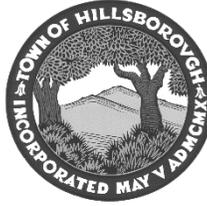


TOWN OF HILLSBOROUGH

San Mateo County

Catherine Lee, Chair
Robert Berger, Panel Member
Catherine "Kitty" Mullooly, Panel Member
Robert Walker, Panel Member
David Weinberg, Panel Member



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MINUTES DECEMBER 10, 2020 9:00 A.M. ADMINISTRATIVE HEARING PANEL

On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means. Pursuant to the Shelter-in-Place Order issued by the San Mateo County Health Officer on March 16, 2020, and which was updated and extended on March 31, 2020, April 29, 2020, May 15, 2020, and May 28, 2020, the statewide Shelter-in-Place Order issued by the Governor in Executive Order N-33-20 on March 19, 2020, and the CDC's social distancing guidelines which discourage large public gatherings, the Council Chambers were not open to the public for the December 10, 2020 Administrative Hearing Panel meeting. The Town conducted the Administrative Hearing Panel meeting via Zoom.

I. CALL TO ORDER

Chair Lee called the meeting to order at 9:20 A.M.

II. ROLL CALL

Present: Panel Members Catherine Lee, Kitty Mullooly, Robert Berger and David Weinberg

III. APPROVAL OF MINUTES:

The minutes of 45 Berryessa Way were approved by Chair Lee, seconded by Panel Member Mullooly and unanimous on voice vote.

VI. PUBLIC COMMENT I:

There was no public comment.

IX. OLD BUSINESS: 45 Berryessa Way in litigation.

X. PUBLIC HEARING:

Jonathan Brown & Alison Thalheim
680 Fairway Circle
Hillsborough, CA 94010

The Chair opened the public hearing.

The Administrative Hearing Panel was provided with a packet of information, including the Administrative Citation, relevant Code sections, the Stop Work notice, permit records, a Notice of Violation issued by the Regional Water Quality Control Board, and photographs of the gabion wall installed along the creek bank at 680 Fairway Circle. The packet also included correspondence from the Owners' legal counsel relating to a requested continuance and additional information.

Linda Stevens, Code Enforcement Officer, provided a PowerPoint and summary of the situation that led to the issuance of the citation, including the Code sections involved. She reported that the residents at 680 Fairway Circle, Jonathan Brown and Alison Thalheim (the "Owners") had erected a gabion wall within a 20' drainage easement in favor of the Town in violation of HMC 13.50.130.

A permit had been issued to a general contractor employed by the Owners, Michael Gutierrez, in 2016. The permit was to replace an existing wall, approximately 12 feet in length. Two years later, Mr. Gutierrez told the staff that the replacement wall had created a headwall that was interfering with the flow in the creek and requested an amendment to the permit to add another six feet of wall to address this issue. After the amended permit was issued, the contractor did not call for inspections and the permit was never finalized.

Staff was called out by another resident and found that 50-60 feet of additional gabion wall had been installed in the creek. There was no permit for this work, in violation of Section R-105.1, R-106.1, R-113.1, R-114.1 and R-114.2 of the 2019 California Residential Building Code, adopted as part of the Hillsborough Municipal Code (HMC). Because this wall went far beyond replacing an existing wall, regulatory approvals from the Regional Water Quality Control Board, the Department of Fish and Wildlife, and the Army Corps of Engineers would have been required in addition to the building permit issued by the Town.

Upon learning of the additional wall, staff notified the other regulatory agencies. The Regional Board issued the Notice of Violation included in the Panel's packet.

Tim Anderson, the Town's Building Official, presented a PowerPoint and additional information for the Panel. He stated that, in June 2016, a permit had been issued to Mr. Gutierrez to "repair" a wall in the creek, implying that the work would be limited to the existing situation, which was reflected in the permit application. The work was to be done on an emergency basis because the creek was at a low point. The proposed gabion wall would have two courses of six feet each, resulting in a 12' wall. This permit expired in January 2017 due to lack of inspections within the prior six months.

In March 2019, Mr. Gutierrez came to the Building Department and explained that the replacement wall was interfering with the flow of water in the creek and requested to add another 6' course of wall at an angle to deflect the flow. The original permit was reactivated for this limited purpose, with the expectation that an inspection would be called for when the work was completed. Mr. Gutierrez promised to call for an inspection when the work was ready.

In August 2019, the Building Department was notified by the resident across the creek from 680 Fairway at 730 Sharon Avenue that an extensive new wall was being installed. At that point, the contractor had not called for an inspection under the amended permit. Mr. Anderson observed the wall from the Sharon Avenue property and confirmed that the work extended far beyond the original 12' replacement and additional 6' extension that had been permitted. A Stop Work order was issued. Mr. Anderson gave direction that a soils engineering study, and perhaps a hydrology study, would be required to potentially legalize the wall outside the original scope.

Mr. Anderson said that the original permit fee was \$895. Because the length of the wall was increased by approximately 500%, the permit fees for the entire wall, based on the original valuation, would have been approximately \$5,000.

Because the work had been done within a Town drainage easement, he brought in the City Engineer/Public Works Department to coordinate the Town's response to the situation. In response to Panel questions, Mr. Anderson explained that the original permit and amendment had been issued on an emergency basis and the emergency was erosion of the creek bank that threatened the house and other improvements on 680 Fairway Circle. In response to a question about the contractor's explanation for why he had exceeded the permit scope, Mr. Anderson said that Mr. Gutierrez said, "it needed to be done."

Natalie Gribben, Associate Engineer in the City Engineer/Public Works Department, advised the Panel that she was involved because the Town's drainage easement within the creek was administered by her department. She explained that a permit was needed for work within the drainage easement and should have been obtained for the extended gabion wall. She notified the other regulatory agencies of the work.

Mr. Anderson presented the permit records and Stop Work that he issued and showed photographs of the wall and creek.

Mark Haesloop, Esq. made a presentation on behalf of the Owners. He stated that the staff presentation was essentially correct and that there was no excuse for the contractor's failure to call for inspections. The only point omitted from the staff report was that the Owners had not been told by staff that approvals from the other regulatory agencies would be needed. He stated that the Owners wanted to cooperate in resolving the situation.

Mr. Haesloop explained that the situation was complex. The resident at 703 Sharon has filed a lawsuit. The Owners have tendered the defense of the lawsuit to their homeowner's insurance and the insurer has retained a soils engineering company to assess the situation and make recommendations. The Regional Board has scheduled a report on the current situation by December 18th and a further report on remedial work after that. He said that a report from Balance Hydrology had been provided to the Town. He said that getting full engineering studies, developing plans, and going through plan checking will take time. Some recommended solutions, such as bolstering the creek wall on the opposite bank, would be outside the Owners' control because it is not on their property. The Panel should take these factors into account.

Assistant City Attorney Mark Hudak informed the Panel that, because the contractor did not apply for a permit for the extended wall, there was no opportunity for staff to inform him or the Owners that such work would require approvals from the other regulatory agencies.

Mr. Hudak asked whether there were any engineering recommendations for temporary measures that might mitigate the impact of the wall during the approaching rainy season, noting that the Balance Hydrology report did not address impacts from “episodic events.” Mr. Haesloop said there were none so far.

Staff reviewed the fees and potential penalties. Ms. Stevens said there was a standard administrative fee of \$200 for the issuance of the citation. Mr. Anderson stated that the Building Code provides for a penalty of up to 10 times the permit value for work done without a permit. The Stop Work order provides for the reimbursement of staff time expended in obtaining correction of the violations set forth in it.

Mr. Torello, the resident at 672 Fairway Circle, asked that staff confirm that the replacement section of the gabion wall is in the right location relative to the original slope of the creek wall. He expressed concern that there is no technical report saying that the wall is where it should be. He expressed concern about the impact of the new wall on downstream properties. Gregory Walston, the attorney for the resident at 703 Sharon, explained that he had filed the lawsuit against the Owners as a last resort after receiving no cooperation from the Owners in 2019. He stated that the wall on 680 Fairway Circle was causing erosion on his client’s property.

He agreed that the residents should be talking about how to fix the problems they are having in the creek.

The residents at 701 Walnut Avenue, Ms. Chen and Mr. Keim stated that they were concerned about the impacts on downstream properties like theirs.

The Chair closed the public hearing.

Code Enforcement Officer Linda Stevens informed the Hearing Panel that there is a \$200 fee applicable to the proceedings.

XIV. ADJOURNMENT

The Panel adjourned to Closed Session at 11:15 A.M. to deliberate.