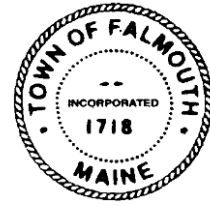


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Memorandum Corrected

Date: November 8, 2010
To: Town Council
From: Amanda L. Stearns, Community Development Director
Cc: Nathan A. Poore, Town Manager
Justin Brown, Deputy Code Enforcement Officer
Re: 2 Inverness Road, Application for Mislocated Dwelling

Stephen Willis is requesting consideration for a Consent Agreement under Section 8.2.1 for a mislocated single family dwelling located at 2 Inverness Road. The following comments address Section 1-14 of the Code of Ordinances, General penalty; continuing violations; consent agreements.

- (c) In determining what, if any, civil penalty to impose as part of a consent agreement entered into pursuant to section 8.2.1 of the zoning and site plan review ordinance, the town council may consider:
- (1) How long the violation has existed; - **The house was constructed in 1988, 22 years. It was constructed 23 years since the enactment of the 1965 Zoning Ordinance.**
 - (2) The circumstances surrounding the construction which violates the setback; - **The lot was part of a subdivision in the Falmouth Country Club, approved in 1986 as Lot 42.**
 - (3) Whether a building permit was issued for the construction; - **A building permit was issued on November 29, 1988. This permit included a plot plan indicating the boundaries and the required setbacks.**
 - (4) Whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line - **no**
 - (5) Such other facts as the council deems relevant.

Based on the record and factual information I offer the following comments.

1. There was no intent to deceive the town or other parties regarding the required setbacks.
2. There was a survey available to the contractor and property owner from which to measure setbacks.
3. The current assessed value of the home is \$378,400 with an effective square footage of 4,963.

Based on the following guidelines the Council discussed as a basis for determining penalties, a strict application of the guidelines would generate a penalty of \$3,820.

Guidelines for determining penalty fee for mislocated dwellings.

<u>Circumstance</u>	<u>Range of options</u>
<p>The age of the violation</p> <p>The circumstances of the mislocation of the improvement</p>	<p>Each year since 1965 equals 1 @ \$100 per year = \$2,300</p> <ul style="list-style-type: none"> • Incorrect survey X1 - NA • Using geographical features, thought to be the boundary; i.e.: fences, hedgerows or other, X2 - NA
<p>Consideration of ownership and approved building permit plan</p>	<ul style="list-style-type: none"> • Current owner exceeded the approved Building Permit construction plan, 3 times the value of the area of violation. - NA • No Building Permit Application filed or granted, 6 times the value of the area of violation. - NA
<p>The assessed value of the parent structure in its entirety. A \$500,000 home of 4,000 square feet of habitable equals \$125.00 per square foot</p>	<p>Value; area of the violation multiplied by the assessed square foot value of the improved dwelling, not including the land, multiplied by two (2). - Approximate square footage of the area in violation based on the mortgage survey is 10 square feet and is valued at approximately \$76 per square foot (based on the assessed value and effective square footage) = \$1,520 (\$760 x 2)</p>