

TOWN OF FAIRFAX STAFF REPORT

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager 
Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner

Date: September 1, 2010

Subject: Appeal of Penalty Fees for work done without permits at 31 Bolinas Road

RECOMMENDATION

Staff recommends reducing the penalty fee to only twice the \$750.00 permit fee for design review of a commercial project for a total of \$1,500.00.

DISCUSSION

The staff recently determined that a straw bale bench and exterior design features were being constructed onto the side of the Commercial building at 31 Bolinas Road. Construction in the Central Commercial Zone where the property is located requires prior Design Review Board approval [Town Code § 17.020.030(B)].

Resolution No. 2434, adopted by the Town Council on September 6, 2006, requires that penalty fees be charged where work requiring a permit from the Town, such as design review approval, is started without the required entitlement. The Resolution requires that the penalty fees be three times the cost of the required permit. In this case the permit fee for design review of a project in the Central Commercial Zone is \$750.00 and the penalty fee would be \$2,250.00 (Exhibit B – Resolution No. 2434, § 1.1.10 and § 5).

The appellant has indicated that she is low on funds and she does not own the building. She also indicated that because the bench was structural and did not project onto the sidewalk she was not aware that the aesthetic aspects required a permit (Exhibit A – appeal form).

The Town Staff has spent time with the appellant working to ensure that cob tree work done inside and outside the building did not pose a danger to customers and on advising them on the planning process. The appellant also was not issued an administrative citation. In light of these facts a complete waiver of the penalty fees does not seem justified.

Note: The Town does not have standards/policies to determine whether a waiver of penalty fees is warranted. The Town Council should consider developing a set of standards for evaluating a penalty fee waiver request.

Standards could include:

- Whether the person(s) have violated any Town regulations before.
- Whether or not corroborating evidence can be provided to verify hardship (i.e. tax returns which could be kept confidential).
- Whether or not the person was issued a citation by the Town.
- How much staff time was spent with complainants, the person violating the code, investigation, researching the code, etc.

ATTACHMENTS

Exhibit A – Appeal Form

Exhibit B – Resolution No. 2434



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930

(415) 453-1584 / FAX (415) 453-1585

NOTICE OF APPEAL

JUL 29 2010

FOR STAFF USE

RECEIVED

Date: 7-26-10 Fee: \$105.00

Appl.# _____

Receipt# _____

Recvd. By: S. Watson

Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name Lydia Kindheart

Mailing address 31 Bolinas rd Zip: 94930 Day phone 415 258 1559

Property Address: ↑

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # _____

The following are my reasons for appeal:

low on funds / I do not own the building
and did not know that esthetics had to run through
the board, I thought it was structural / the bench was off

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct. side walk

Executed this _____ day of _____, 19____

SIGNATURE OF APPELLANT: [Signature] (4/94)

RESOLUTION NO. 2434

A RESOLUTION OF THE FAIRFAX TOWN COUNCIL SETTING FEES FOR PLANNING ENTITLEMENTS AND RELATED PERMITS, AND FEES TO RECOVER SOME COSTS RELATED TO INFRASTRUCTURE IMPROVEMENTS TO PROVIDE IMPROVED CUSTOMER SERVICE

WHEREAS, the Town Council has determined that it is necessary that fees pertaining to processing applications for planning entitlements related to development activity be more commensurate with the costs to the Town of Fairfax relative to providing such services;

WHEREAS, the Town Council has determined that planning fees geared to improve cost recovery are critical to the goal of providing excellent customer service, given budget constraints and related impacts on the General Fund of the Town of Fairfax;

NOW, THEREFORE BE IT RESOLVED that the following fee schedule be adopted:

SECTION 1. FEES

The following fees are based upon an estimate of the minimal amount of planning staff time necessary to process various planning entitlements. These fees do not include costs pertaining to other Town Staff members related to processing planning entitlements. Also, the following fee schedule does not include the cost or related fees associated with review of an application by the Town Engineer (See Section 2.).

1.0 Basic Sign Permit Fee (conforming use)
\$35.00

1.10 Design Review Fees

Preliminary Design Review Signs	\$50.00 per hour
Permit	\$100.00
Modification	\$100.00
Violation Inspection	\$ 80.00
Banner Installation (non-profit)	\$ 51.00
Confiscated Sign	\$ 27.00
Fences and Exterior Color Change	\$150.00
Residential Construction ≤ \$19,999	\$300.00
Residential Construction ≥ \$20,000	\$750.00
Commercial Projects	\$750.00
Modification of Approved Plan Amount	½ Fee
Multiple Residential, per Each Unit Over 10	\$70.00

EXHIBIT #

B

Street Opening Permit (residential/commercial property)	\$121.00
Street Opening Permit (utility company project)	\$500.00
Excavation permit review	\$500.00
Map review	\$850.00
Site specific engineering review	\$450.00

SECTION 3. CONTRACT OR CONSULTING SERVICES

In addition to planning staff, and the services of the Town Engineer, the services of an outside consultant, other than an Environmental Impact Report Consultant may be necessary. The consultant's time will be charged on a cost basis plus 10% of the contract cost to recover administrative costs incurred by the Town.

SECTION 4. ADVANCED PLANNING, TECHNOLOGY AND INFRASTRUCTURE IMPROVEMENT FEES

- | | |
|--|--|
| 4.0 <u>General Plan Maintenance Fee</u> | 5% on all building permits with a valuation over \$10,000.00 |
| 4.1 <u>Technology Improvement Fee</u> | 5% on all building permits |
| 4.2 <u>Infrastructure Improvement Fee</u> | 5% on all building permits |



SECTION 5. PENALTY FOR WORK WITHOUT VALID ENTITLEMENTS OR PERMITS

Where work requiring a permit or entitlement required by the Fairfax Town Code or the Uniform or California Building Codes, for which fees are specified in this resolution, is started or proceeded with prior to obtaining said permit, the fees shall be three times the cost of the required permit. The payment of such fees shall not relieve any persons from fully complying with the requirements of the Codes in the execution of the work nor from any other penalties prescribed therein.

SECTION 6. REIMBURSEMENT OF TOWN ATTORNEY COSTS

The Town Attorney's time is charged at the rate specified in the current contract with the Town. A minimum deposit equivalent to one hour of time is required in conjunction with a formal request for the Town Attorney Services.

SECTION 7. RESIDENTIAL RE-SALE INSPECTION

- | | |
|------------------------------------|----------|
| 7.1 Residential Re-Sale Inspection | \$210.00 |
| Per additional living unit | \$ 25.00 |