

1 Mark D. Hudak (Bar No. 099801) ✓
2 Law Offices of Mark D. Hudak
3 177 Bovet Road, Suite 600
4 San Mateo, CA 94402
5 Telephone: (650) 638-2390
6 Email: Mark@mhudaklaw.com

7 Attorneys for Plaintiff
8 Town of Hillsborough

FILED
SAN MATEO COUNTY

MAR 13 2019

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO
11 UNLIMITED JURISDICTION

12 TOWN OF HILLSBOROUGH, a
13 municipal corporation

14 Plaintiff,

15 v.

16 FLORENCE FANG, an individual;
17 DOES 1-20, inclusive

18 Defendants.

No. **19CIV01442**

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

19 - CIV - 01442
CMP
Complaint
1702599



19 Plaintiff Town of Hillsborough ("Hillsborough") alleges as follows:

- 20 1. Hillsborough is a municipal corporation organized under and existing by virtue of
21 the laws of the State of California. Hillsborough is located within San Mateo County.
- 22 2. Defendant Florence Fang is a resident of San Mateo County.
- 23 3. Mrs. Fang owns the real property and improvements commonly known as 45
24 Berryessa Way, Hillsborough, San Mateo County, California ("45 Berryessa").
- 25 4. Hillsborough does not know the identities of the defendants named herein as Does
26 1-20 and therefore sues them by such fictitious names. Hillsborough will amend the complaint to
27 allege their true names and capacities when they have been ascertained. Hillsborough is informed
28 and believes that the Doe defendants have some right to, title to, or interest in 45 Berryessa and/or

1 are responsible for the maintenance of 45 Berryessa.

2 5. This action is filed in San Mateo County because it affects real property located in
3 this county and because a defendant resides in this county.

4 **BACKGROUND**

5 6. 45 Berryessa has a unique architectural design. It is commonly referred to as the
6 “Flintstone House.” It is in prominent view from Highway 280 and many locations within
7 Hillsborough.

8 7. Beginning in approximately 2017, Mrs. Fang began to install extensive
9 improvements in the yard areas of 45 Berryessa. Some of these improvements involved large
10 statues of dinosaurs and other figures and a sign reading “Yabba Dabba Doo” (the “Landscaping
11 Improvements”). She also made nondecorative modifications to the property including a
12 retaining wall, steps, columns, gates, a parking strip, and a deck to accommodate her plan to use
13 45 Berryessa for parties and social gatherings (the “Other Improvements”). Several of the Other
14 Improvements created life-safety hazards that required immediate correction to protect visitors to
15 the property.

16 8. The Landscaping Improvements and Other Improvements required various
17 approvals from Hillsborough, including planning review and building permits. Mrs. Fang
18 installed all of the improvements without planning approvals and without building permits, except
19 for a very limited permit for a low wall in the front of the property.

20 9. When it learned of the work being carried out at 45 Berryessa, the Hillsborough
21 Building Department issued a Stop Work Order on or about December 11, 2017. Mrs. Fang
22 continued the work at 45 Berryessa in violation of the first Stop Work Notice and a second Stop
23 Work Notice was issued on or about January 12, 2018. Mrs. Fang continued the work at 45
24 Berryessa and a third Stop Work Notice was issued on or about August 1, 2018.

25 10. Due to the installation of the Landscaping Improvements and the Other
26 Improvements, the failure to comply with the Stop Work Notices, and the failure to take
27 corrective actions required, Mrs. Fang was cited for multiple violations of the Hillsborough
28 Municipal Code.

1 11. On October 29, 2018, a hearing was held before the Administrative Hearing Panel
2 of the Town of Hillsborough (the "Panel"). Mrs. Fang attended the hearing but did not address
3 the Panel.

4 12. Based on the information submitted at the hearing, the Panel issued a unanimous
5 Decision and Order finding that 45 Berryessa was in violation of several sections of the
6 Municipal Code and constituted a public nuisance. Because the Landscaping Improvements
7 create a highly visible eyesore and are out of keeping with community standards, the Decision
8 and Order required that they be removed by December 5, 2018 and that no planning approvals for
9 new landscaping be granted until these items were removed. The Decision and Order also
10 imposed a \$200.00 citation penalty. A true and correct copy of the Decision and Order is
11 attached to this complaint as Exhibit A and incorporated herein by reference.

12 13. The Decision and Order was mailed to Mrs. Fang on or about November 1, 2018.

13 14. Hillsborough Municipal Code Section 8.16.080 provides that any judicial action
14 challenging a Decision and Order must be filed within 20 days of service. Mrs. Fang did not file
15 an action to contest the findings and directives in the Decision and Order within this 20 day
16 period.

17 15. Mrs. Fang did not file a mandamus action to challenge the validity of the Decision
18 and Order within 90 days of its issuance.

19 16. Because Mrs. Fang did not file a timely legal challenge to it, the Decision and
20 Order is now final.

21 **FIRST CAUSE OF ACTION**

22 **(Injunctive Relief)**

23 17. Hillsborough realleges and incorporates by reference the allegations of Paragraphs
24 1 through 16.

25 18. The Decision and Order required that all Landscaping Improvements be removed
26 from 45 Berryessa by December 5, 2018.

27 19. The Decision and Order provided that a building permit be obtained by December
28 5, 2018 for any of the Other Improvements that Mrs. Fang intended to retain and that she correct

1 any unsafe conditions identified by Hillsborough staff while the permit application is pending.

2 20. Mrs. Fang did not remove the Landscaping Improvements by December 5, 2018 as
3 required by the Decision and Order. The Landscaping Improvements remain in place at 45
4 Berryessa.

5 21. Mrs. Fang submitted an incomplete application for an after-the-fact building
6 permit for the Other Improvements, but she has not completed the application. Mrs. Fang has not
7 removed the Other Improvements. Hillsborough is informed and believes that Mrs. Fang has not
8 corrected the life-safety defects in the Other Improvements noted in the Decision and Order.

9 22. On or about December 11, 2018, Mrs. Fang paid the \$200.00 citation fee assessed
10 in the Decision and Order. In all other regards, the requirements of the Decision and Order have
11 not been met.

12 23. On or about January 31, 2019, Hillsborough's Assistant City Attorney notified
13 Mrs. Fang that a lawsuit would be filed to enforce the Decision and Order if she did not comply
14 with its terms within 30 days. A true and correct copy of the letter is attached hereto as Exhibit B
15 for reference. Mrs. Fang did not remove the Landscaping Improvements or otherwise comply
16 with the Decision and Order within 30 days of the letter.

17 24. Mrs. Fang does not intend to remove the Landscaping Improvements and has not
18 obtained a building permit for the Other Improvements as required by the Decision and Order.

19 25. Hillsborough is entitled to an injunction requiring Mrs. Fang to comply with the
20 Decision and Order, including removal of the Landscaping Improvements that were installed
21 without planning approvals and without building permits.

22 WHEREFORE, Hillsborough prays for judgment as hereinafter set forth.

23 **SECOND CAUSE OF ACTION**

24 **(Declaratory Relief)**

25 26. Hillsborough realleges and incorporates by reference the allegations of Paragraphs
26 1 through 25 as if fully set forth.

27 27. The Panel found that the condition of 45 Berryessa violates multiple sections of
28 the Municipal Code including Section 8.16.035(N), (O), and (P).

1 28. Properties in violation of the cited Code sections constitute a public nuisance as set
2 forth in Chapter 8.16 of the Municipal Code.

3 29. The findings of the Panel are now final and unchallenged by Mrs. Fang.

4 30. Mrs. Fang has not corrected or abated the conditions cited in the Decision and
5 Order to support the finding that 45 Berryessa is a public nuisance.

6 31. A present controversy exists between Hillsborough and Mrs. Fang. Hillsborough
7 contends that 45 Berryessa is a public nuisance and that this finding is now final as to Mrs. Fang.
8 Hillsborough is informed and believes that Mrs. Fang contends that 45 Berryessa is not a public
9 nuisance.

10 32. A declaration by this Court declaring 45 Berryessa to be a public nuisance is
11 necessary and appropriate.

12 WHEREFORE, Hillsborough prays for judgment as follows:

13 1. For an injunction requiring Mrs. Fang to comply with the Decision and Order,
14 including the removal of the Landscaping Improvements, the permitting of the Other
15 Improvements, and the removal of any of the Other Improvements for which a building permit
16 and/or planning approval is not obtained.

17 2. For a declaration that 45 Berryessa is a public nuisance.

18 3. For costs of suit herein.

19 4. For such other and further relief as the Court deems just and proper.

20
21 Dated: March 11, 2019

LAW OFFICES OF MARK D. HUDAK

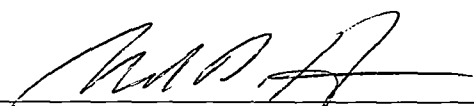
22
23
24 By: 
25 Mark D. Hudak
26 Attorneys for Plaintiff
27 Town of Hillsborough
28

EXHIBIT A

**DECISION AND ORDER
OF THE ADMINISTRATIVE HEARING PANEL
FOR
TOWN OF HILLSBOROUGH**

Citation: CE2018-0015

Name(s) of Property Owner(s): Florence Fang

Address: 45 Berryessa Way
Hillsborough, CA 94010

DATE OF ADMINISTRATIVE HEARING: October 29, 2018

CODE VIOLATIONS CITED

8.16.035(N), (O), (P) & (V), 15.24.030(A) Cat 2, 15.30.040,
15.30.070(C) 1 & 2, 17.56.020, 17.56.050(B) & (E),
17.56.060, 17.56.070- Hillsborough Municipal Codes
California Residential Codes: R105.2, R114, R114.1 &
R114.2

RELEVANT ITEMS PRESENTED

This matter involves the property at 45 Berryessa Way, owned by Florence Fang. The matter involves extensive work performed at 45 Berryessa without planning approvals and without building permits. The Hearing Panel had received copies of the Stop Work Notices, photographs, and relevant Hillsborough Municipal Code sections in advance of the hearing.

Tim Anderson, the Town's Building Official, presented the staff report.

Mr. Anderson stated that the Town had issued a building permit for a two-foot high retaining wall in the front of the property in November 2017. When an inspection was conducted, a great deal of work was discovered outside the scope of the permit, including extensive landscaping in the back yard, a new deck, and a retaining wall on the side of the property adjacent to the garage to create a parking area. Since the affected area appeared to be in excess of 10,000 square feet, planning approvals would be required for this project. In addition, some unenclosed structures may be located within setbacks, which would require Planning Division approval. A Stop Work Notice was issued on December 11, 2017. Mrs. Fang was directed to stop all work, bring a set of plans for review, and obtain proper permits.

The owner continued to add landscaping in the form of large figurines. Due to their height, some of these figurines are classified as unenclosed structures, requiring Planning approval and a building permit. The figurines were very visible from public rights of way and adjoining properties. Other unpermitted work was discovered, including an automated driveway gate and columns, a front parking strip, and an extension to the driveway. Some of the work was located in the Town's right of way, requiring an encroachment permit. A second Stop Work Notice was issued on January 12, 2018.

In February 2018, Mrs. Fang submitted an application for planning approval but it was deemed incomplete. In particular, the application did not include a survey showing property boundaries, setbacks and the location of the newly-installed improvements. On March 14, 2018, staff provided her with a letter explaining what additional information was required to complete the application. She did not provide any further information for the application.

Mrs. Fang continued to add additional landscaping and figurines, including extensive improvements in the front yard (a sign reading "Yabba Dabba Doo" on artificial turf and many smaller figurines) and a parking strip in the right-of-way. A third Stop Work Notice was issued on August 1, 2018.

Mr. Anderson showed pictures of the condition of the house before it was acquired by Mrs. Fang. These pictures showed minimal landscaping, with most of the lot in its natural condition. He then showed pictures of the current conditions, including a dense population of figurines including dinosaurs, mushrooms, and animals in both the front and rear yards.

Mr. Anderson showed photographs of the new retaining wall built near the garage to create parking. He explained that any wall over 30" in height required

a building permit and a guardrail or other fall protection as required by the Building Code. This deck exceeds 30" in height and does not have a railing or other protection for users. He also showed a picture of a new set of stairs, again over 30" in height, which had been constructed without a permit and without a guardrail or other fall protection.

Stephanie O'Rourke, a landscaper designer, stated that she recently had been retained by Mrs. Fang to work on obtaining approvals from the Planning Division. She said that she was obtaining a survey but it was delayed due to a personal situation with the surveyor. She stated that Mrs. Fang had received letters of support for her vision for this property but did not provide copies of the letters for the Panel's review. She noted that the figurines and landscaping had low water usage. She did not address the question of why the landscaping, figurines, and other improvements had been installed without planning approvals or building permits.

Mrs. Fang was present at the hearing but did not address the Panel.

The neighbor at 40 Berryessa Way, Garbis Bezujian, stated that the property at 45 Berryessa should comply with Town ordinances and processes. He stated that the landscaping appeared to be outside the norms for the Town and creates a lot of questions. He stated that at least some of the landscaping was visible from his property. His home is located on the same cul-de-sac as the subject property.

Code Enforcement Officer Linda Stevens informed the Panel that the \$200.00 citation/hearing fee could be assessed.

FINDINGS

The Town has developed extensive processes for approving new homes, landscaping, and other improvements. One aim of these procedures is to provide neighbors and other residents with an opportunity to comment on the proposed improvements. The goal is to attain a quality of construction and appearance that meets community standards throughout the Town. When projects are begun without first going through these processes, other residents do not have the chance to exercise their rights to comment on the proposed project. Further, the Town's planning staff does not have an opportunity to inform the owner about applicable regulations and achieve voluntary compliance.

When there are concerns about the nature, quality, and extent of proposed improvements, community standards may be applied through a hearing with the Town's Architecture and Design Review Board ("ADRB"). Ultimately, the City Council may have the final say in the matter if appealed.

The Town's ordinances also require the issuance of building permits when proposed improvements meet certain objective criteria. During the course of reviewing plans and specifications in the permit application, the Building Division applies the Building Code and other standards that are designed to ensure health and safety.

In this case, the homeowner obtained one building permit for a very limited project. After that, she embarked on an extensive program that completely ignored the processes for obtaining planning approvals and building permits. She continued to install very extensive landscaping and other improvements despite three Stop Work Notices. She cannot claim that she was unaware of the requirement for review and approval by the Planning Division, since she did submit an application for review, but it was far from complete. In the subsequent eight months, she took no action to supply missing information and go through the planning process. Her refusal to obey the Stop Work Notices and her failure to proceed with the planning application after March 2018, demonstrates her lack of intention to comply with the Town's ordinances.

As a result of her actions, Town staff and the ADRB did not have their opportunities to perform their review functions for these extensive projects. Equally important, neighbors and members of the public did not get their opportunity to comment on the proposed improvements. The Panel cannot support a project that proceeds on a "build first, ask for permission later" basis.

Further, the nature and extent of the landscaping performed, including the installation of a large number of figurines, artificial turf, and the aforementioned front yard sign (the "Landscaping Improvements") are far outside the norms observed by Panel members throughout the Town. These Landscaping Improvements are prominent and visible from public rights of way, including Highway 280 and Berryessa Way, and from other properties in Hillsborough. They are designed to be very intrusive, resulting in the owner's "vision" for her property being imposed on many other properties and views, without regard to the desires of other residents.

Similarly, the failure to apply for building and encroachment permits for the deck, retaining wall, stairs, driveway extension, driveway gate and columns,

and parking strip (the "Other Improvements") did not allow Town staff to determine their structural integrity, to ensure that safety features are in place, or to achieve compliance with applicable standards. As a result, potentially dangerous conditions exist on the deck and parking areas and other improvements may not satisfy Code requirements.

The Panel notes that Mrs. Fang did not speak at the hearing or offer any written evidence. She did not attempt to explain why she continued installing improvements on the property despite three Stop Work Notices or why she failed to complete her planning application. In the absence of a credible explanation, her disregard of the Town's processes must be viewed as intentional.

Based on the foregoing, the Panel finds that the owner failed to obtain design review for the Landscaping Improvements as required by HMC Sections 17.56.050. et seq. Further, the Landscaping Improvements are out of harmony with the standards of nearby properties and are therefore public nuisances as defined by HMC Sections 8.16.035 (N), (O), and (P).

Based on the foregoing, the Panel finds that the Other Improvements including the new deck, side yard retaining wall, stairs, automatic driveway gate and columns, and parking strip were constructed without building permits and constitute a public nuisance.

DECISION

The Landscaping Improvements must be removed. Should the owner desire to re-install any of these improvements, she must submit a complete application to the Planning Division and provide any information requested by staff. The owner shall not install any further landscaping improvements without planning approval and building permits.

The Other Improvements may be legitimized after a permit application is submitted and reviewed by staff. Any such improvements for which a permit is not requested or not issued must be removed.

ORDER

All Landscaping Improvements shall be removed by **December 5, 2018**. The owner may submit an application for approval of new landscaping after all the Landscaping Improvements have been removed. The owner shall comply with any

directives from staff regarding winterization of the site. Should the owner decide not to apply for a new landscaping plan, she shall restore the property to its former natural condition.

The owner shall apply for a building permit for the Other Improvements that she wants to retain, including the side yard retaining wall, deck, stairs, driveway gates and columns, and parking strip. The permit application shall be submitted by **December 5, 2018**. The owner shall comply with any staff directives regarding temporary usage and safety of these improvements while the permit application is pending. Any such improvements for which a permit is not obtained shall be removed by **December 31, 2018**.

The tree Stop Work Notices shall remain in effect, except for specific work authorized in writing by the Building Division to comply with this Decision and Order. Any contractor found to be working on the property in violation of the Stop Work Notices shall be referred to the City Attorney's Office for revocation of the contractor's business license and/or other legal remedies.

The owner shall pay the **\$200.00** administrative citation fee payable to the Town of Hillsborough by **December 15, 2018**.

FAILURE TO COMPLY WITH THIS DECISION AND ORDER MAY RESULT IN ABATEMENT ACTION BY THE TOWN, ADDITIONAL ADMINISTRATIVE FINES, CRIMINAL OR CIVIL PROSECUTION AND PENALTIES, FILING OF A LIEN AGAINST THE PROPERTY AND OTHER REMEDIES.

THIS DECISION AND ORDER MAY BE CONSIDERED TO BE FINAL. ANY COURT ACTION OR PROCEEDING TO REVIEW OR CHALLENGE THIS DECISION AND ORDER SHALL BE BARRED UNLESS IT IS COMMENCED WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS DECISION OR ORDER (OR SUCH LATER DATE AS MAY BE SPECIFIED BY CALIFORNIA GOVERNMENT CODE SECTION 53069.4.)

DATED: October 29, 2018

ADMINISTRATIVE HEARING PANEL

Signature: _____

Print Name: _____

CATHERINE H. COE

Signature: _____

Print Name: _____

DAVID L. WENKING

Signature: _____

Print Name: _____

DENNIS TOM

Signature: _____

Print Name: _____

CATHERINE MULLOCH

Signature: _____

Print Name: _____

ROBERT BERGER

EXHIBIT B

**LAW OFFICES OF
MARK D. HUDAK**

177 Bovet Road, Suite 600
San Mateo, CA 94402

(650) 638-2390
Mark@mhudaklaw.com

January 31, 2019

Florence Fang
980 Parrott Drive
Hillsborough, CA 94010
Re: Code Enforcement Decision and Order for 45 Berryessa Way

Dear Ms. Fang:

I am the Assistant City Attorney for the Town of Hillsborough. In that capacity, I assist the Town with Code Enforcement and litigation matters.

The Town of Hillsborough's Administrative Hearing Panel held a hearing on October 29, 2018 regarding multiple Zoning and Building Code violations at your property at 45 Berryessa Way. You were present at the hearing. Following the hearing, the Panel issued a Decision and Order that required you to take certain steps to correct these violations. These steps were to be completed by December 5, 2018. A copy of the Decision and Order is enclosed for your reference.

Section 8.16.080 of the Hillsborough Municipal Code allows a resident to file an appeal of a Decision and Order in San Mateo Superior Court within 20 days of service. You did not file an appeal and the Decision and Order is now final.

As far as we can determine, you have not complied with the Decision and Order. The Decision and Order required that the statuary and other Landscaping Improvements be removed by December 5, 2018 but they remain in place. You were supposed to apply for permits and correct other violations described in the Decision and Order, and while you did submit a permit application, it was deemed incomplete and a revised application has not been received. Although you have begun the process for obtaining design review for landscaping on 45 Berryessa, you still need to comply with the portions of the Decision and Order requiring removal of illegal structures already installed.

The City Council was advised of your failure to comply during at its January meeting. The Council asked that a letter be sent to inform you that a lawsuit will be filed against you if you do not comply with the Decision and Order, and authorized me to file the lawsuit if full compliance is not obtained within 30 days.

Please be advised that I will file the lawsuit as directed by the Council unless you have complied with the Decision and Order within 30 days of the date of this letter. The lawsuit will seek a

Florence Fang
January 31, 2019
p. 2

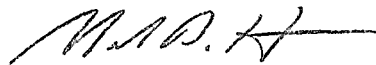
court injunction requiring full compliance. The court may impose sanctions, including monetary penalties and possibly contempt charges, if you fail to comply with the court's orders.

The Council was very concerned that some improvements were installed without required life safety features, such as handrails, and that these conditions have not been corrected. Because these conditions may result in personal injuries to visitors, they need to be corrected immediately. You must cease and desist from any use of the property until these corrections have been made. Please contact the Town's Building Official, Tim Anderson, if you have any questions regarding this urgent matter.

Please understand that neither the staff nor the City Attorney's Office are allowed to modify or suspend a Decision and Order or to extend the time for compliance. Therefore, unless you can provide proof of compliance within the 30 day period allowed by the City Council, I will proceed with the lawsuit as described.

Please contact me if you have any questions regarding this situation or the actions authorized by the City Council.

Very Truly Yours,



Mark D. Hudak
Assistant City Attorney

Enclosure

cc: City Manager (via email, w/encl.)
City Attorney (via email, w/encl.)
Elizabeth Cullinan (via email, w/encl.)
Cynthia Richardson (via email, w/encl.)
Tim Anderson (via email, w/encl.)
Linda Stevens (via email, w/encl.)