BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

TIMOTHY J. WHITE and HIDI R. SOBELMAN, Property Owners,

3435 Redwood Road, Napa.

Citation No. CE19-00075-1

OAH No. 2019080013

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on October 30, 2019, in Oakland, California.

Jason M. Dooley and Shana A. Bagley, Deputy County Counsel, appeared on behalf of complainant Napa County Planning, Building and Environmental Services Department.

Valerie E. Clemen, Attorney at Law, Coombs & Dunlap, LLP, appeared on behalf of property owners Timothy J. White and Hidi R. Sobelman, who were present at the hearing.

The record closed and the matter was submitted for decision on October 30, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Property owners Timothy J. White and Hidi R. Sobelman are the owners of property located at 3435 Redwood Road in Napa, Assessor's Parcel Number 035-320-002-000. There is a single family residence on the property located at the top of a driveway that ascends from the street. This matter arises from a citation issued following violations discovered at the property after a hillslide on February 28, 2019.

2. On June 5, 2019, Citation No. CE19-00075-1 was issued to the property owners. The citation alleges the following violations:[1] 1) Earthmoving/grading/infill without benefit of permit; 2) Maintaining an erosion hazard in a manner that may result in an illicit discharge; 3) Construction of a retaining wall, and a garage, without benefit of building and/or grading permits; and 4) An area exceeding 100 square feet containing lumber and building materials not being used for construction on the premises.

The citation directed the property owners to: immediately remediate the erosion and slope stability hazards; apply for grading permits and stabilize hillside to mitigate further slope failure; apply for a building or demolition permit for the retaining walls which were constructed without benefit of permit; and store building

[1] A fifth violation was withdrawn at hearing.

materials in one area of not more than 100 square feet. No administrative penalty was imposed. The citation has not been recorded against the property.

3. The owners filed a Request for Hearing re Citation pursuant to Napa County Code section 1.28.090, and this hearing followed.

Complainant's Evidence

4. On the morning of February 28, 2019, the Napa County Department of Public Works became aware of a hillslide blocking Redwood Road in front of the property belonging to the property owners.

5. Patrick Ryan, Engineering Manager for the Napa County Planning, Building and Environmental Services Department (department), went to the property at 3435 Redwood Road at approximately 7:00 a.m. Code Compliance Manager David Giudice arrived about thirty minutes later.

Ryan and Giudice walked up the driveway to the residence where they spoke with White. White consented to them inspecting the property and gave them permission to take photographs, including by use of a drone. White allowed access to the property and showed them a drainage swale under the residence. White stated that he had constructed the swale after heavy rain in 2017, in order to divert run off away from the dwelling and onto the hillside area where the slide occurred. Ryan later ascertained that there had been no permit issued for the construction of the swale.

Ryan observed a shed structure that was more than 120 square feet in area that had slid down the slope. White told Ryan that he had been using the structure to store tools and as a garage to park his Mercedes. There was no permit for construction of the shed/garage structure.

Ryan observed indicia that artificial fill had been placed at the top of the slope. Ryan compared photographs of the property from 2014 and concluded that two trees had been removed and fill had been placed around and on top of the remaining tree stumps, and that the concrete pad in front of the residence had been expanded and paved. There was no grading permit for importing fill and altering the property in this manner.

Ryan observed a lower pad adjacent to the driveway where vehicles and building materials were stored in an area in excess of 100 square feet. White told Ryan that the materials belonged to him.

Ryan observed evidence of retaining walls in the slide debris, consisting of redwood planks and iron stakes. He also observed evidence of retaining walls that had been constructed elsewhere on the property. No permits had been issued for the construction of retaining walls.

6. Ryan contacted Shane Rodacker, a geotechnical engineer with Geocon Consultants, Inc. Rodacker arrived at the property at around 1:00 p.m. He met with Ryan. White again consented to them inspecting the property.

7. Ryan and Rodacker returned to the property on March 7. They knocked on the door and no one was home. They returned to the public right of way to perform their inspection of the property.

8. Rodacker wrote a report regarding the slope failure and testified at the hearing. He opined that surcharge from importing fills on the top of the slope and from the garage/shed and other materials at the top of the slope combined with the site drainage to the area from the swale were the primary factors in causing the slope

to fail. He opined that areas north and south of the slide area are at risk for future failure.

9. On April 9, 2019, the department issued a Notice of Nuisance to the property owners. The owners were directed to abate the violations identified in the notice, which are the same as the violations later included in the citation. The owners were directed to act within one week and were advised that failure to abate could result in further legal proceedings. The owners did not abate the violations, and the citation was issued.

10. At some time the department became aware that the area of the property where the building materials were stored was part of a separate parcel, APN 035-320-003. The property owners themselves had not been aware that they did not own the land at the time of the slope failure. They subsequently purchased the land in August 2019.

Property Owners' Evidence

11. Property owner White denied walking around the property with Ryan on the day of the slide and denied ever meeting Rodacker. He denied being asked for approval to inspect the property on the day of the slide. He stated that he was asleep until 9:00 or 9:30 a.m., after having been up much of the night due to the slide. This testimony was not credible.

White acknowledged importing fill to bury the stumps of two redwood trees, but depicted this as minimal. White denied constructing retaining walls and stated that there had been a redwood fence with decorative lattice which had been misidentified as a retaining wall.

White acknowledged building the shed/garage structure which he described as a "canopy" that was built along the fence. The ends were open and shed siding was used as a roof. He did not deny that he had not obtained a permit for its construction.

White acknowledged that he leveled the driveway area with a tractor and spread some gravel there in 2003 or 2004. He estimated that he used less than 10 square yards of gravel and denied using asphalt or concrete.

White denied constructing the drainage swale and stated it existed when he bought the property.

White acknowledged that there were pallets of bricks and stacks of firewood on portion of the property that he did not actually own until August 2019. He stated that these materials were to complete landscaping plans that were underway.

White was not a credible witness. His testimony was self-serving and contradicted by the more credible testimony of the department's witnesses and by photographic evidence.

12. The property owners hired Alan Kropp as a geotechnical engineering consultant. Kropp visited the property on April 5, 2019. He authored a report and testified at the hearing. Kropp disagrees with the conclusions of Rodacker regarding the cause of the slope failure. He believes, based in large part on representations made to him by White, that the primary cause of the slope failure was aggressive excavations made by Napa County road crews. Testimonial evidence by the superintendent of the Napa County Department of Public Works established that no such aggressive excavations were made.

LEGAL CONCLUSIONS

1. Napa County Code (NCC) section 1.28.030 authorizes county enforcement officers to issue citations for violations of the county code. The department bears the burden of proving the existence of the violations by a preponderance of the evidence. (Evid. Code § 115.) NCC section 1.28.090(A) provides that the property owners may contest: whether the code was violated, whether the recipient of the citation is responsible, whether recordation of the citation is appropriate, or whether the penalty amount is appropriate.

2. It is a violation of NCC section 15.08.080, in connection with California Building Code (CBC) appendix J, section J103.1, to perform earthmoving, grading, and to place infill without benefit of required permits. The evidence established that the property owners performed these activities and that no permit had been issued. The violations continue to exist on the property. Cause exists to order the property owners to correct the violation by applying for the required permits to abate and remediate the violation, in light of the matters set forth in Factual Finding 5.

3. It is a violation of NCC section 16.28.050(C) to maintain materials in a manner that may result in illicit discharge. NCC section 18.144.040 provides that the department may commence actions to abate a public nuisance. The evidence established that a swale was constructed on the property, and unpermitted grading and importation of fill was performed, creating an erosion hazard and a public nuisance. Cause exists to order the property owners to correct the violation by applying for the required permits to abate and remediate the violation, in light of the matters set forth in Factual Finding 5.

4. It is a violation of CBC section 105.1 to construct retaining walls and structures without benefit of permits. The evidence established that retaining walls and a shed/garage structure were constructed without permits. Cause exists to order the property owners to correct the violation by applying for the required permits, in light of the matters set forth in Factual Finding 5.

5. It is a violation of NCC 1.20.022(B)(3) to maintain an area exceeding 100 square feet containing lumber and building materials not being used for construction. The evidence established that vehicles and building materials were stored for the benefit of the property owners on an adjacent parcel which they believed was their property, and which they now own. Cause exists to order the property owners to correct the violation by storing all building materials in one area of no more than 100 square feet, in light of the matters set forth in Factual Findings 5 and 10.

ORDER

Citation No. CE19-00075-1, issued to property owners Timothy J. White and Hidi R. Sobelman, is affirmed.

DATE: December 2, 2019

DocuSigned by:
Karen E Reichmann
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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE

Case Name: White, Timothy; Sobelman, Hidi R. (Napa) **OAH No.: 2019080013**

I, Helen C. Tsai, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1515 Clay Street, Suite 206, Oakland, CA 94612. On December 02, 2019, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Valerie E. Clemen
Coombs & Dunlap, LLP
1211 Division Street
Napa, CA 94559

Received

DEC 04 2019

Napa County Counsel

Jason Dooley
Deputy
Napa County Counsel's Office
1195 Third Street, Suite 301
Napa, CA 94559

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Oakland, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. Correspondences are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid. [☐ by certified mail].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Oakland, California on December 02, 2019.

DocuSigned by:
Helen Tsai
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Helen C. Tsai, Declarant