was determined to be \$520,000, which also increased your time limit to complete construction from 15 to 18 months. Accordingly, we have revised the construction completion deadline to July 23, 2014.

Your project received final Building Department approval on April 2, 2015. Per Chapter 15.50 of Ross Municipal Code, a penalty for **\$163,000** is due the Town, less the remaining amount of your deposit of \$6,169, in the amount of **\$156,831** based on the following calculation:

Tier	Days Past Deadline	Start Range	End Range	Days	Daily Fine	Penalty
1	1st 30 Days (grace period)	7/24/2014	8/22/2014	30	\$ -	\$ -
2	Day 31 to the 60th Day	8/23/2014	9/21/2014	30	\$ 200	\$ 6,000
3	Day 61 to the 120th Day	9/22/2014	11/20/2014	60	\$ 400	\$ 24,000
4	Day 121-Completion	11/21/2014	4/2/2015	133	\$ 1,000	\$ 133,000
				<b>Totals:</b>	<b>253</b>	<b>\$ 644.27</b>
					Less Remaining Deposit:	\$ 6,169
					<b>Total Amount Due:</b>	<b>\$ 156,831</b>

As per Ross Municipal Code Section 15.50.100(a), any penalty amount in excess of the construction completion deposit shall be paid within 30 days of the date of mailing the letter by first class mail to the property owner and any penalty amount not paid within 30 days shall be subject to additional 10% (ten percent) penalty on the unpaid balance remaining after this 30 day period and monthly interest shall accrue on this unpaid balance at an annual rate of 12% (twelve percent). **To avoid paying additional late payment penalties and interest, your payment is due within 30 days of the date of this letter.**

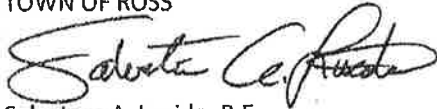
The penalties and interest due are a personal debt of the property owner, and also an obligation that runs with the land to all subsequent owners of the property. **If payment of the amounts due, including any additional penalties and interest, is not received within 45 days the total amount shall become a lien on the subject property pursuant to Section 15.50.100 of the Ross Municipal Code.**

May 28, 2015  
Mr. Michael Board  
Page 2 of 2

After a confirmation hearing on the amount of the proposed lien, your property will be assessed these costs. This assessment shall be a lien upon the property owned by you until paid in full and discharged of record. The lien will be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary municipal taxes.

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 **\$1,042** is required to appeal this determination and must be paid no later than NOON on Friday, June 5, 2015 for this item to be scheduled for the June 11, 2015 Town Council meeting. Please contact us if you have any questions.

Sincerely,  
TOWN OF ROSS

A handwritten signature in black ink, appearing to read "Salvatore A. Lucido".

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

CC: Dianne Thompson, Interim Town Manager (DThompson@townofross.org)  
Gregory W. Stepanicich, Town Attorney (GStepanicich@rwglaw.com)  
Simone Jamotte, Building Department Secretary (sjamotte@townofross.org)

Encl.: Time Limits for Completion – Chapter 15.50 Muni. Code (Ordinance 579)

LAW OFFICES

**RIFKIND LAW GROUP**

LEONARD A. RIFKIND  
THOMAS C. TAYLOR, JR.,  
OF COUNSEL

100 B DRAKE'S LANDING ROAD, SUITE 260  
GREENBRAE, CALIFORNIA 94904  
TEL (415) 785-7988 • FAX (415) 785-7976  
WWW.RIFKINDLAWGROUP.COM

REAL ESTATE  
LAND USE  
BUSINESS LAW  
ESTATE PLANNING

June 4, 2015

VIA EMAIL: [slucido@townofross.org](mailto:slucido@townofross.org)  
VIA HAND DELIVERY  
VIA U.S. MAIL

Salvatore A. Lucido, P.E., Building Official  
Town of Ross  
P.O. Box 320  
Ross, CA 94957-0320

Re: 90 Sir Francis Drake Boulevard  
Notice of Appeal of Demand by Town of Ross for Monetary Penalties Relating to Time  
Limits for Completion of Construction  
Our Client: MH Property Holdings, LLC

Dear Mr. Lucido:

Our firm represents MH Property Holdings, LLC, and its member, Michael Board regarding the referenced matter. Thank you for speaking with me today by telephone. We are in receipt of a copy of your letter dated May 29, 2015 sent to Mr. Board, seeking \$156,831 in monetary penalties in connection with the remodel project at 90 Sir Francis Drake. Please consider this letter an appeal by the property owner of the proposed penalties. Please find enclosed the property owner's money order for \$1,042.00 to cover the administrative filing fee. As we discussed briefly on the phone today, Mr. Board needs more time to prepare his appeal, and respectfully requests to be placed on the July 2015 agenda for an appeal hearing before the Town Council.

Briefly, we understand the following issues will be raised on appeal, and reserve the right to augment this list as we have the opportunity to review the file. Please advise of the deadline for our materials to be submitted so that Staff will have sufficient time to review in anticipation of the July council meeting.

**Initial Grounds for Appeal:**

1. **Improper Red Tag and Town Delay in Processing.** Town Building Inspector, Robert Haggett, at an inspection approved the framing, and advised the project could proceed for

sheeting and shingling. Subsequently, the Town determined a new gable roof was built approximately 10 inches in height higher than approved despite the prior framing approval. The Town then red tagged the project, causing a five month delay caused in part by slow processing by the Town to correct the height issue, as well as the moisture condition of the replacement wood that could not be wrapped until dry.

2. **Town and RVFD Failure to Provide Timely Inspections For Final Permit Approval.** The project was substantially completed in November 2014, and the Town and RVFD did not provide final approval until April 2015.
3. **Sidewalk and Accessibility Ramp Project Expanded Scope of Work.** After the Town issued its building permit, it greatly expanded the scope of work for the sidewalk repair in terms of width and length, and added an access ramp. This expanded scope of work adversely affected the landscaping plan.
4. **New Sewer Lateral.** The new Ross Valley Sanitary District sewer lateral requirement, effective January 1, 2015, required removal and replacement of existing landscaping. RVSD was slow to provide inspections of the work.
5. **New Fire Wall and Sprinkler Requirements.** After the building permit approval, and the project was complete, RVFD added a new fire wall requirement in the attic above the garage and added new sprinkler locations. RVFD required the sprinklers to have an alarm system and gave referrals to companies that ultimately could not perform.
6. **HVAC Units.** Delay in Town communicating to our client that HVAC units had to be relocated.

The total delay by the items referenced will result in time credits to our client, and demonstrate this project was timely built in compliance with Town Code. Further our client reserves the right to provide further and additional grounds for appeal prior to the appeal hearing.

Respectfully submitted,

RIFKIND/LAW GROUP

By:

  
Leonard A. Rifkind

LAR/fw

Encls.

FOR ADDITIONAL SECURITY FEATURES SEE BACK

0001333 11-24  
Office AU # 1210(8)  
Remitter: MICHAEL BOARD  
Operator I.D.: u402818 u367707

CASHIER'S CHECK

0133302195

PAY TO THE ORDER OF \*\*\*TOWN OF ROSS\*\*\*

June 03, 2015

\*\*\*One thousand forty-two dollars and no cents\*\*\*

\*\*\$1,042.00\*\*

Payee Address:  
Memo:  
WELLS FARGO BANK, N.A.  
2090 HARBISON DR  
VACAVILLE, CA 95687  
FOR INQUIRIES CALL (480) 394-3122

*Appeal Fee  
GO Sir Francis Drake*

VOID IF OVER US \$ 1,042.00  
*Richard Levy*  
CONTROLLER

⑈0133302195⑈ ⑆121000248⑆4861 511459⑈

7/29/2015

ORIGIN ID:APCA (415) 421-8484  
AMANDA L. CHARNE  
RICHARDS, WATSON & GERSHON  
44 MONTGOMERY STREET  
SUITE 3800  
SAN FRANCISCO, CA 94104  
UNITED STATES US

SHIP DATE: 29 JUL 15  
ACTWGT: 0.50 LB  
CAD: 5502922/INET3670

BILL SENDER

TO **MICHAEL BOARD**

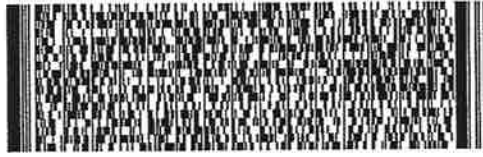
**101 RANDALL AVENUE**

**VACAVILLE CA 95687**

(415) 421-8484  
INV:  
PO:

REF: 12771-0001

DEPT:



559.031/153100

TRK#  
0201 **7741 6468 7952**

**THU - 30 JUL AM**  
**STANDARD OVERNIGHT**

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 or PO Box No. 1000 Drake's Landing  
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PS Form 3800, July 2014 See Reverse for Instructions

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 or PO Box No.   
 City, State, ZIP+4 Vacaville, CA 95687

PS Form 3800, July 2014 See Reverse for Instructions