



Stoel Rives_{LLP}

Andresen's Appeal of the Department of Public Works' Notice of Violation to the Nevada County Board of Supervisors

Lauren Neuhaus

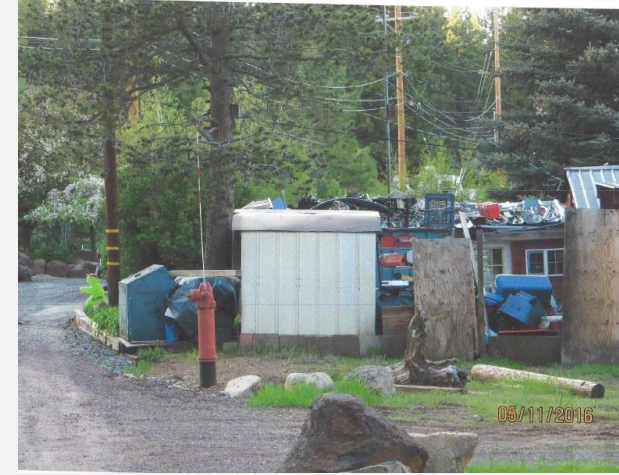
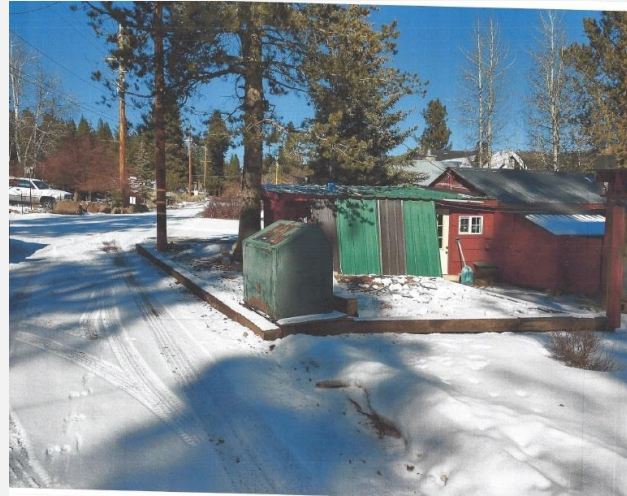
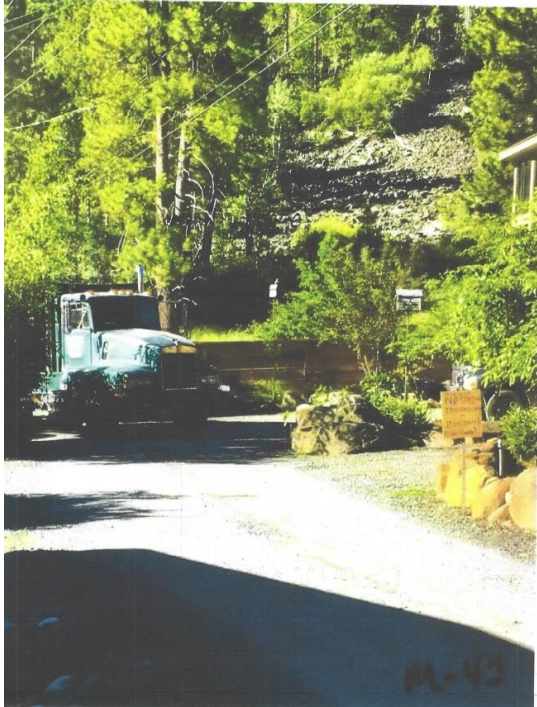
Nevada County Board of
Supervisors Meeting

September 22, 2020

Roadmap

- Background
 - Encroachments on Floriston Avenue
 - Willow Bush and Rock Planter Removal
 - Timeline of Events
- Issues on Appeal
- County's Unlawful Actions Against Appellants
- Request for Board of Supervisors Action
- Questions?

Encroachments on Floriston Avenue



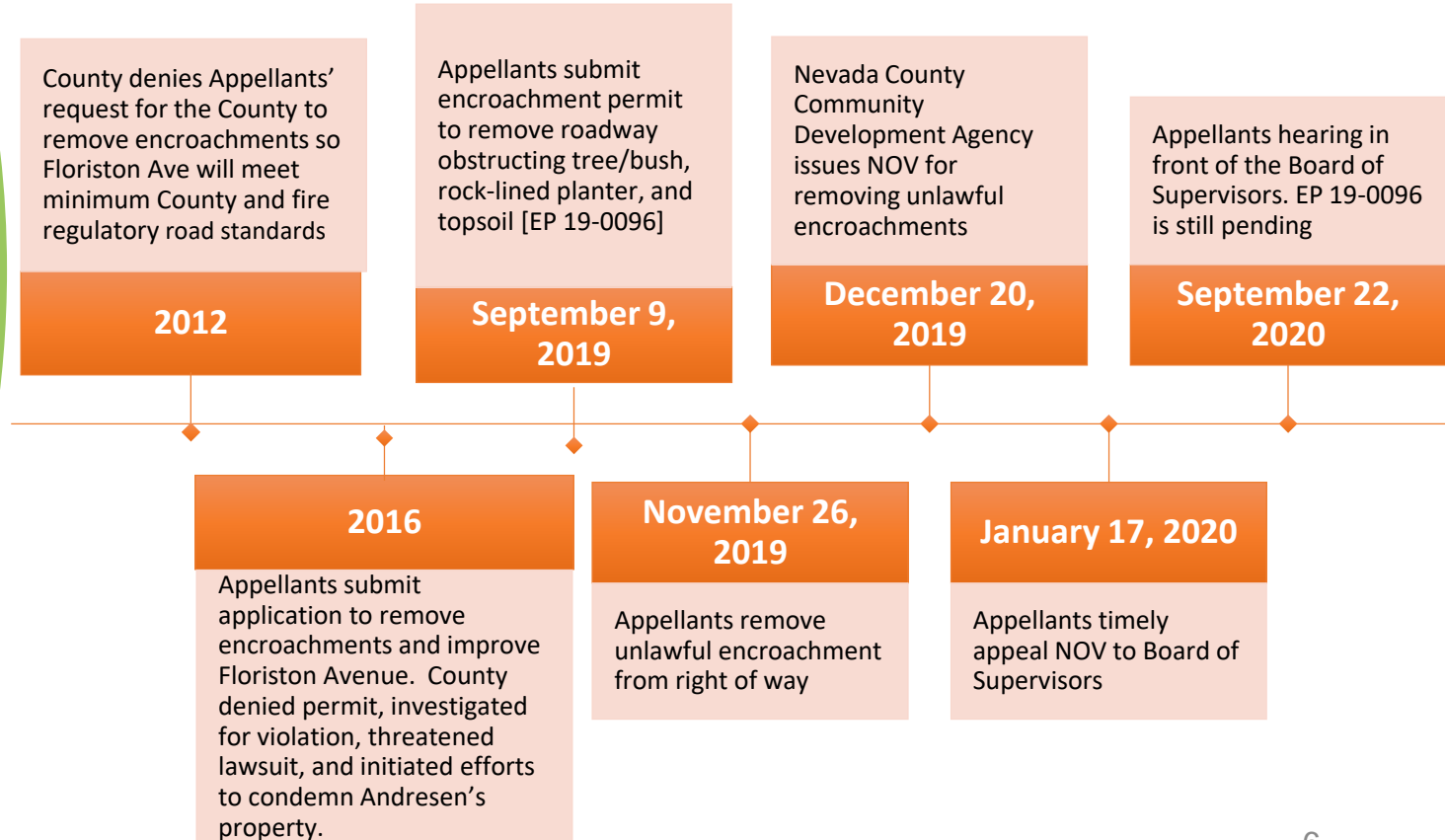
- **County Code, Sec. G-IV 4.A.35 – No hedge, shrub, or other planting shall be planted, erected, or maintained in the right-of-way without a permit.**
- **Sec. G-IV 4.A.36 – It is unlawful to maintain encroachments where to do so would create an unsafe condition to the users of the County highway in violation of the Code.**

Bush and Planter Removal



Hazardous vegetation and combustibles located along roadways that serve as primary ingress and egress routes are **public nuisances**. (County Code, Sec. G-IV 7.4.)

Timeline of Events



Issues on Appeal

- (1) The County's determination that Appellants violated Nevada County Code Section G-IV 4.A;
- (2) The fines, restoration, relocation, replacement, and repair work imposed following the County's determination that Appellants violated the County Code when it removed an unlawful encroachment on Floriston Avenue; and
- (3) The imposition of additional conditions on Appellants' unrelated and pending encroachment permit

County's Unlawful Conduct Towards Appellants

2012

- County refuses to enforce its ordinances to remove unlawful encroachments on Floriston Ave.

2016

- In response to Appellants' road improvement plan, County:
 - Denied permit and appeal;
 - Investigated potential regulatory violations with Appellants' properties;
 - Threatened lawsuit against Appellants; and
 - Proposed to allow Appellants' neighbor the right to purchase Appellants' property through eminent domain proceeding, rather than require removal of encroachments.
- Following mediation with Appellants, rather than relocate/remove encroachments per the parties' agreement, County issues encroachment permit to Appellants' neighbor without notice to Appellants to allow unlawful encroachments to remain in right-of-way.

2019

- In response to Appellants' most recent encroachment permit, County issued notice to neighbors asking for feedback, despite this being against County policy; and
- Issued NOV for removing what County admitted was an unlawful and unsafe encroachment in right-of-way and purported to require Appellants to replace unlawful encroachments and pay for roadwork unrelated to bush removal as condition of pending permit.

The County's disparate treatment of Appellants, and failure to enforce its ordinances to protect Nevada County citizens, violates the Equal Protection Clause and Due Process Clause of the United States Constitution:

Local government land use decisions violate the Equal Protection Clause when similarly-situated properties are treated differently and there is no rational basis for such differential treatment. (*Larsen v. Town of Corte Madera* (N.D. Cal. Mar. 25, 1996) No. C-95-2514 SI, 1996 WL 147627, at *1.)

Land use regulations and actions must substantially advance legitimate governmental interests. (See *Lingle v. Chevron USA, Inc.* (2005) 544 U.S. 528, 540.)

Why This Matters



NIGHTLY NEWS
WITH LESTER HOLT

Will Your Home Survive?

Fire season is now year-round

Winter and early spring are the best times for clearing

Find information you need to prepare for wildfire: evacuation plan checklist, emergency supply kit, animal care tips, and more:

www.ReadyForWildfire.org (a CAL FIRE website)

Request a free Defensible Space Advisory Visit, get information on local resources to help protect your home and family:

Fire Safe Council of Nevada County

www.AreYouFireSafe.com (530) 272-1122

Want fire engines to come down your road? Here's what they need:

10' min. cleared beyond the shoulders and 15' height clearance (Nevada Co. ordinance Sec. G-IV 7.4)

California Law* Requires 100 feet of
Defensible Space Around
All Structures
Public Resource Code 4291

Total acres burned by fires in California

This year a record number of acres have burned due to wildfires.



Source: CalFire

LAUREN TIERNEY/THE WASHINGTON POST



Photo credits –

Top left: Nevada County Flyer in tax bills

Top right: NBC News

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Bottom right: CBS News

COUNTY OF NEVADA
OFFICE OF THE
FIRE MARSHAL
Eric Rood Administration Building
950 Maidu Avenue
Nevada City, CA 95959
(530) 265-1714 FAX#: (530) 265-9851

June 21, 2016

Mr. Larry Andresen
P.O. Box 34047
Truckee, Ca 96160

Re: Floriston Avenue Encroachment Permit #9541

Mr. Andresen,

A review has been completed of the proposed road improvements of Floriston Avenue as referenced by Nevada County Encroachment Permit #9541.

This Office supports improvements to existing roadways that currently do not meet Nevada County's minimum road standard of the "Fire Standard Access Road".

Again, this Office supports road improvements that can be made to improve the egress of citizens and the ingress of emergency vehicles in times of emergency incidents.

Respectfully,

George Morris III
Fire Marshal
Unit Chief, Cal Fire

Matt Furtado
Deputy Fire Marshal
Fire Captain, Cal Fire

Request for Board of Supervisor Action

Appellants respectfully request the Board:

1. Rescind the December 20, 2019 NOV;
2. Direct immediate correction of the identified encroachments on the right-of-way; and
3. Request the Community Development Agency issue a final decision on Appellants' pending encroachment permit application as soon as practicable, without the imposition of additional conditions.

Questions?

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