

Case No. 122610
APPEAL OF MISHA CROSBY
TO THE LOS ANGELES BOARD OF PUBLIC WORKS
Of Hearing Examiner Report/Notice of Decision
Dated October 27, 2023

RESPONSE OF MISHA CROSBY TO BSS BOARD REPORT

TO THE COMMISSIONERS OF THE LOS ANGELES BOARD OF PUBLIC WORKS:

Please consider this Response of Misha Crosby to the Bureau of Street Services Board Report (“BSS Report”) tendered in this case on or about January 18, 2024.

This Response assumes the Commissioners are familiar with the Notice of Appeal filed by Misha Crosby, in the Board’s file as Transmittal 2.

Misha Crosby tenders three new exhibits: Exhibit A, the Declaration of Raymond Salas; Exhibit B, a complete copy of the email Mr. Crosby sent to Raymond Salas with full copies of maps attached; and Exhibit C, a letter to Mr. Crosby from Mr. Jamie Hall.

The BSS Report ignores the key facts in this case: that Mr. Crosby conferred with tree removal professionals before he hired them to do any work, and both told Mr. Crosby the trees he wanted removed were not protected.

The BSS Report ignores the undisputed fact that Mr. Crosby met with two different tree removal professionals on this property, who viewed the trees Mr. Crosby wanted removed, and both told Mr. Crosby that the trees in the area were not protected under the City ordinance; and therefore, he did not need a tree removal permit.

The undisputed evidence is that Mr. Crosby met on site with a licensed contractor, Raymond Salas, and an arborist, Frankie Lopez; and was given their opinions that no protected trees were in the area designated for removal; before Mr. Crosby hired either company to clear his property.

Mr. Crosby’s statement (Transmittal 14) details that he met with both contractors on the property, and looked at the specific trees with them. And both contractors told Mr. Crosby that the trees he was looking at having removed were not protected. Transmittal 14, pages 1-2 re Think Green Tree Care, Inc. – pages 9-13 re California Tree Design. The meetings and conversations are further confirmed by text messages and emails between Mr. Crosby and the contractors.

The Declaration of Raymond Salas exonerates Mr. Crosby of the BSS’s accusations.

Attached hereto as Exhibit A is the Declaration of Raymond Salas, owner of Think Green Tree Care, Inc., the contractor who first removed protected trees by mistake on June 28, 2023. [Note: this Declaration was not presented to the Hearing Officer.] Mr. Salas confirms what Mr.

Crosby testified to: that Mr. Crosby met with Mr. Salas on the property before Mr. Salas was hired, and that Mr. Salas told Mr. Crosby the trees he wanted removed were not protected. Mr. Salas confirms that Mr. Crosby did not ask him to remove any protected trees. Mr. Salas admits it was his mistake that protected trees were removed, and that he should have known better. Mr. Salas is not an arborist, but admits that since he is in the business of removing trees, he should know better. He assumes responsibility for his mistake.

Mr. Crosby hired certified arborists to consult after Mr. Salas removed protected trees.

Mr. Crosby relied on Mr. Salas as a tree removal professional. When Mr. Crosby learned on June 28 that Mr. Salas was not an arborist, he had Mr. Salas stop work. As set forth in Mr. Crosby's statement and as testified to at the hearing, Mr. Crosby felt it was important before continuing work, after Mr. Salas' company had improperly removed protected trees, to consult with a certified arborist (as neighbor Jamie Hall had explained to him). Mr. Crosby researched and found California Tree Design, which advertises certified arborists. See their website link at <https://californiatreedesign.com>.

Frankie Lopez of California Tree Design told Mr. Crosby he is an arborist, and met with Mr. Crosby on the lot, prior to Mr. Crosby hiring Mr. Lopez's company to complete the job. Mr. Crosby told Mr. Lopez of the prior problem with the first contractor. Mr. Lopez looked at the trees and told Mr. Crosby they were not protected. Only then did Mr. Crosby hire California Tree Design; and put in their contract that they were not to cut any protected trees. *Id.*

The BSS Report makes no mention of Mr. Crosby meeting with the tree removal experts in person, and ignores this evidence; and misstates other evidence.

Disturbingly, the BSS Report nowhere mentions the fact that Mr. Crosby met with and conferred with experts before having trees removed. The BSS Report makes **no mention at all** of the meetings Mr. Crosby had with the two contractors, before they were hired. The BSS Report ignores this evidence completely, and inexplicably.

Indeed, the following section of the BSS Report at page 8 is restated here in its entirety. It attempts to gloss over the facts with the following statements, which appear intended to imply that Mr. Crosby never meet with the experts, but simply sent them written instructions and maps:

Appellant Crosby made no effort to identify the tree species on site to be cleared

Appellant Crosby presented no evidence and made no meaningful effort to confirm what protected tree or shrub species were on the property prior to giving instructions for either of these services. He made no effort to have arborists or other professionals first confirm the presence or absence of protected trees before contracting for tree removal.⁵ On the contrary, Appellant Crosby presented both tree services with maps showing areas in green and yellow, respectively, to be cleared (presenting at best a contradiction with the ostensible supposed direction to avoid protected trees). *See* Exhibits 12, 21 and 23 (Transcript of Part 2, 40:19-42:5; Audio of Part 2, 0:45:45-0:47:40).

5 Appellant understood the second tree removal company had arborists, but he did not have nor request any specific arborist review or survey prior to removal. See generally Transmittal No.13 Transcript of Part 2, 41:12-43:15; Audio of Part 2, 47:42-49:01.

These statements are factually incorrect. “He made no effort to have arborists or other professionals first confirm the presence or absence of protected trees before contracting for tree removal.” This statement is blatantly false.

For clarity, Mr. Crosby attaches hereto Exhibit B, which is a copy of his email to Raymond Salas with two maps attached; neither of which are prepared as part of a tree survey. These maps were provided by Mr. Crosby to Mr. Salas **after** they had met on the property, viewed the trees, and Mr. Salas had told Mr. Crosby none of them were protected.

Mr. Bryan Ramirez of the BSS even argued at the Hearing that he thought, from seeing a picture on Mr. Hall’s video of one of these maps on Mr. Salas’s phone, and thinking that it had “orange dots and pink dots” - that “there was a [tree] survey done on this lot by some tree expert” that was given to Mr. Salas, and that was the basis for his “belief” that “Mr. Crosby was aware there were protected trees on the lot.” Transcript of Hearing Vol. 2, page 42-43. Mr. Ramirez never contacted Mr. Salas or Mr. Crosby to try to verify his “belief.” BSS seems to have withdrawn this accusation. It is now clear there was no such “tree report” prepared. It was improper for Mr. Ramirez, on behalf of the BSS, to make such a serious and wildly unsubstantiated allegation at the Hearing, without doing adequate investigations.

What more “reasonable steps” should Mr. Crosby have taken?

The following unsupported argument is claimed at BSS Report page 7 – Mr. Crosby “knew or should have known of the protected trees on his property and taken reasonable steps to prevent their removal, both before June 28, 2023, and July 7, 2023.” What more “reasonable steps” should Mr. Crosby have taken? The BSS Report is silent on this issue. What more was Mr. Crosby to have done? BSS does not explain why it was unreasonable for Mr. Crosby to rely on professionals. What does “should have known” mean? How?

Property owners must rely on the opinions of experts in the industry in identifying protected trees. Certified arborists prepare the protected tree reports involved in applying for building permits and tree removal permits. If the experts are wrong, the property owner should not be punished.

LAMC § 46.06(a) gives the Bureau discretion to seek withholding of permits, but such withholding is not required or mandatory.

LAMC § 46.06(a) states: “The Bureau of Street Services, after notice and hearing pursuant to Subsections (b) and (c) in this section, shall have the authority to request the Superintendent of Building to withhold issuance of building permits...up to a maximum of 10 years....

The statute grants permissive authority to request withholding of permits if protected trees are removed without a permit, but that is not mandatory.

LAMC § 46.06(c) provides that at the required hearing, if the facts indicate, the BSS may request withholding of permits. LAMC § 46.06 does not make this mandatory, as erroneously argued in the BSS Report at page 6. It is discretionary, based on the facts.

There is no evidence that Mr. Crosby had knowledge or intent to wrongfully have protected trees removed without a permit; and no evidence of any prior violations; the two key factors at issue here.

LAMC § 46.06(c) lists four factors the BSS should consider in whether or not to request withholding of building permits: as mentioned in the Notice of Appeal. The first two factors deal with (1) the number of trees, and (2) their size and age. The BSS Report does not discuss how those factors should play into any decision about whether to seek withholding of building permits. They simply say how old they think the trees were and their size.

The next two factors listed in §46.06 – (3) the knowledge and intent of the owner with respect to the removal, and (4) prior violations of law with respect to the removal of protected shrubs, were discussed at length in the Notice of Appeal.

BSS admits there is no evidence of any prior violations by Mr. Crosby. BSS Report p. 9.

This leaves only the question: what is the evidence of Mr. Crosby's knowledge and intent with respect to the protected trees?

The BSS has submitted no evidence of knowledge or intent on behalf of Mr. Crosby to remove protected trees without a permit.

The BSS has argued speculation, and in forming its arguments, has been less than candid with the Commissioners. According to the Declaration of Mr. Salas, the BSS (or anyone from the City) never contacted Mr. Salas to ask about that happened here; though they had his email address and phone number in Mr. Crosby's statement.

The BSS never interviewed Mr. Crosby. They never asked him for additional information. They simply went for the jugular, asking for a seven year moratorium on building permits.

The BSS Report, and indeed the presentation of the Bureau at the hearing, seem to demonize Mr. Crosby for wanting to build a residence on the residential lot he had purchased in a residential zoned area. For no reason. They seem to accuse Mr. Crosby of wanting to remove trees and shrubs that needed to be removed to build a house; as if there is anything wrong with that?

LAMC § 46.02((b)(1) allows a protected tree removal permit to be granted if "it is necessary to remove the protected tree or shrub because its continued existence at the location

prevents the reasonable development of the subject property.” And in a residential zoned area, the only reasonable development is the building of a residence. If it is permissible for protected trees to be removed for these reasons, it was clearly permissible for Mr. Crosby to remove what he thought were unprotected trees, for the same reason.

BSS was unduly influenced to punish Mr.. Crosby by the “neighbor” emails.

None of the seventeen “neighbors” who sent emails to the Commissioners and other City officials complaining about Mr. Crosby, claiming Mr. Crosby intentionally and knowingly destroyed protected trees, ever spoke with Mr. Crosby to investigate.

We have learned since the hearing (where Mr. Crosby first learned of the neighborhood emails), the emails come from people associated with an organization headed by Jamie Hall that has as its specific mission to try to prevent further development of homes on residential lots in Laurel Canyon.

Attached as Exhibit C is a letter Mr. Crosby recently received from Mr. Jamie Hall, after the Bureau’s Decision recommended a four year moratorium on building on Mr. Crosby’s lot. The letter asks Mr. Crosby to consider donating his land to the Laurel Canyon Land Trust, which has as its stated “Mission Statement” “to acquire existing undeveloped land in Laurel Canyon for both residents and animals.”

Whether Mr. Hall was merely gloating or was serious is unknown. However, the information in Mr. Crosby’s statement, that Mr. Hall had told Mr. Crosby “how they’d stopped the previous owner from building,” and Rikki Poulos then warned Mr. Crosby “about how organized they were as a group, and that when the new wildlife ordinance had passed it would be impossible [for Mr. Crosby] to build;” these statements now take on new meaning. See Crosby Statement, page 8 (Exhibit 12, Transmittal 14).

Multiple factual findings in the Decision are clearly erroneous.

The Decision erred in holding in the “Specifications of the Allegations” that the BSS was alleging that there were three episodes of tree removal, on June 28, July 7 and July 27;” and also in making a Finding of Fact that Mr. Crosby “received a Notice to attend an Administrative Hearing on August 25, 2023...[and] after receiving the Notice, an additional two protected Black Walnut trees were removed by arborists on July 27th, 2023....” Of note, this is confusing because July 27 is before August 25 – however, regardless, there is no evidence of tree removal on three dates, or after a written Notice of hearing was received.

This error was pointed out in the Notice of Appeal at ¶6. BSS at page 7, footnote 4, admits that the Decision erred, and admits that no trees were removed after July 7, 2023.

Oddly, the BSS does not suggest that these serious factual error needs correction, and asks the Board to “CONCUR” with the Decision’s findings and determinations even though the Hearing Officer was mistaken. In light of the Decision’s clear error about the number of times trees were removed, the reasoning behind the severe penalty should definitely be reassessed.

The Hearing Officer in his Decision also mistakenly found that “the last Owner” “had applied for a building permit, which was denied back in 2018. Misha Crosby was aware that building on this property was not viable without the removal of these protected trees.” As noted in the Notice of Appeal at ¶7, this too is inaccurate.

The BSS Report does not explain how the Hearing Officer made these multiple errors.

Mr. Crosby is willing to make amends, pay any permit fees, and plant replacement trees in mitigation.

Mr. Crosby stands ready and willing to plant replacement trees, and pay whatever fees would be required for a protected tree removal permit. Mr. Kelly Lewis’s report (Transmittal 8) has made suggestions, which the BSS Report does not comment on.

It is baffling that the BSS has not requested any protected trees be re-planted. Indeed, the BSS has not proposed any mitigation planting at all. They are apparently more concerned with preventing Crosby from building a residence than the presence of protected trees.

As the Report of Mr. Kelly Lewis (Transmittal 8) makes clear, there is more than ample room to allow for the planting of Southern California Black Walnuts trees in mitigation, which Mr. Crosby is willing to do.

Unprotected trees were removed by the contractors, including a Sumac tree and a scrub oak. Transmittal 8, page 8. There remain on the property protected trees, three Coast Live Oaks, one Mexican Elderberry, and one Southern California Black Walnut. Transmittal 8, page 7.

Mr. Crosby protected the Live Oak trees he knew about, and asked two professionals to determine if other trees were protected. Those professionals made mistakes and removed protected trees, which was no fault of Mr. Crosby. Mr. Crosby is willing to make amends.

However, it is not fair to punish Mr. Crosby for the mistakes of the contractors.

In conclusion, Mr. Crosby requests that the Board reverse the Decision, and that appropriate mitigation be determined, so that he may proceed with building his home.

Respectfully submitted,

/s/ David L. Monroe

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