

State Minimum Fire Safe Regulation Appeal Hearing

May 23, 2023

APN: 654-15-028

PLN15-10815-MOD1-APL3

My single-family home project is blocked yet again due to a requirement from CALFIRE to construct a fire truck turnaround which does not fit inside my easement. Since I am legally prevented from building the required turnaround, and I'm not allowed to build my home without the turnaround, I am therefore prevented from building my home and developing my land. If I cannot develop the property, its value is reduced by over 90% to grazing land.

The requirement to build a CALFIRE turnaround at the intersection of my driveway with Higuera Highland Lane should be removed since it may constitute a regulatory taking by being so burdensome that it causes the property to lose a significant portion of its value.

Timeline

2016 – Santa Clara Land Development Engineering and Fire Marshal request a SD16 Type B turnaround at the intersection of my driveway with Higuera Highland Lane as the fulfillment of my pro-rata improvement share of the private access road. I receive Site and Grading Approval for a single-family home.

September 3, 2020 – I submit a modification to my Site Approval to substantially reduce the size of my house. I naively assume that since this is a reduction in project scope, that the Modification will be processed quickly.

October 6, 2020 – I receive my first Incomplete Letter.

January 28, 2021 – I resubmit revised plans.

March 9, 2021 – I receive my second Incomplete Letter with minor comments.

March 24, 2021 – I receive a revision of the March 9 Incomplete letter with the addition of several comments from CALFIRE which render my project unbuildable. The comments also include a request for a revision of the turnaround: "Approved turnaround is required: 40-foot radius or hammerhead/T with the top of the "T" being 60-feet. The Hammerhead/T in this plan is not in the correct orientation for the top of the "T"."

I contest several of the other comments as unconstitutional. However, assuming that the 60' wide turnaround can fit inside my 60' easement, I ask my engineer to revise the turnaround per the request.

April 29, 2021 – CALFIRE denies my request for exception for the remaining comments.

May 12, 2021 – I appeal the CALFIRE denial and request a Planning Commission hearing.

June 3, 2021 – I point out to the Planning Department that the addition of new requirements in a third iteration of an Incomplete Letter is a violation of the Permit Streamlining Act, and therefore the new CALFIRE comments added on March 24th are a violation of State Law.

June 8, 2021 – The Department agrees to remove the new CALFIRE comments from my Incomplete Letter and allow me to resubmit my plans. However, they move the comments to a Letter of Concerns and indicate that they will be in my Conditions of Approval.

June 10, 2021 – I am told that my appeal hearing is “tentatively scheduled to go before the Planning Commission on July 22nd.” The scheduled hearing date is 73 days after the submittal of my appeal, which exceeds the 60-day time limit in the Permit Streamlining Act. I am told that the time limit does not apply in this case.

June 30, 2021 – I resubmit plans showing the rotated fire truck turnaround and a daylight line extending beyond the easement. No comments are received from the County.

July 6, 2021 – Sixteen days before my scheduled hearing date I am told that I will not be allowed to have a hearing in front of the Planning Commission as previously stated. Instead the County will create a new hearing process with the Fire Marshal which is expected to be approved sometime in October. I am told I need to wait for that process in order to move forward.

July 30, 2021 – I receive my Complete Letter. No comments are made about the turnaround grading extending beyond the easement.

September 28, 2021 – I receive my preliminary Conditions of Approval. No comments are made about the turnaround grading extending beyond the easement.

October 13, 2021 – I appeal the Conditions of Approval, specifically the CALFIRE road requirements. *If I had been informed by the County that the requested turnaround was not legal, it would have been included as part of this appeal.*

October 14, 2021, October 28, 2021, December 7, 2021 – I have multiple hearings in front of the Fire Marshal to appeal the CALFIRE denial for exception as part of the County’s new “State Minimum Fire Safe Regulation Appeals” process. My appeal is denied.

March 14, 2022 – The Planning Commission grants my appeal of my Conditions of Approval on the grounds that they are unconstitutional takings. My plans are approved and Final Conditions of Approval are issued. No comments are made about the turnaround grading extending beyond the easement.

March 18, 2022 – I apply for my grading permit.

February 27, 2023 – After almost a year of change requests, my plans are finally approved by Land Development Engineering. The processing status record shows: Marked as **Approved - Stamps Required** on **02/27/2023** by **EG**

March 15, 2023 - I address the final incomplete comment, which is to pay my Habitat Fee.

March 17, 2023 - I am told that my record has been approved and that the only remaining items are stamping of the plans and signing of the declarations.

April 3, 2023 – Land Development again approves my plans for stamping and my application status changes to Final Processing. The processing status record shows: Marked as **Stamp/ReStamp Required** on **04/03/2023** by **EG**

April 5, 2023 – I receive a call from Eric Gonzales at Land Development Engineering stating that some of the information he gave me over the past year was incorrect and that the driveway plans would need to be completely revised yet again, and that I would need to obtain a notarized permission letter from my neighbor in order to construct the CALFIRE turnaround.

May 2, 2023 – Since I do not have permission from my neighbor to build on his property, I ask the County to apply their new Administrative Review process to my application to deem the CALFIRE turnaround requirement as a taking since it is blocking the development of my parcel.

My request is denied and I am told that I need to appeal the CALFIRE decision to the Fire Marshal via the County's "State Minimum Fire Safe Regulation Appeals" process. This process has not been utilized since my hearing in December 2021; other applicants have their CALFIRE requirements reviewed and waived using the Administrative Review process. In their April 27, 2023 report to HLUET, the Planning Department highlighted that "there have been no appeals filed with the County since implementation of the administrative review process."

May 19, 2021 – I learn that my neighbor on Higuera Highland Lane had all off-site improvements waived for his project via the Administrative Review processes, include all CALFIRE road improvement requirements and all pro-rata road improvement requirements. I request equal consideration for my project and my request is denied.

It has now been two years and nine months since I submitted a Modification to reduce the size of my single-family home. What I had hoped to be a quick, administrative review, has turned into a grueling multi-year ordeal punctuated by delay after delay. Every time I think I am getting close, the Department finds a new reason to block or delay me.

While other applicants get their off-site improvements waived via Administrative Reviews, get issued grading and building permits, and get to start construction, I continue to be singled-out and have non-standard processes and different criteria applied to my project.

If I am unable to get an exception for the CALFIRE turnaround at the intersection of my driveway with Higuera Highland Lane I will not be able to develop my property and it will become nearly valueless.

The County has multiple options to allow my project to move forward and avoid a potential regulatory taking case, including approving viable alternatives via the State Minimum Fire Safe Regulation Appeals process, or removing all CALFIRE requirements as unconstitutional via the Administrative Review process.

I therefore request that the County take one of many paths available to unblock my project and halt all further unnecessary delays to issuing my permit.

Sincerely,
Margaret Belska