



DENNIS J. HERRERA
City Attorney

JOHN D. MALAMUT
Deputy City Attorney

Direct Dial: (415) 554-4622
Email: john.malamut@sfgov.org

MEMORANDUM

TO: Angela Calvillo
Clerk of the Board of Supervisors

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

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.

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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