



CITY OF FORT BRAGG

Incorporated August 5, 1889

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September 10, 2013

Mr. Travis Swithenbank
Swithenbank Construction, Inc.
P.O. Box 1660
Fort Bragg, CA 95437

Subject: Administrative Appeal regarding application of Fort Bragg Municipal Code Chapter 15.06 "Automatic Fire Sprinkler and Alarm Systems" to remodeling project at former Redwood Health Club (401 Cypress Street)

Dear Mr. Swithenbank,

I have carefully considered the administrative record, including testimony received at two administrative hearings regarding your appeal of the Community Development Department's determination that automatic fire sprinklers must be installed at the former Redwood Health Club property at 401 Cypress Street. I have determined that fire sprinklers will not be required at this time. This determination is based on the following conclusions:

- 1) The primary consideration is whether or not the work performed in your recent remodel of the premises triggered the requirement for installation of automatic fire sprinklers, as established in Fort Bragg Municipal Code (FBMC) Chapter 15.06 "Automatic Fire Sprinkler and Alarm Systems":

Existing buildings which are remodeled, added to, or altered, including maintenance and repair activities, when the cost of such work within any 36-month period exceeds \$50,000, shall have an automatic fire system installed. Roof replacement costs will not be calculated into the \$50,000 limit.
[Section 15.06.030(C)]

- 2) Attachment A provides a list of documentation submitted at or before the two administrative hearings that were held on August 14, 2013 and August 23, 2013. The hearings were attended by me, Travis Swithenbank, Robert Riggs (representing Swithenbank), Community Development Director Marie Jones, City Attorney David Warner, Fire Chief Steve Orsi, Fire Marshall Steve Wells and City Clerk Cindy VanWormer.

Based on all of the evidence submitted as well as discussions at the hearings, I can substantiate a cost for the work performed during the recent remodel project of between \$38,560 and \$50,690 (Attachment B). These cost estimates incorporate the following assumptions:

- a) With one exception (cost for interior/exterior painting), the costs provided by the independent contractor retained by the City of Fort Bragg (Mark Walker, April 19, 2013) are used with the following modifications that were agreed to by the parties at the hearings based upon information provided by Travis Swithenbank:
 - The cost of the stained concrete was reduced from \$7,698 to \$1,539,
 - The cost of the ceramic tile was reduced from \$4,250 to \$450,
 - A cost of \$657 for new electrical subpanels was added,
 - A cost of \$500 for a tile countertop was added.
 - b) The two parties did not reach an agreement on the cost for interior and exterior painting. The Walker cost estimate included a total cost of \$33,133. Mr. Swithenbank provided an alternative estimate of \$20,758, indicating that only one-third of the interior was painted and the exterior painting is one color with no trim. The two spreadsheets in Attachment B use Mr. Swithenbank's cost estimate. If the Walker estimate for painting were used, the range of total costs would be \$50,935 to \$63,065.
 - c) The \$50,690 cost estimate includes \$18,900 in costs for the activities covered under the building permit for the project and eliminates three line items from the estimate prepared by the independent contractor retained by the City (Mark Walker, Pinnacle Built) to avoid duplication as follows: Electrical-fixtures (\$1,600); Windows (\$3,870); Interior trim (\$900).
 - d) The \$38,560 cost estimate includes the line items from Walker's cost estimate, but not the valuation from the building permit to avoid duplication.
 - e) The new exterior fencing is not included in the cost estimate. It does not constitute remodeling, alteration or an addition to the existing building.
 - f) The rubber mat floor covering is not included in the cost estimate. The flooring was a tenant improvement and is installed on top of a finished floor.
 - g) The plumbing repairs are not included in the cost estimate. The work involved installation of new shower valves, repair of a leaky water line, replacement of toilet flanges, etc. While this work constitutes repair activities, it falls more into the category of day-to-day maintenance rather than maintenance associated with the remodeling project.
- 3) The low end of the range of the cost estimates presented in Attachment B (\$38,560) is less than the \$50,000 threshold triggering the requirement for installation of automatic fire sprinklers. Further, even if the parties had agreed upon the higher painting cost as included in the Walker estimate, the low end estimate would have been less than \$1,000 over the \$50,000 threshold established in FBMC Chapter 15.06.
 - 4) The specific circumstances of the Redwood Health Club remodel project have exposed some of the difficulties inherent in applying FBMC Chapter 15.06 to remodeling projects. Unlike for new construction, there is no standardized means of estimating remodeling costs. Furthermore, the scope of work performed oftentimes expands as a remodeling project progresses. I will encourage the Community Development Department, the Fire Chief, and the Fire Marshall to prepare an amended ordinance for consideration by the City Council to help remove the ambiguity in Chapter 15.06 and to

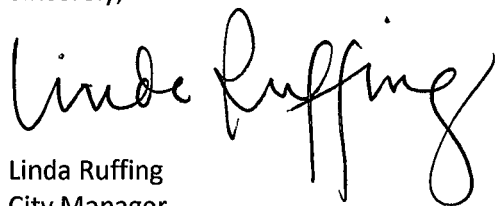
consider changes to the process for implementation of the ordinance in an effort to avoid similar situations in the future. A few suggestions arising from these proceedings are as follows:

- a. Provide a clear definition of "cost" and identify items that should be included and/or excluded from the total "cost."
- b. Consider whether the trigger mechanism in the ordinance should be modified to only include the cost of remodeling work that requires a building permit and inspections.
- c. To the extent possible, establish a process whereby a determination as to whether or not fire sprinklers are required is made prior to issuance of a building permit.
- d. Consider allowing phased installation of sprinkler systems in situations where the cost of installing sprinklers far exceeds the cost of the remodeling work performed.

I would like to thank all of the parties involved in this proceeding for their thoughtful participation.

Lastly, please be advised that any further remodeling, additions and/or alterations on the premises (other than roof repairs) within 36 months of the final building inspection for the Redwood Health Club remodeling project will trigger the requirement for installation of automated fire sprinklers.

Sincerely,

A handwritten signature in black ink that reads "Linda Ruffing". The signature is written in a cursive, flowing style.

Linda Ruffing
City Manager

cc: City Council
Community Development Director
City Attorney
City Clerk
Fire Chief
Fire Marshall
Building Inspector
Robert Riggs, Katzoff & Riggs, LLP

ATTACHMENT A - SUMMARY OF ADMINISTRATIVE RECORD

March 18, 2013-

Letter from Community Development Director Jones to Redwood Avenue Design, LLC and Swithenbank Construction regarding possible triggering of requirement for installation of automatic fire sprinklers per Fort Bragg Municipal Code (FBMC) Chapter 15.06 "Automatic Fire Sprinkler and Alarm Systems."

April 8, 2013

City Council discussion regarding automatic fire sprinkler requirements for Redwood Health Club and Surf & Sand Motel. Council directed that the term "cost" should be interpreted as objective value of the project, including materials and labor. Council directed that, in these two instances, automatic fire sprinkler requirement could be deferred for a year with a contract and a deposit.

April 29, 2013

Letter from Community Development Director Jones to Redwood Avenue Design, LLC and Swithenbank Construction informing owners that an estimate of the value of the work performed, which was prepared by an independent contractor, estimated the value at \$77,148. (NOTE: This was a typo, actual valuation was \$67,086). This amount exceeds the \$50,000 threshold in FBMC 15.06, and consequently, automatic fire sprinklers are required.

May 13, 2013

Letter from Katzoff & Riggs, LLP, representing Redwood Avenue Design, LLC and Travis Swithenbank, Swithenbank Construction, Inc. requesting an administrative appeal of the Community Development Director's determination.

August 8, 2013

Letter from Community Development Director Jones to City Manager Ruffing regarding application of FBMC Chapter 15.06 to the Redwood Health Club project. Letter includes Cost Analysis by general building contractor Mark Walker (CA Lic. #611234).

August 14, 2013

Administrative appeal hearing held. Testimony received from: Travis Swithenbank, Robert Riggs, Marie Jones, David Warner, Steve Orsi, Steve Wells. Documentation submitted at hearing by Mr. Swithenbank: "Response to Mr. Walker's Estimate of April 19, 2013." (Hearing continued to August 23, 2013.)

August 16, 2013

Email from City Clerk VanWormer with current version of FBMC Chapter 15.06 (adopted in 2007) and prior version attached.

Invoices from Russ Merritt Electric, North Coast Plumbing & Heating submitted by Mr. Swithenbank.

Excel spreadsheet of costs submitted by Community Development Director Jones.

August 20, 2013

Letter from Katzoff & Riggs, LLP to City Manager Ruffing stating that FBMC Chapter 15.06 was misapplied to Mendocino Coast Clinics project and therefore "ordinary maintenance" such as repainting Redwood Health Club should be excluded from project costs.

August 23, 2013

Continued administrative appeal hearing held. Testimony received from: Travis Swithenbank, Robert Riggs, Marie Jones, David Warner, Steve Orsi, Steve Wells.

**ATTACHMENT B -
COST ESTIMATES BASED ON ADMINISTRATIVE HEARING DISCUSSIONS**

WORK PERFORMED	COST	SOURCE	NOTES
Demolition	\$3,480	Walker estimate	Agreed upon at 8/14 hearing
Work performed under bldg permit: weight room/machine room	\$18,500	Permit valuation	interior wall removal, beam installation, new ext. windows (5), replace light fixtures, repair wiring, new drywall
Stained concrete	\$1,539	Swithenbank	Agreed upon at 8/14 hearing
Floor covering-laminate	\$2,000	Walker estimate	Agreed upon at 8/14 hearing
Floor covering-carpet	\$1,628	Walker estimate	Agreed upon at 8/14 hearing
Floor covering-locker rooms	\$878	Walker estimate	Agreed upon at 8/14 hearing
Sheetmetal	\$300	Walker estimate	Agreed upon at 8/14 hearing
Ceramic Tile	\$450	Swithenbank	Agreed upon at 8/14 hearing
Electrical - subpanels	\$657	Invoice	Agreed upon at 8/23 hearing
Counter tile	\$500	Swithenbank	Agreed upon at 8/14 hearing
Painting - interior/exterior	\$20,758	Swithenbank	No agreement reached
TOTAL COST	\$50,690		

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