

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

July 2, 2015

Rosemarie MacGuinness
Attorney, SirkinLaw APC
On behalf of owner/occupants of 158 Linda Street
388 Market Street, #1300
San Francisco, CA 94111

Subject: Tentative Map Application Incompleteness Appeal - 158-162 Linda Street

Dear Ms. MacGuinness:

This is in reference to the appeal you submitted concerning rejection of the subject Tentative Map Application for property located at:

158-162 Linda Street, Assessor's Block No. 3597, Lot No. 049.

Pursuant to the attached determination from the Office of the City Attorney and California Government Code, Section 65943(c), an appeal hearing has been scheduled on **Tuesday, July 28, 2015, at 3:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, 1 Dr. Carlton B. Goodlett Place, Legislative Chamber, Room 250, San Francisco, CA 94102.

Please provide to the Clerk's Office by 12:00 noon:

20 days prior to the hearing: names and addresses of interested parties to be notified of the hearing, in spreadsheet format; and

11 days prior to the hearing: any documentation which you may want available to the Board members prior to the hearing.

For the above, the Clerk's office requests one electronic file (sent to bos.legislation@sfgov.org) and one hard copy of the documentation for distribution.

NOTE: If electronic versions of the documentation are not available, please submit 18 hard copies of the materials to the Clerk's Office for distribution. If you are unable to make the deadlines prescribed above, it is your responsibility to ensure that all parties receive copies of the materials.

Appeals filed pursuant to Government Code, Section 65943(c) are not subject to an appeal filing fee. With a copy of this letter, we are hereby returning the check you made at the time of filing, payable to Public Works for \$298, which has not yet been deposited by the department.

If you have any questions, please feel free to contact John Carroll, Legislative Clerk, at (415) 554-4445.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Calvillo". The signature is stylized and includes a vertical line at the end.

Angela Calvillo
Clerk of the Board

c:
Jon Givner, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
John Malamut, Deputy City Attorney
Mohammed Nuru, Director, Public Works
Jerry Sanguinetti, Public Works-Bureau of Street Use and Mapping
Fuad Sweiss, City Engineer, Public Works
Bruce Storrs, Public Works
Scott Sanchez, Zoning Administrator, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department



DENNIS J. HERRERA
City Attorney

JOHN D. MALAMUT
Deputy City Attorney

Direct Dial: (415) 554-4622
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MEMORANDUM

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: John D. Malamut *JDM*
Deputy City Attorney

DATE: July 1, 2015

RE: Tentative Map Disapproval Appeal (June 15, 2015) for 158-162 Linda Street

On June 17, 2015, you forwarded the abovementioned appeal to our office to determine if the matter is appealable to the Board of Supervisors. Due to the unique circumstances of the appeal, our determination took longer than anticipated. Our office has concluded that the appeal was timely and appropriately filed with the Board of Supervisors, but the legal framework that the appellant invoked for the appeal is not applicable.

On June 9, 2015, Bruce Storrs, the City and County Surveyor, on behalf of Public Works (PW), determined that the subdivision map application for a 6-unit condominium conversion at 158-162 Linda Street was incomplete. His letter to the applicant states: "[t]his application is being returned at this time. If you choose to resubmit, please do so once the applicants are eligible for conversion." Mr. Storrs decision was not a disapproval of the tentative map itself, but rather a determination that the application was incomplete.

The appellant invoked San Francisco Subdivision Code Section 1314 as the basis for bringing the appeal. However, Section 1314 applies only to PW's determination to approve, conditionally approve, or deny tentative subdivision or tentative parcel maps. As stated above, PW's decision concerned the application's completeness. It was not a tentative subdivision map denial. Therefore, Subdivision Code Section 1314 is inapplicable to this appeal. Nevertheless, the California Permit Streamlining Act (California Government Code Sections 65920 et seq.) does provide for an appeal right to a city's or county's decision that an application for a permit, like a tentative subdivision map, is incomplete.

Government Code Section 65943(c) provides that the determination of permit application incompleteness can be appealed to the city's governing body, here the Board of Supervisors. This Section states that a "final written determination by the agency on the appeal" shall occur no later than 60 calendar days after receipt of the applicant's written appeal. If the written determination is not made within this 60-day time frame, then the application is "deemed complete".

Unlike appeals of tentative subdivision or tentative parcel maps, San Francisco has no adopted rules for an appeal under Government Code Section 65943. There is no deadline to timely file the appeal, there is no appeal fee, and there are no procedures for noticing and conducting the Board's appeal hearing.

MEMORANDUM

TO: Angela Calvillo
Clerk of the Board of Supervisors
DATE: July 1, 2015
PAGE: 2
RE: Tentative Map Disapproval Appeal (June 15, 2015) for 158-162 Linda Street

Despite the fact that the appellant invoked the wrong appeal procedure, our office feels that the appeal was properly filed for purposes of Government Code Section 65943 in light of PW's determination that the subdivision map application was incomplete. The appeal should not be rejected simply because the appellant cited to the wrong appeal procedures.

In the absence of San Francisco rules for this appeal, we offer the following recommendations concerning the deadline for filing the appeal, the appeal fee, and hearing procedures. Even though there is no adopted appeal filing deadline, the appeal was filed within 6 days of PW's determination. Such an appeal would have been considered timely under any comparable San Francisco land use appeal process, so this appeal should be considered timely and validly filed. Government Code Section 65943(e) does allow an appeal fee to be charged; yet, it requires that the fee be collected as part of the application fee charged for the subdivision/permit. San Francisco has no such legislatively adopted fee, therefore, the appeal fee should be refunded to the appellant. In regard to the hearing procedure, Government Code Section 65943(c) sets forth a deadline for the Board to hear and decide the appeal within 60 days of the receipt of the appeal, but includes no other information regarding notice or the conduct of the hearing. We recommend that the Clerk calendar an appeal hearing within 60 days of its June 15 receipt of the written appeal and follow the Board's and Clerk's standard procedures for notice and conduct of the hearing that are followed for other land use appeals.

If you have further questions about this memorandum or the appeal, please do not hesitate to contact me.

cc: Jon Givner