No. 24-0548
MOTION TO VETO DECISION OF THE LOS ANGELES BOARD OF PUBLIC WORKS IN THE APPEAL OF MISHA CROSBY

Copies of Documents From the Board of Public Works ("BPW")
Proceedings in Case No. BPW-2024-0168

In an effort to clarify the facts presented to the BPW, Misha Crosby attaches the following documents, all of which are part of the BPW record.

1. Aerial Photograph of 8461 W. Grand View Avenue, showing the upper hillside near Grand View Avenue completely barren of any vegetation on May 9, 2023, before any tree removals

2. Timeline of Relevant Events (revised to include BPW hearing dates)

3. Declaration of Raymond Salas, confirming that he wrongly advised Mr. Crosby that there were no protected trees, and he is at fault, not Mr. Crosby

4. Transmittal 14, Formal Statement of Misha Crosby, that contains copies of emails and contracts with the two contractors, establishing he told them to protect the live oaks and any other protected trees on his property

5. Notice of Appeal of Misha Crosby, detailing the factual errors in the BSS Hearing Examiner Report/Notice of Decision

6. BSS Report in Response to Notice of Appeal; particularly page 7, footnote 4, where the BSS admits that it does not assert any protected tree removals took place other than on June 28 and July 7, 2023, though the Notice of Determination "appears to refence removals that took place on July 27, 2023."

7. Response of Misha Crosby to BSS Board Report

8. Statement of Kelly Lewis to Commissioners Regarding Historical Application of LAMC § 46.06 and the Size of Trees Removed at 8461 Grand View Avenue

9. Form Emails from Jane Kurson and Ann Song to City Officials and others

10. David Monroe Email of 10-5-2023 to Form Email recipients

11. Sullivan Equity Partners, LLC v. City of L.A., 2022 Cal. App. Unpub. LEXIS 4439, 2022 WL 2815451

ITEM 1

3D
289 m
Camera: 373 m 34°06'10"N 118°22'30"W
10 m
Google
100%
Imagery date: 5/9/22

No. 24-0548
MOTION TO VETO DECISION OF THE LOS ANGELES BOARD OF PUBLIC WORKS IN THE APPEAL OF MISHA CROSBY

Timeline of Relevant Events
Re Misha Crosby Purchase of Residential Lot
At 8461 Grand View Avenue and BPW Proceedings

8/10/2021	Misha Crosby buys 8461 Grand View Avenue, zoned R1 HCR, from Robert L. Gopen, Trustee of the Robert L. Gopen Trust, for $120,000. He is provided no information about protected trees on the property by the Seller.
2021-2022	Alex Catala prepares building plans for a two-level home, and site plan maps
1/27/2023	Updated Soils and Engineering Geologic Investigation Report completed
3/15/2023	LADBS approval letter issued for the property
6/20/2023	On June 20, 2023, the proposed Wildlife Ordinance was considered by City Council's Planning and Land Use (PLUM) Committee. Misha tried to attend the hearing, but was unable to get in. The PLUM Committee unanimously voted to approve the proposed Wildlife Ordinance with some additional modifications. Wildlife Ordinance begins review by the City Attorney's Office. News reports passage as possibly "imminent."
6/20/2023	After knowing the hearing results, Misha begins contacting licensed tree contractors about removing trees, concerned about the potential passing of the Wildlife Ordinance
6/22/2023	Misha meets two different tree removal contractors on site. Misha meets licensed contractor, Raymond Salas, owner of Think Green Tree Care, on site. Raymond Salas tells Misha there are no protected trees in the area to be cleared, receives bid of $6,500 Misha also meets with a second contractor, "Tree Trimming," on site and is also told no protected trees are in the area to be cleared, receives bid of $3,200 from Natalie Alvarez
6/24/2023	Misha hires Raymond Salas's company for $3,200; sends site plan maps prepared by home designer Alex Catala
6/28/2023	Raymond Salas's company begins clearing area; neighbors Rikki Poulos and Jamie Hall observe a black walnut has been cut; advise Raymond Salas and Misha Crosby; Misha has Raymond stop work; Jamie Hall tells Misha they had managed to stop the prior owner from building; Rikki Poulos warns Misha how organized they are as a group, and that when the new wildlife ordinance passes it will be impossible for him to build

7/3/2023	Misha still has two trees and some shrubs remaining in the area he wanted cleared. Having searched for certified arborist companies, Misha had located California Tree Design, which advertises they have certified arborists. Misha meets on site with Frankie Lopez, who tells Misha that he is an arborist, and that the remaining trees are not protected
7/6/2023	Misha contracts with California Tree Design for $1,800 to finish the job; puts in contract to not remove any protected trees
7/7/2023	California Tree Design removes trees, and removes at least one protected black walnut tree; Rikki Poulos observes, tells the tree cutters the trees are protected; workers call their office, which tells them to continue work; Poulos makes 3 short videos
7/7/2023	12:52 pm - Mr. Jamie Hall, on behalf of the Laurel Canyon Association and Laurel Canyon Land Trust, sends an email to four City officials, Hector Banuelos, Bryan Ramirez, David Miranda and Stephen Duprey; including a link to the video he made on June 28, 2023, requesting immediate action; cc'ing representatives of Councilmember Raman, the City Attorney's office, and Santa Monica Mountains Conservatory. (Transmittal No. 5). Mr. Hall attaches a tree removal permit from many years before filed by a prior owner.
7/7/2023	1:33 pm – Field Inspector dispatched 2:45 pm - UFD Inspector Ignacio Alvarez arrives at the property; concludes that 5 total black walnut trees had been removed
7/14/2023	UFD mails NTC
7/24/2023 – 7/30/2023	14 "neighbors" send 14 emails to 18 City officials (including all the Commissioners of DPW), stating their "outrage" and requesting maximum penalties, falsely stating all vegetation had been removed and the removal was done intentionally and knowingly in flagrant disregard of the ordinance [Note: Misha Crosby never was consulted by any of the email authors]
7/25/2023	Misha receives NTC in the mail
7/27/2023	Misha responds to UFD, requests additional time as response due
7/29/2023	Misha hires Kelly Lewis to prepare the required tree report
8/1/2023	Misha serves his Formal Statement to BSS as requested by BSS (Transmittal 14)
8/8/2023	Bryan Ramirez of UFD emails Jamie Hall, asking Mr. Hall for more information of what happened on June 28.

8/18/2023	Further onsite filed inspection, with consent of the owner Misha Crosby, by Bryan Ramirez and Stephen Duprey of UFD
8/25/2023	Notice of Administrative Hearing mailed, hearing on 9/27/2023 (Transmittal 6)
9/22/2023	Kelly Lewis completes his Tree Report (Transmittal 8)
9/23/2023	Mr. Monroe, on behalf of Misha Crosby, via email requests from Ms. Ana Tabuena-Ruddy a copy of the evidence to be presented at the upcoming hearing. Nothing was provided.
9/26/2023	Mr. Bryan Ramirez of UFD receives 3 videos made by Rikki Poulos
9/27/2023	Administrative Hearing held; UFD requests 7-year hold; Misha sees for the first time the emails from other residents and the email from Jamie Hall; and sees for the first time the prior tree removal permit filed by a prior owner, which Mr. Hall had emailed to City officials
~9/30/2023	Misha Crosby contacts Ann Song, who wrote one of the 14 emails about him. She owns the lot next to him, and allowed Misha's contractors to park in her driveway when working on Misha's lot. Misha expressed dismay at the false statements in Ann's email, and explained that he told the contractors not to cut any protected trees, but they did anyway. Misha asked Ann where she had gotten the false information in her email from. Ann tells Misha she worked off a template provided by Rikki Poulos. Ann tells Misha she did not realize her email was about him, and told Misha she would write a retraction; but later told Misha she would not write a retraction
10/5/2023	David Monroe, on behalf of Misha Crosby, sends letter to the Commissioners and other recipients of the 14 emails sent in July 2023, advising the 14 emails contain false statements of fact and requests an investigation
10/27/2023	Notice of Decision issued, recommends 4-year hold on building permits
11/6/2023	Notice of Appeal filed, pointing out numerous factual errors in the Notice of Decision
~1/24/2024	Misha Crosby receives letter from Jamie Hall requesting Misha consider donating his property to the Laurel Canyon Land Trust (Exhibit C)
3/27/2024	First Hearing of Appeal before BPW
4/15/2024	Second Hearing before BPW
5/6/2024	Third Hearing before BPW – decision to withhold building permits for two years, as allowed by the LAMC 46.06

DECLARATION OF RAYMOND SALAS

I, Raymond Salas, am the owner of Think Green Tree Care, Inc. I am over eighteen years of age, and am a resident of California. My phone number is 626-510-5144.

Last summer, I was contacted by Misha Crosby about having my company remove some trees and shrubs from his property at 8461 W. Grand Drive in Los Angeles. Two days or so before we did the actual work, I met with Mr. Crosby at the property. Misha Crosby showed me a diagram of the house he was going to build. We looked at the trees involved in the diagram area that he wanted cleared, and together we looked at all the trees that had to be cut down in order to build his house. He told me did not know if any of the trees, other than live oak trees on the map, were protected. He asked me if any of the other trees were protected, and I said that none of the trees in the area he wanted cleared were protected. The only trees I saw that I thought were protected were the live oak trees. Mr. Crosby made clear he did not have a permit to cut protected trees, and made clear he did not want any protected trees cut down. To be clear, Misha Crosby did not instruct Think Green Tree Care Inc. to cut down protected trees; to the contrary.

It was to my knowledge that the only trees protected on the property were the oak trees. I have been in business about 7+ years now, but I am not a certified arborist. Regardless, I work in the tree business and I should know these important things.

Mr. Crosby then hired my company to clear that part of his land on the diagram, and we signed a contract. My company went to the property and started clearing the area. While we were working, I learned that we had cut down black walnuts, and an elberberry tree. A neighbor came and brought this to our attention, while we were still working. We stopped doing the work immediately and there is video to prove that.

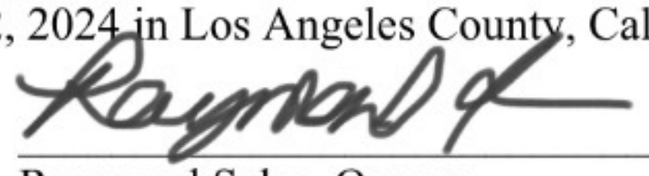
I now have pictures on all my work trucks to remind myself and all my workers not to touch protected trees. I now use an app that helps me identify trees, which I did not have or use when I did the work for Mr. Crosby.

Think Green Tree Care Inc. takes full responsibility for cutting down the protected trees on Mr. Crosby's property. It was an honest mistake. It was not done intentionally or with any malice. My apologies go out to the city of Los Angeles and to the state of California for this terrible mistake. I also want to extend my apologizes to my client, Misha Crosby, for not being able to build and for the trouble he has gone through because of my actions.

Since this occurred last summer, I have not been contacted by anyone from the City of Los Angeles asking me what happened.

Please feel free to contact me with any questions. Thank you.

I hereby declare that the above facts are within my personal knowledge, and are true and correct, under penalty of perjury. Signed on February 12, 2024 in Los Angeles County, California.



Raymond Salas, Owner
Think Green Tree Care, Inc.

Exhibit 12

TRANSMITTAL NO. 14

Misha Crosby
Datura Enterprises, LLC
1260 N Flores St, #1
West Hollywood, CA 90069
misha@mishacrosby.com
310-717-9973

DEPARTMENT OF PUBLIC WORKS
CITY OF LOS ANGELES
BUREAU OF STREET SERVICES URBAN FORESTRY DIVISION
1149 S. Broadway, Suite 400
Los Angeles, CA. 90015

ITEM 4

RE: SR # 1-4377422511; Formal Statement in Response to Notice to Comply

08/01/2023

Dear Board of Public Works, Urban Forestry Division

Thank you for the opportunity to submit my formal statement on this matter. Per your notice it appears that you have concluded that at least one protected tree has been cut on my property. I have been incredibly concerned with this, as I explicitly instructed the company I hired not to cut any protected trees, both verbally and in writing (copies attached). I am grateful for the opportunity to work with you to submit the report at this point and follow the procedure to plant the necessary replacements. Per you request, I have laid out the series of events regarding tree removal that was recently done on my lot at 8461 W Grand View Drive.

I received the Notice to Comply, dated July 14, 2023 when I went to the Post Office on July 25, 2023 to pick up the certified mail. I had been out of town. A response was due July 28, 2023. I have requested an extension.

On July 31, 2023, I hired Kelly Lewis from PTS Tree Service. He is a Registered Consulting Arborist #669 and former employee of the City of Los Angeles who will be providing the requested Protected Tree Report and a mitigation plan to help resolve this issue. Please let me know that an extension to file the report is granted and when the report is now due.

I am the owner of the lot and have been working on plans to build a home for me to live on my property. I am not a developer by trade, this is a personal project that I've been pursuing for many years and this will be my first time owning a home. Based on advice of my accountant, I am using an LLC that is owned by me, Datura Enterprises, LLC., as a conduit for development.

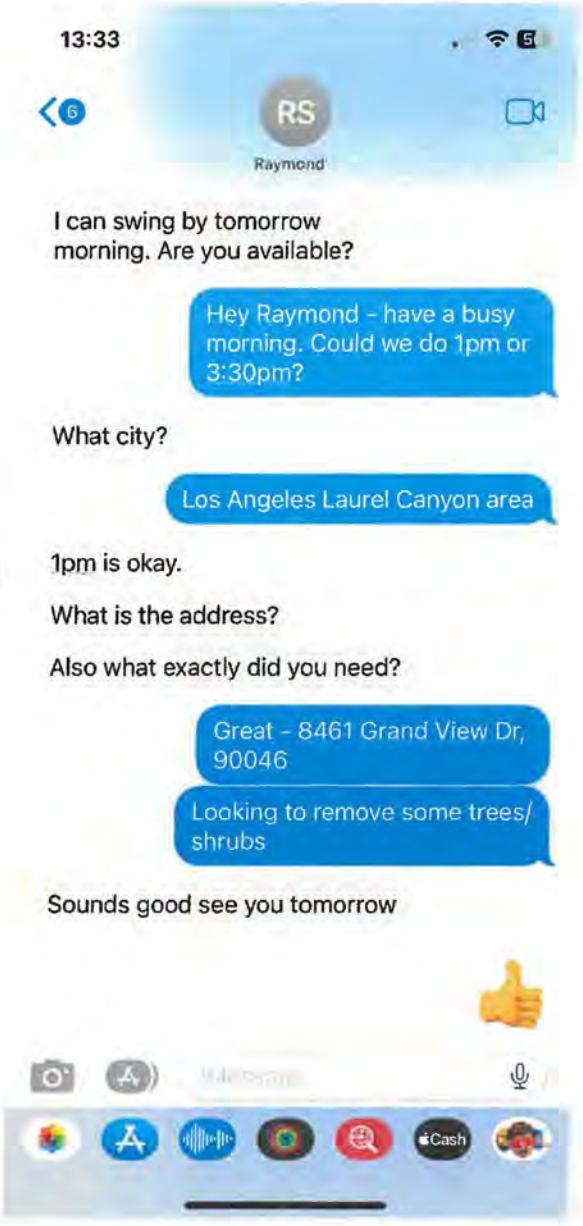
On June 20th I contacted Think Green Tree Care Inc., Lic #1023688 and spoke with Raymond Salas. I asked if we could meet to discuss getting some trees and shrubs removed from an area of my lot. The purpose of removing the trees and shrubs from this area is for the proposed floor area for my home. I had also been made aware of an impending wildlife ordinance that is likely to affect my property and wished to proceed before restrictions were implemented on my lot regarding removing any trees.

Think Green Tree Care Inc. Attachments EXHIBIT A

We met at 1pm on June 22nd at my Grand View lot where I outlined the proposed scope of work. During the walk through I specifically asked if we were ok to proceed regarding any protected trees. Raymond pointed out the oak trees on site, which had been notated on the plans and excluded from the proposed site plan area, and he said that we were good to proceed as long as they were not harmed. We then talked about logistics for parking, which I said I would attempt to arrange with my neighbours. We agreed on a price and continued to correspond via text and email.

I believed, because they were licensed, that Think Green Tree Care would know what trees were protected.

Think Green Tree Care Inc. Attachments EXHIBIT B



Think Green Tree Care Inc. Attachments EXHIBIT C

From: **Misha Crosby** mishacrosby@yahoo.co.uk
Subject: Tree Removal - Grand View Drive - 06/28
Date: June 23, 2023 at 4:28 PM
To: Thinkgreentreecaresales@gmail.com

Hey Raymond, as promised here's the floor plan and the area that needs to be cleared of trees.

The first PDF shows the overall area that needs to have the trees removed highlighted in green.

The other PDF shows the proposed home and the trees that need removing marked in red. (there maybe shrubs and smaller trees, etc, that are not shown on the maps but please clear anything in the green highlighted area that they are able to.

Please make sure the right work is done so that the roots will not cause the trees to grow back.

N.B Of course please do not remove the oak trees or any other protected trees on the lot.

Wednesday 28th 8:30am is what I have currently in the calendar.

Got an ok back from all three neighbors.
Will discuss the logistics of where we can park on the phone but essentially the dump truck should be ok to be in the driveway of 8451 & 8459 (FYI 8451 will be out of town so please park most of the truck on that side).
The driveway of 8454 we can not block in the main drive but we can use the spot just to the left of the entrance where I parked when I met you if you need to park another truck there if possible.

Please send me through the $3200 quote back here so I have it.

Cheers!
Misha

From: **Raymond Salas** thinkgreentreecaresales@gmail.com
Subject: Re: Tree Removal - Grand View Drive - 06/28
Date: June 23, 2023 at 6:28 PM
To: Misha Crosby mishacrosby@yahoo.co.uk

Will do

On Fri, Jun 23, 2023 at 4:27 PM Misha Crosby <mishacrosby@yahoo.co.uk> wrote:

> Hey Raymond, as promised here's the floor plan and the area that needs to be cleared of trees.
>
> The first PDF shows the overall area that needs to have the trees removed highlighted in green.
>
> The other PDF shows the proposed home and the trees that need removing marked in red. (there maybe shrubs and smaller trees, etc, that are not shown on the maps but please clear anything in the green highlighted area that they are able to.
>
> Please make sure the right work is done so that the roots will not cause the trees to grow back.
>
> N.B Of course please do not remove the oak trees or any other protected trees on the lot.
>
> **Wednesday 28th 8:30am** is what I have currently in the calendar.
>
> Got an ok back from all three neighbors.
> Will discuss the logistics of where we can park on the phone but essentially the dump truck should be ok to be in the driveway of 8451 & 8459 (FYI 8451 will be out of town so please park most of the truck on that side).
> The driveway of 8454 we can not block in the main drive but we can use the spot just to the left of the entrance where I parked when I met you if you need to park another truck there if possible.
>
> Please send me through the $3200 quote back here so I have it.
>
> Cheers!
> Misha

Think Green Tree Care Inc. Attachments EXHIBIT D

Think Green Tree Care Inc. Attachments EXHIBIT E

From: **Misha Crosby** mishacrosby@yahoo.co.uk
Subject: Re: Your estimate 838 from Think Green Tree Care Inc.
Date: June 24, 2023 at 2:41 PM
To: thinkgreentreecaresales@gmail.com

Thanks Raymond!

A few updates below please and I'll get that back to you.

1) Change Misha Crosby to **Datura Enterprises, LLC.**

2) In Description **add:** Cut down 7 trees/shrubs on hillside (various species) **as outline in emailed correspondence.**

3) Add: Think Green Tree Care Inc ("Company") agrees that it is an independent contractor and assumes full responsibility for its employees, agents, and subcontractors. Datura Enterprises LLC ("Owner") shall not be liable for any injuries, damages, claims, or liabilities arising from or related to activities on the Owner's property at 8461 W Grand view Drive. Company shall maintain comprehensive general liability insurance coverage, including workers' compensation insurance, in amounts sufficient to cover any injuries, damages, or claims that may arise during the course of its work. Company shall indemnify and hold Owner harmless from any claims, demands, suits, or actions, including reasonable attorney fees, arising out of or in connection with Company's work.

4) Not planing on canceling but in the event there was a problem 25% is quite steep. Happy to do 10%.

Cheers & chat soon!

Misha

On Jun 24, 2023, at 7:26 AM, Raymond Salas <delivery@email.joistapp.com> wrote:

Estimate #838 from Think Green Tree Care Inc.

Attn: Mischa Crosby

We are excited about the possibility of working with you.

Please click the button below to view your Estimate on a secure webpage.

View Estimate

Powered by JOIST

Trouble seeing this email? Add us to your safe senders list

Think Green Tree Care Inc. Attachments EXHIBIT F

Prepared For

Datura Enterprises, LLC.
8461 W Grand View Dr
Los Angeles , CA 90046
(310) 717-9973

Think Green Tree Care Inc.

16037 Harvest Moon
La Puente, CA 91744
Phone: (626) 510-5144
Email: thinkgreentreecaresales@gmail.com
Web: thinkgreentreecare.com

Estimate # 838
Date 06/24/2023

Description	Total
Cut down 7 trees/shrubs on hillside as outlined in email correspondence. (various species). Haul away and clean up included.	$3,200.00

Subtotal	$3,200.00
Total	**$3,200.00**

Notes:

Think Green Tree Care Inc ("Company") agrees that it is an independent contractor and assumes full responsibility for its employees, agents, and subcontractors. Datura Enterprises LLC ("Owner") shall not be liable for any injuries, damages, claims, or liabilities arising from or related to activities on the Owner's property at 8461 W Grand view Drive. Company shall maintain comprehensive general liability insurance coverage, including workers' compensation insurance, in amounts sufficient to cover any injuries, damages, or claims that may arise during the course of its work. Company shall indemnify and hold Owner harmless from any claims, demands, suits, or actions, including reasonable attorney fees, arising out of or in connection with Company's work.

Think Green Tree Care is not responsible for any underground piping or sprinklers that are broken by stump grinding or underground digging. Also, by signing this document you agree to pay 25% of this contract if by any reason you choose to cancel services.

Datura Enterprises

Signed on: 06/24/2023

Datura Enterprises, LLC.

On Wed June 28th Raymond of Think Green Tree Care, Inc. and his team arranged to be on site early. I had worked out the parking logistics with the neighbours so that we were not blocking the road for passing traffic on the day.

They proceeded with their work, I had offered to bring the workers drinks up to the lot around noon.

Raymond text me to let me know that there had been an issue from a neighbour who was asking for permits for the trees as she believed they were protected.

I called him to ask what was going on. He told me he said to her that they were not protected and that we could proceed.

I stopped off at the gas station on my way up Laurel Canyon to get the drinks, and received another call from Raymond saying that there was now an environmental lawyer on site and I should come. I arrived shortly after up to the lot where I saw a man, Jamie Hall, filming, and a woman with a dog, Rikki Poulos.

It was not long before Jamie had a camera pointed at me close up asking me if I knew that this was a protected tree, I told him the tree company had informed me that they were not protected and directed the question to the tree company. Jamie then shifted the camera to Raymond and was asking about a specific tree to which he didn't know, at which point I asked Jamie to stop filming. He said that it was public property and that he could still film; at which point I still said I'd rather he didn't as it was very disconcerting whilst we were attempting to figure out what was going on.

Jamie had also said that I needed a certified arborist which I have now come to learn that even as a licenced company, Raymond's company Think Green Tree Care Inc., was not.

There were tree remains in the road blocking my neighbours' driveway and at some point during one of Jamie's speeches one of my neighbours called down to ask that we clear them away. The workers wished to clear them but Jamie had claimed we were "removing evidence". I told him that's not what was happening. I said he was free to take photographs first but we didn't want to continue blocking the street and the driveway. Once he was content he had all the photographs he wanted, I asked if the workers were ok to proceed clearing the remains. He said that they were, and then he began filming again of them disposing of the remains.

I had asked Jamie to get me some sort of verification of what he was saying was true, and he attempted to make a call and left a voice message. I took Jamie at face value with everything he was telling us. I respected his wishes and did not have Think Green Tree Care Inc. proceed.

Jamie had then gone on to mention how they knew about this lot and how they'd managed to stop the previous property owner from building, and Rikki then warned me about how organized they were as a group, and that when the new wildlife ordinance had passed it would be impossible to build.

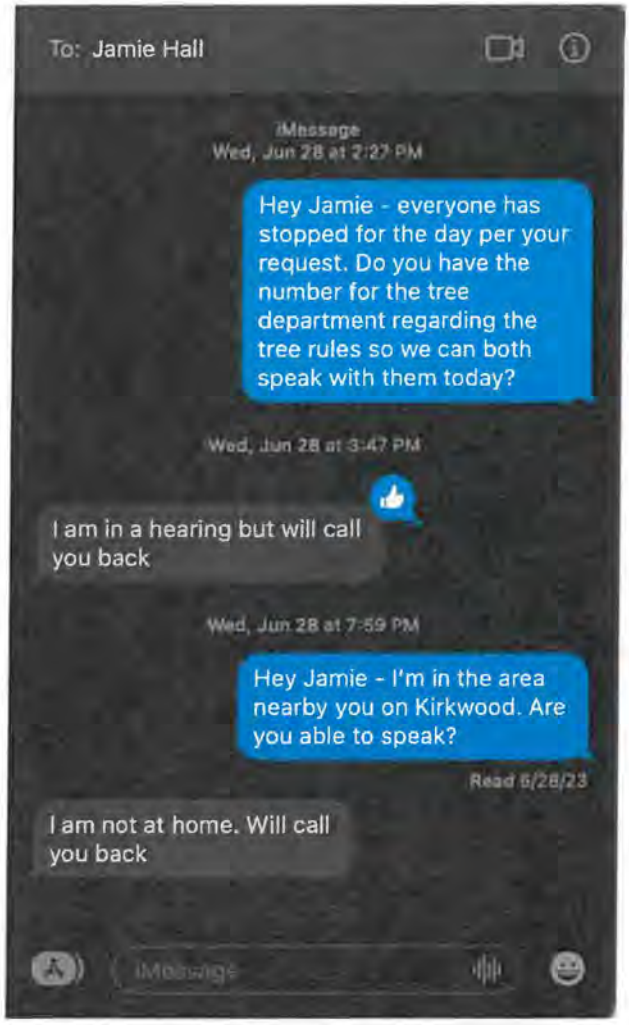
Rikki had mentioned how they had had bad experiences with developers in the past, and I tried to assure her that I was not a big corporate developer and this was going to be a property for me to live in.

Jamie had asked who sold me that land and if they'd disclosed there were protected trees on the lot and that if he were me he'd sue Berkshire Hathaway for selling me the lot.

Jamie then let me know he had to leave for a hearing and that he'd be reporting me to the city.

I attempted to speak with Jamie several times after this incident about how to proceed. I left both voice messages and texts. On numerous occasions he said that he'd call me back and he did not. He has not gotten back to me since, and I have not spoken with him.

Jamie Hall (resident) Attachment EXHIBIT G



Because we stopped at Jamie's demand, the job was not finished and there were still at least 2 trees and some shrubs remaining in the mapped area. Per Jamie's instruction, I found a company with ISA certified arborists, California Tree Design Inc. and had them come out to look at the remaining work.

I stated I had an incident with previous neighbours and asked if we were ok to proceed with the remaining scope. I specifically instructed them not to cut any protected trees both in our conversation and in writing.

The crew was arranged for 8am on July 7th to finish the job. I visited the lot in the morning and went to get coffee and drinks for the workers around noon

When I returned one of the crew mentioned to me that a neighbour had come by that I believe to be Rikki Poulos but I can't confirm as I didn't see her. The crew member told me that she said that I had been fined and was not supposed to be cutting trees on the property. I asked them what proceeded. They said they called their boss who told them to proceed with the remaining work and clean-up.

California Tree Design Inc. Attachments EXHIBIT H

California Tree Design Inc. Attachments EXHIBIT I

California Tree Design Inbox mi...y@yahoo.co.uk July 6, 2023 at 10:30 PM
Your estimate 3525 from California Tree Design
To: Misha Crosby,
Reply-To: californiatreedesign@gmail.com

CALIFORNIA TREE DESIGN

Estimate #3525 from California Tree Design

Attn: Misha Crosby

Hi there!

Here is your estimate. We appreciate the opportunity to help and we're excited about working with you. Feel free to contact us with any questions. Thanks again!

Best regards,
California Tree Design Inc.

Please click the button below to view your Estimate on a secure webpage.

View Estimate

Powered by JOIST

Trouble seeing this email? Add us to your safe senders list

California Tree Design Inc. Attachments EXHIBIT J

Misha Crosby Sent -...yahoo.co.uk July 6, 2023 at 11:15 PM
Re: Your estimate 3525 from California Tree Design
To: californiatreedesign@gmail.com

Thanks Frankie - please make these updates to the quote and I'll get that back to you.

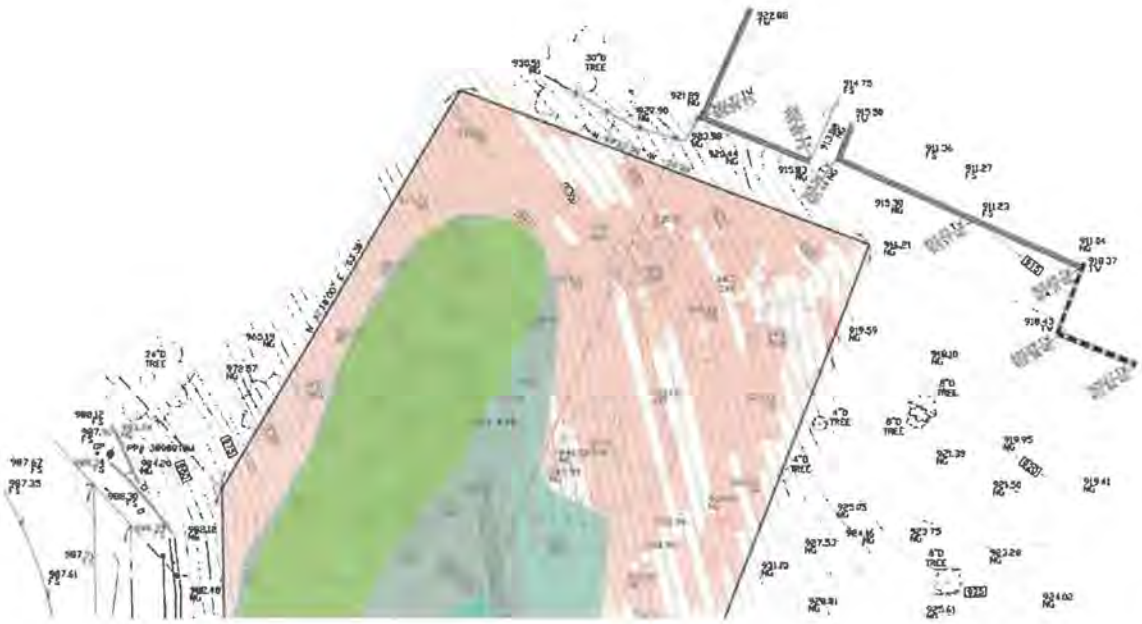
1) Change Misha Crosby to **Datura Enterprises, LLC**.

2) Update Description: Removal of selected trees and shrubs in highlighted area per the PDF map provided. Removal of resulting stumps on ground as much as possible or treat stumps to assure no new growth. California Tree Design Inc will not remove the oak trees or any other protected trees on the lot.

2) Add: California Tree Design Inc ("Company") agrees that it is an independent contractor and assumes full responsibility for its employees, agents, and subcontractors. Datura Enterprises LLC and Misha Crosby ("Owner") shall not be liable for any injuries, damages, claims, or liabilities arising from or related to activities on the Owner's property at 8461 W Grand view Drive. Company shall maintain comprehensive general liability insurance coverage, including workers' compensation insurance, in amounts sufficient to cover any injuries, damages, or claims that may arise during the course of its work. Company shall indemnify and hold Owner harmless from any claims, demands, suits, or actions, including reasonable attorney fees, arising out of or in connection with Company's work.

I've attached a map of the lot with the area marked in yellow that is to be cleared.

Cheers,
Misha



California Tree Design Inc. Attachments EXHIBIT K

ESTIMATE

Prepared For

Datura Enterprises, LLC
8461 W Grand View Dr Los Angeles, CA 90046
United States

California Tree Design

6528 Greenleaf Ave., Suite 112
Whittier, CA 90601
Phone: (562) 253-9577
Email: californiatreedesign@gmail.com
Web: www.catreedesign.com

Estimate #	3525
Date	07/06/2023
Business / Tax #	27-2596057

Description	Total
Tree Pruning	$1,800.00
1) Removal of selected trees and shrubs in highlighted area per the PDF map provided. Removal of resulting stumps on ground as much as possible or treat stumps to assure no new growth. California Tree Design Inc will not remove the oak trees or any other protected trees on the lot.	
Haul away	$0.00
1) Haul away and dispose resulting wood, greenwaste, and debris	

Subtotal	$1,800.00
Total	**$1,800.00**

M. Crosby

Signed on: 07/07/2023
Datura Enterprises, LLC

I hope this information has provided clarity of what has transpired regarding the matter.

Please let me know if there is any other information I can provide to you.

Sincerely,

Misha Crosby
310-717-9973

ITEM 5

NOTICE OF APPEAL
TO THE LOS ANGELES BOARD OF PUBLIC WORKS
Of Hearing Examiner Report/Notice of Decision
Dated October 27, 2023
Regarding Misha Crosby and 8461 Grand View Drive, Los Angeles

Please take notice that Misha Crosby hereby appeals the Hearing Examiner Report/Notice of Decision ("Decision") dated October 27, 2023 to the Board of Public Works, pursuant to LAMC § 46.06(d).

The Department of Public Works, through its Hearing Examiner, erred on multiple factual matters, and abused its discretion in making the determination that Misha Crosby not be allowed to apply for any City of Los Angeles building permits for any new development at the property Mr. Crosby owns at 8461 Grand View Drive, Los Angeles, CA 90046 (the "Subject Property") for four years from the date of the decision, pursuant to LAMC § 46.06; which penalty is grossly excessive and punitive given the facts of this case. There is no evidence that Mr. Crosby knew that there were any protected trees in the area he wanted cleared on his lot. Indeed, though he now knows that two contractors cut down protected trees, he was told by both contractors there were no protected trees in the area he wanted cleared, and was told in writing they would not remove any protected trees.

Mr. Crosby appeals because the Decision contains factual errors not supported in the record; incorrect statements about the allegations presented by the UFD; and reached conclusions of facts that are against the weight of the evidence. As a result, the penalty assessed constitutes an abuse of discretion.

References herein to [Exhibit #] herein are references to Exhibits presented at the hearing by either the Urban Forestry Division ("UFD") or Mr. Crosby, and listed in the Decision. Mr. Crosby reserves the right to present additional argument and evidence at the appeal hearing before the Board.

SUMMARY OF ARGUMENT ON APPEAL

On appeal, Misha Crosby believes the clear preponderance of the evidence will show that, as found by the Hearing Examiner, Mr. Crosby relied on tree removal companies to verify that the trees on the property to be removed were not, in fact, protected trees; that the tree removal companies did remove some protected trees, in disregard and contrary to the clear written instructions of Mr. Crosby; and that Mr. Crosby is innocent of any intent to violate Los Angeles city ordinances. Mr. Crosby is prepared to plant replacement trees. The four year moratorium ordered by the Hearing Examiner is based on incorrect facts, is unnecessarily punitive, and should be reversed, and remanded for a determination of the proper remediation and planting of replacement trees on the property.

STATEMENT OF ERRORS AND ABUSE OF DISCRETION

1. Evidence is undisputed that the tree removal companies were directed in writing by Mr. Crosby not to remove any protected trees.

In the Decision, the "Hearing Examiner determined that the Property Owner [Mr. Crosby] attempted to utilize tree removal companies to verify that the trees to be removed were in fact not California protected trees." There is no criticism of this in the Decision. Most property owners must rely on experts on such matters.

The undisputed evidence is that Mr. Crosby hired two different tree removal companies to advise him whether there were any protected trees in the area of his small residential hillside lot where he plans to build a home for himself. As detailed below, both companies did a site visit and told Mr. Crosby that there were no protected trees in the area he wanted cleared.

(a) Mr. Crosby's emails with Think Green Tree Care, Inc. are Exhibit C to Exhibit 12 presented to the Hearing Examiner.

In clarifying the scope of work, Mr. Crosby's email to the contractor states, "N.B Of course, do not remove the oak trees or any other protected trees on the

lot." [Emphasis in the original email.] Mr. Crosby provided the tree company with the floor plan of his home, and a map provided by his home planner that noted the location of trees on the property. The map did not identify any of the trees by species, except for some oak trees. Mr. Crosby was invoiced $3200 by this company. [Exhibit 12.]

The notation "N.B" is a British notation commonly used to indicate that special attention should be particularly paid to something; and stands for the Latin "nota bene." Mr. Crosby was born and raised in England.

(b) Mr. Crosby's email and contract with California Tree Design are Exhibits J and K to Exhibit 12.

Mr. Crosby's email and contract with the second contractor, California Tree Design, both stated, "California Tree Design will not remove the oak trees or any other protected trees on the lot." [Emphasis in the email, not in the contract.] [Exhibit 12.] Mr. Crosby personally met with the California Tree Design arborist on his property prior to sending those emails and entering into that contact, as detailed in his statement, [Exhibit 12].

2. A property owner is not required to have a tree report prepared or apply for a protected tree permit to remove unprotected trees.

The Hearing Examiner noted that there was no record of Misha Crosby ever applying for a Tree Removal Permit with the City of Los Angeles. That is consistent with Mr. Crosby's understanding that the area to be cleared did not include any protected trees. As Mr. Crosby was assured by two companies that they would not be removing protected trees, there was no need for him to apply for a permit; since no protected trees were to be removed.

There was no evidence presented that Mr. Crosby knew the tree removal companies had misinformed him. As such, he had every right to rely on their opinions. In faith, had the ISA certified arborist prepared a tree report that stated

the same thing, i.e. that there were no protected trees in the area he wanted to have cleared, Mr. Crosby would not have needed to file that with the City before proceeding with clearing his land of unprotected trees and other growth. Only when protected trees are to be removed is a permit required.

It is an abuse of discretion to penalize Mr. Crosby for not requesting a protected tree removal permit when he did not know any protected trees were to be removed.

3. The two tree removal companies did remove some protected trees, contrary to Mr. Crosby's specific instructions not to remove any protected trees, and without his knowledge or approval.

On June 28, 2023, Think Green Tree Care, Inc., owned and operated by Raymond Salas, cleared some trees and shrubs from the lot. A neighbor, Mr. Jamie Hall, filmed his conversation with Mr. Salas, and told Mr. Salas he was cutting protected black walnuts. The film shows Mr. Salas's surprise, and he stated he thought the tree was another kind of black walnut. The film shows Mr. Crosby arriving, expressing disbelief that any protected trees were being cut. Mr. Hall told Mr. Crosby he needed to hire a certified arborist. Work stopped.

During the following week, Mr. Crosby contacted California Tree Design, and met onsite with one of their certified arborists; showed him the remaining area to be cleared and the unfinished work left over by the first contactor. California Tree Design's certified arborist told Mr. Crosby that there were no protected trees in that area. Mr. Crosby relied on that opinion, and hired them to come to finish the job that had been stopped on June 28. As mentioned above, Mr. Crosby clarified with California Tree Design in both an email and expressly in their contract that no protected trees were to be removed. [Exhibit 12.] California Tree Design came and cleared some trees on July 7, 2023; and unfortunately, in spite of all this, California Tree Design removed at least one and possibly two protected black walnut trees.

4. Upon receiving the City's notice on July 25, 2023, Mr. Crosby hired his own arborist, Mr. Kelly Lewis, to prepare a protected tree report, who concluded protected trees were removed.

The evidence is that on July 25, 2023, Mr. Crosby received the written notice dated July 14, 2023 in the mail from Mr. Ramirez of the Department, stating that the Department had determined that protected trees had been removed from his property. [Exhibit 12.] On July 27, 2023, Mr. Crosby contacted Mr. Ramirez by email, requesting time to further respond, and advised he was seeking to hire the required tree expert. [Exhibit 19, Work Information.]

On July 29, 2023, Mr. Crosby contacted and then hired Kelly Lewis, a Registered Consulting Arborist, who prepared a protected tree report, which was submitted to the Hearing Examiner, though it does not appear to be listed among the Decision's list of Exhibits.

Mr. Lewis noted there are five protected trees on the property now: three (3) Coast Live Oaks, one (1) Mexican Elderberry, and one (1) Southern California Black Walnut. The live oaks appear on the map Mr. Crosby gave to the contractors.

Mr. Lewis found 18 stumps on the property, and that eight (8) were Southern Black Walnut stumps. He also concluded that three (3) of the black walnuts removed were definitely of protected size; one (1) was likely of protected size; for two (2) the size health could not be reasonably determined whether they were protected or not; and two (2) were not of protected size.

Therefore, Mr. Crosby agrees that protected trees were removed by the two contractors, without a permit; and the contractors thereby violated LAMC § 46.02.

5. No trees of any kind were removed after July 7, 2023.

The Decision made the following Findings of Fact:

"On June 28, 2023, Misha Crosby had been filmed by Jamie Hall, a witness who observed the Arborists while they were removing four protected trees (Exhibit

8 – Three Black Walnut and one Mexican Elderberry). On July 7, 2023, Arborists continued to remove two Black Walnut trees. *Misha Crosby received a Notice to attend an Administrative Hearing on August 25th, 2023 regarding the unauthorized removal of protected trees on July 7th, 2023. After receiving the Notice, an additional two protected Black Walnut trees were removed by Arborists on July 27th, 2023 without the City of Los Angles authorization*." [Emphasis added.]

The italicized portion above is entirely incorrect. There is no evidence that Misha Crosby received any notice from the City on July 7. As noted above, Mr. Crosby received the City's notice in the mail on July 25, and responded by email on July 27. And, more importantly, there is no evidence that additional trees were removed after Mr. Crosby received any notice from the City. No trees were removed on July 27, 2023. In fact, no trees were removed after July 7, 2023. These factual errors indicate the Hearing Examiner was confused when he based the Decision on the erroneous factual findings that Mr. Crosby had proceeded with tree removal on July 27, 2023 after being contacted by the City.

6. <u>The Decision misstates the allegations presented by UFD.</u>

In the "Specifications of the Allegations," the Decision erroneously states "the Department alleges the property owner at 8461 Grandview Dr., Los Angeles, CA hired three Arborists on three different occasions to remove several protected trees and shrubs from this property on 6/28/23, 7/7/23 and 7/27/23 without authorization." The allegation from the Department was only that trees were removed on 6/28/23 and 7/7/23, which Misha Crosby admits and does not dispute. There was no allegation that any trees were removed on 7/27/23.

Mr. Crosby hired Mr. Lewis shortly after July 27, but Mr. Lewis did not oversee any tree removals or other work on the property.

These serious misstatements of the record undermine any presumption of correctness an administrative finding might otherwise be afforded.

7. The Decision misstates that a prior building permit was denied.

The Decision incorrectly states: "Deputy City Attorney Adena Hopenstand presented the history of the last Owner who had applied for a building permit, which was denied back in 2018." It then follows this erroneous finding of fact with the conclusion that "Misha Crosby was aware that developing on this property was not viable without the removal of these protected trees." There is no evidence of any prior building permit ever being denied. There is no evidence to support the conclusion that Mr. Crosby was aware of this prior permit, and therefore was "aware" of the need to remove protected trees to develop the property.

The only evidence the UFD submitted of anything resembling a prior building permit request by a previous owner was an "Application For A Tree Removal Permit" filed by Patel Sachin of 360 Capital Ventures, Inc., submitted back in 2018 to remove two protected black walnuts of fair to poor condition; which apparently was never granted or denied. [Exhibit 9 and 19.] The Application included a "Protected Tree Report" prepared in March 2018 by Lisa Smith, which identified two protected black walnuts on the site in the footprint of Mr. Sachin's proposed home. [Exhibit 9.] There was no evidence submitted that the Application was ever denied.

Moreover, there is no evidence that Mr. Crosby ever saw or was in any way aware of the Application For A Tree Removal Permit, much less the included tree report. Mr. Crosby did not purchase the property from Mr. Sachin of 360 Capital Ventures, but from Robert L. Gopen, Trustee of the Robert L. Gopen Trust in August 2021. [Exhibit 4.] There is no evidence Mr. Crosby had ever talked with or had any communication with Mr. Sachin.

8. There is no other evidence to support the Decision's conclusion that "Misha Crosby was aware that developing on this property was not viable without the removal of these protected trees."

The 2018 Application for a Tree Removal Permit and the "Protected Tree Report" filed with it were unknown to Mr. Crosby, and therefore do not support the finding that Mr. Crosby was "aware" that the "removal of these protected trees" was required to develop the property. There is no other evidence to support this finding; it is erroneous and contrary to the preponderance of the evidence.

The undisputed evidence is that Misha Crosby hired two different sets of tree specialists, and both met with Misha Crosby on the property, and when shown what areas Misha was interested in having cleared, told Misha unequivocally that no protected trees were in those areas. What is more, Misha Crosby confirmed with both tree specialists that they would not cut any protected trees, in writing, acknowledged by both tree companies. There is no evidence that Misha Crosby had any intent to remove any protected trees.

9. There is insufficient evidence to support the Decision to not allow Mr. Crosby to apply for building permits for four years.

As part of his findings: "The Hearing Examiner determined that the Property Owner [Misha Crosby] attempted to utilize tree removal companies to verify that the tree used to be removed were in fact not California protect trees." However, in assessing a four-year moratorium of building permits, the Hearing Officer essentially ignored his own finding that Mr. Crosby relied on experts to determine whether the trees to be removed were protected or not.

10. The Hearing Examiner abused his discretion in not properly weighing the four factors in § 46.06(c).

The Decision found that eight protected trees were removed. This conclusion is questionable, as it based upon the erroneous finding that two protected trees were removed on July 27, 2023, for which there is no evidence.

The number of trees removed is the first of four factors that shall be considered in determining any withholding of building permits under LAMC § 46.06(c), e.g. (1) the number of trees removed or relocated.

The Decision does not discuss the second factor, (2) the size and age of the trees or shrubs removed; and if any such considerations played into the Decision.

More importantly, the Decision does not discuss factors (3) and (4) of LAMC § 46.06(c); i.e (3) the knowledge and intent of the owners of the property with respect to the removal relocation, and (4) prior violations of law with respect to removal.

Mr. Crosby's statement was admitted into evidence [Exhibit 12], and there was no evidence to dispute anything therein. In 2021, Mr. Crosby purchased the Subject Property, a small hillside lot in Laurel Canyon, in order to build a private residence for himself. Mr. Crosby has no experience in building anything, in permitting process, or otherwise. Mr. Crosby is not a developer. Mr. Crosby's building plans were engineered to work around old protected live oaks on his property.

Mr. Crosby submitted to the Hearing Examiner his proposed building plan for his small home, and it is undisputed that it would be necessary to clear some of the lot from vegetation to allow for the building of the home. It is also undisputed that the building plan was designed to avoid all known protected trees, specifically several live oak trees. [Exhibit 12.]

The report of Kelly Lewis was admitted into evidence, which found that the three Coastal Live Oaks are still on the property; which Mr. Crosby's house plan works around. The great weight and preponderance of the evidence is that Mr. Crosby did not intend his contractors to remove protected trees; and any such removals were contrary to his written instructions to the contractors.

A proper weighing of the four factors set forth in LAMC § 46.06(c) should result in no penalty to Mr. Crosby, as he is not the person who removed the protected trees without a permit.

11. Due Process concerns about the false and defamatory emails sent to multiple City officials must be addressed.

(a) Emails from "neighbors"

This case is marred by the introduction into evidence, without prior notice to Misha Crosby, of fourteen (14) emails from "neighbors" which falsely accused Mr. Crosby of intentionally and flagrantly defying LAMC law and removing protected trees knowingly; all of which were also sent to eighteen (18) City officials. [Exhibit 16; a fifteenth email as sent by Sarah Hayes solely to Ms. Aura Garcia.] The emails were sent to all five Commissioners of the Board of Public Works; Aura Garcia, Teresa Villegas, Mike Davis, Vahid Khorsand, and Susana Reyes. The emails include a false report to City officials, and none of the authors of any of those emails ever contacted Misha Crosby to inquire about the truth of their allegations. None of the emails state any basis for the false accusations against Mr. Crosby they contain. The false accusations are outlined in detail in Mr. Monroe's email and letter of October 5, 2023 to the City officials who received those emails, which are incorporated herein by reference. Mr. Monroe's email and letter attaches a copy of [Exhibit 16], which includes a copy of all these emails.

Misha Crosby was only made aware of those emails and their false contents when they were presented by the UFD at the hearing on August 25, 2023. Though Mr. Crosby objected to the introduction of those hearsay statements, the Hearing Officer stated he would admit them and that he could consider hearsay.

None of the writers of these emails ever contacted Mr. Crosby or inquired of him about the allegations contained therein.

(b) *Ex Parte* Communications to Board members regarding an appeal are improper.

These *ex parte* communications to the Board are improper. They present a due process question; whether it is possible for Mr. Crosby to have a fair hearing on appeal after the Board members have all received these multiple emails? The reports to the Board members were not necessary to request enforcement action: any such requests would properly be sent to UFD officials, such as Mr. Ramirez.

The effect of these *ex parte* communications cannot be underestimated. They probably have the effect of prejudicing the members of the Board of Public Works, who will be deciding this appeal, against Mr. Crosby. This was a calculated attempt to "poison the well" by presenting false information about Mr. Crosby, while giving him no opportunity to respond, since he was not advised of these communications until the September 27, 2023 hearing. Attorney Monroe's response of October 2, 2023, discussed below, came long after the seeds of deceit had been planted.

These emails were sent not only to the Board members, but also to Bryan Ramirez, who presented the case to the Hearing Examiner. Mr. Ramirez's bias was exhibited when, during the hearing, he made the completely unsubstantiated and false accusation that he believed that Mr. Crosby had a tree report prepared per "UFD's tree removal application requirements" that he gave to the contractor, and argued that Mr. Crosby gave the report designating protected trees to be removed by the contractor, knowing they were protected. [See Exhibit 8, page 5, with Mr. Ramirez's handwritten notes.]

This accusation is a complete fabrication, and why a city official would fabricate such a concoction, without even speaking with Mr. Crosby, is evidence to the bias generated by the false "public outrage." This contention was completely dispelled at the hearing, as Mr. Crosby offered [Exhibit 21], which showed the map

Mr. Ramirez based his false accusation upon to be a map highlighted by Mr. Crosby's home designer. Mr. Kelly Lewis also testified that the map was not part of a tree report.

Mr. Crosby is requesting copies from the City of all records of correspondence or communications between City officials, Mr. Hall, and any others mentioning Mr. Crosby or this property since July 7, 2023. Mr. Crosby reserves the right to supplement this argument upon receipt of this additional information.

(c) Email and video submitted by Jamie Hall

A video filmed on June 28, 2023 by Jamie Hall, an activist attorney, was presented by the Department and played at the hearing. In that video, Mr. Hall made false statements about Mr. Crosby and the extent of work done on the property. Mr. Hall sent an email with a link to the video to four (4) City officials, including Mr. Ramirez, on July 7, 2023. [Exhibit 18.]

(d) Attorney Monroe notified City officials of the false reports.

On October 5, 2023, Attorney David L. Monroe sent a letter via email to all eighteen (18) City officials who received the false information mentioned above. Mr. Monroe advises that he has not received any response from any of the City officials, and he does not know if any investigation into this conduct has taken place. Mr. Monroe's email, letter, Exhibits attached thereto, and the argument contained therein, which are being forwarded with this Notice of Appeal in a pdf designated "Monroe Email and Letter of 10-5-2023," are incorporated into this Notice of Appeal by reference.

(12) Any moratorium on building permits should begin to run from July 7, 2023.

Finally, the Decision states that the four year moratorium would begin on the date of the Decision, October 27, 2023, which conflicts with LAMC § 46.06(a),

which provides that any moratorium "period shall come on the date the Bureau first becomes aware of the removal of the tree." That date would be July 7, 2023.

CONCLUSION

Misha Crosby requests that the Decision by reversed, and that appropriate replacement trees be determined, so that he may proceed with building his home.

Dated: November 6, 2023

Respectfully submitted,

/s/ Misha Crosby

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DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET SERVICES
REPORT NO.

Date:

ITEM 6

Council District No.4

Honorable Board of Public Works
Of the City of Los Angeles

Commissioners:

8461 WEST GRAND VIEW DRIVE - REQUEST THE BOARD OF PUBLIC WORKS TO DENY THE APPEAL OF THE BUREAU OF STREET SERVICES DETERMINATION TO REQUEST THE SUPERINTENDENT OF BUILDING, LOS ANGELES DEPARTMENT OF BUILDING AND SAFETY (LADBS), TO WITHHOLD THE ISSUANCE OF ANY BUILDING PERMITS FOR A PERIOD OF FOUR YEARS PURSUANT TO LAMC 46.06.

RECOMMENDATION:

That the Board of Public Works (Board):

1. FIND that illegal removal of protected trees has taken place at 8461 West Grand View Drive.

2. CONCUR with the Bureau of Street Services' findings and determination to request from the Superintendent of Building, Los Angeles Department of Building and Safety (LADBS), to withhold issuance of building permits for a period of four years.

3. DENY the appeal of the Bureau of Street Services' findings and determination to request the superintendent of building, Los Angeles Department of Building and Safety (LADBS), to withhold the issuance of any building permits for a period of four years.

TRANSMITTALS:

1. Hearing Examiner Report/Notice of Decision, Dated October 27, 2023
2. Notice of Appeal Dated November 6, 2023,
3. Audio of Part 1 Recorded Hearing Sept 27, 2023. 1:08:01-1:08:19
   (Audio & Video will be available upon request – UFD Custodian of Records)
4. Full Transcription of Recorded Hearing on September 27, 2023 (Parts 1 and 2)
5. Constituent Statement of Advisement (Exhibit 18)
6. Notice of Administrative Hearing, Dated August 25, 2023 (Exhibits 1-3)
7. Proof of ownership prior to tree removals (Exhibits 4-5)
8. Tree report dated September 22, 2023, prepared by Mr. Kelly Lewis
9. Audio of Part 2 Recorded Hearing Sept 27, 2023. Except audio; 41:16-44:14
   (Audio & Video will be available upon request – UFD Custodian of Records)

10. Transcription of Recorded Hearing on September 27, 2023 Part. 2 Excerpt pgs. 36:24-39:21
11. UFD Tree Inventory (Exhibit 13)
12. Transcription of Recorded Hearing on Sept 27, 2023. Part 2. Excerpt pgs. 36:12-21
13. Audio of Part 2 0:40:52-0:41:08) Recorded Hearing Sept 27, 2023.
    (Audio & Video will be available upon request – UFD Custodian of Records)
14. Owner's Formal Statement (Exhibit 12)
    (Audio & Video will be available upon request – UFD Custodian of Records)
15. Crosby's Site Plan (Exhibit 21)
16. Crosby's email to Contractor (Exhibit 23)
17. Video of illegal tree removals taken June 28, 2023
    (Audio & Video will be available upon request – UFD Custodian of Records)
18. Transcription of Recorded Hearing on Sept 27, 2023, part 2 Excerpt pgs. 47:2-48-48:14

RECITAL:

The Bureau of Street Services (Bureau) submits this Board Report (Report) in response to the Notice of Appeal to the Los Angeles Board of Public Works of the Hearing Examiner Report/Notice of Decision dated October 27, 2023 (COMM. NO. 122610) (Notice of Appeal). This Report outlines the Los Angeles Municipal Code (LAMC) sections related to the prohibition of removal of protected trees or shrubs, as well as the consequence of such removal at issue in the Notice of Appeal. This Report also summarizes the procedural history including the administrative hearing, as well as generally describes the evidence then presented as well as transmitted here. There is no real dispute in this appeal that protected trees and shrub were removed in violation of the LAMC. Instead, Appellant Misha Crosby brings his appeal, focusing principally on but one of the factors considered in the enforcement provisions set out in the LAMC for the illegal removal of protected trees and shrubs.

Both in this Report and at the scheduled Board hearing, Bureau representatives will provide more detail as to the evidence associated with the unpermitted protected tree and shrub removal. The Bureau will also further support its recommendation that, as a consequence for the illegal removal of protected trees and shrub at the subject property, this Board concur with the Bureau's findings and determination to request the Department of Building and Safety to withhold issuance of building permits for a period of four years.[1]

[1] In fact, the Bureau (Urban Forestry Division) initially recommended seven-years to the Hearing Examiner. See generally Transmittal No.3, Transcript of Audio 9-27-202 Hearing Part 1 mp4 1:08:01-1:08:19; Transmittal No.4, Transcription of Recorded Hearing on September 27, 2023 Part 1 (Transcript of Part 1) pg. 44:11-17.

A. LAMC prohibits relocation or removal of protected trees or shrubs other than in compliance with the LAMC

The removal of a protected tree and shrub requires pre-approval and a permit from the Board of Public Works, pursuant to LAMC 46.00 and 46.02. LAMC Sec. 46.01 defines "protected tree or shrub" to include "Southern California Black Walnut (*Juglans californica*)" as a protected tree and "Mexican Elderberry (*Sambucus mexicana*)" as a protected shrub.

For illegal removal of protected trees, LAMC Sec. 46.06 authorizes the Bureau to request that the Superintendent of LADBS revoke existing building permits and withhold any future building permits for a period not to exceed ten years. In relevant part, Sec. 46.06 (c) provides:

> In the event the Bureau finds that a protected tree or shrub was removed or relocated in violation of Section 46.00 of this Code, it shall specify to the Superintendent of [LADBS] the length of time the issuance of building permits shall be withheld and whether building permits for which construction has not commenced shall be revoked. In making its determination, the Bureau shall consider the following factors: the number of trees and/or shrubs removed or relocated; the size and age of the trees or shrubs removed or relocated; the knowledge and intent of the owners of the property with respect to the removal or relocation; and prior violations of law with respect to removal or relocation of protected trees and shrubs. The applicant or permittee shall be notified in writing of the Bureau's determination within 30 days of the hearing.

B. Illegal protected tree and shrub removal at 8461 West Grand View

Property Owner, Misha B. Crosby, is planning to develop the parcels located at 8461 West Grand View Dr. (APN No. 5556-017-004, TRACT No. 798 Lots 134 and 135). The subject property is located in the Hollywood Community Plan Area with numerous tree species, on and adjacent to the property, some of which were identified as native to Southern California and protected under LAMC 46.01.

On July 7, 2023, Bureau arborists were notified of alleged protected tree removals and responded by inspecting the subject property, confirming that native protected trees had been removed from 8461 W Grand View Drive without permits and in violation of LAMC 46.02.[2] The native trees removed were recorded as follows:

[2] Transmittal No. 5, Exhibit 18 is included with the transmittals as it was the notice to the Bureau of the allegation of protected tree removals, related to which the Bureau then conducted its investigation. Exhibit 16 (Community Statements) were also received, but did not form the basis of the Bureau's investigation.

Southern California Black Walnut, (*Juglans californica)*

Stump#1: diameter at ground level: 9",7",9",3"
Stump#2: diameter at ground level: 6",6"
Stump#5: diameter at ground level: 11",9",6",6.5"
Stump#8: diameter at ground level: 18"
Stump#11: diameter at ground level: 6",5",7",5",3"
Stump#13: diameter at ground level: 8",2"3"
Stump#14: diameter at ground level: 4",7",8",6",14"

Mexican Elderberry

Stump#12: diameter at ground level: 6",10"

The Bureau concluded that seven Southern California Black Walnut trees and one Mexican Elderberry were removed. Although Appellant may dispute the total number of protected trees that he or his agents removed in violation of LAMC Sec. 46.02, he admits to removal of at least three of these protected trees. *See infra.* at p. 4. (Transmittal 2)

C. Administrative Hearing, Bureau Determination, and Appeal

An Administrative Hearing was held on September 27, 2023, at the Public Works Building, 1149 S Broadway Blvd 4th floor, Los Angeles CA, 90015 from approximately 9:30 a.m. to 12:30 p.m. Attending the hearing were the hearing examiner, David Rivera, Principal Clerk Gisela Cardines, Assistant City Attorney Ayelet Feiman, representatives from the Bureau's Urban Forestry Division - Bryan Ramirez, Albert Vera, Stephen Duprey, Deputy City Attorney Adena M. Hopenstand, Assistant City Attorney Ted Jordan, Property Owner/Appellant Misha B. Crosby, Mr. Crosby's attorney David Monroe and Mr. Crosby's Tree consultant Kelly Lewis. At the Administrative Hearing, evidence was submitted that multiple protected trees had been removed from subject property without a permit in violation of LAMC 46.02. The Bureau's Hearing Examiner communicated his determination in the Notice of Decision dated October 27, 2023.

Appellant Crosby appeals this Notice of Decision. However, Appellant Crosby's Notice of Appeal does not dispute the threshold violation of LAMC Sec. 46.06(c) -- a protected tree or shrub was removed or relocated in violation of Section 46.00 of this Code.[3] Instead, Appellant Crosby's appeal focuses on but one of the enumerated factors (knowledge or intent) to be considered for the length of the withholding or revocation of building permits.

[3] See, e.g., Notice of Appeal, p.4, admitting to the removal of protected trees, but placing blame on Appellant's two retained tree removal companies.

1. **Evidence Presented at the Administrative Hearing**

a. Notice of Administrative Hearing

The Bureau provided notice of the Administrative Hearing and recorded this notice consistent with LAMC Sec. 46.06. (Transmittal No.6, Exhibits. 1-3).

b. Appellant Crosby owned the property before the tree removals

Pursuant to LAMC Sec. 46.06(c), Appellant Crosby owned the subject property prior to the tree and shrub removal on June 28 2023 and on July 7, 2023. (Transmittal No.7, Exhibits. 4-5).

c. Protected trees and shrub were removed in violation of LAMC Sec. 46.00

Of the protected trees and shrub that the Urban Forestry Division presented evidence as having been illegally removed, Appellant Crosby does not dispute at least having improperly removed a subset of those protected trees.

At the Administrative Hearing, Appellant's tree consultant presented a report on behalf of Appellant dated September 22, 2023 (marked as Exhibit 24 at the Administrative Hearing, Transmittal No.8). That report and testimony confirmed the observation of eight Black Walnut stumps, and of these, the confirmed unpermitted removal of at least three protected trees (identified as Stump Nos. 5, 6, and 8, and as protected trees). The report and testimony also raised questions as to whether other tree stumps on the property were also associated with viable protected trees (in reference to Stump Nos. 1, 2, 3, 4, and 7). *See* Transmittal No. 9, 41:16-44:14 of 9-27-2023 Hearing Part 2 mp4; Transmittal No. 10, Transcript of Audio Transcription of Recorded Hearing on September 27, 2023 Part 2 (Transcript of Part 2), 36:24-39:21. Although Appellant's report and associated Administrative Hearing testimony disagreed with some of the Urban Forestry Division findings, there was uncontroverted evidence before the Hearing Examiner of protected tree removals in violation of LAMC Sec. 46.00 *et seq.*

Thus, there is no dispute that these removals took place without a permit, or that there was any applicable permit exemption.

d. Having determined protected trees and shrub were removed in violation of LAMC Sec. 46.00, the Bureau also presented evidence on the multiple factors to be considered on the length of withholding and/or revocation of building permits

Sec. 46.06(c) is written as a mandatory enforcement consequence, meaning that if the Bureau determines that unpermitted trees were removed, then the Bureau "**shall** specify to the Superintendent of Building the length of time the issuance of building permits shall be withheld and whether building permits for which construction has not commenced shall be revoked." (Emphasis added). The Bureau – and then the Board in its review – has discretion in how long to request withholding of building permits.

Number of protected trees and/or shrub

The Bureau presented evidence on the number of protected trees and/or shrubs removed, with Appellant confirming a subset of these trees and/or shrubs as having been removed without any permit (*See* Transmittal No. 11, Exhibit 13; *see also* discussion *supra*).

Size and age of removed protected trees and/or shrub

The Bureau investigated the stumps from protected trees, and made the size and age determination from its inspections, including the Google Street View imagery and USDA species description.. (*See* Transmittal No. 12 ,Exhibit 20).

The Urban Forestry Division recorded stumps as follows:

- Black Walnut - Stump #1: 9",7",9",3" - Recorded Survey Diameter 12",6"
- Black Walnut - Stump #2: 6",6" - Recorded Survey Diameter 10"
- Black Walnut - Stump #5: 11",9",6",6.5" - Recorded Survey Diameter 8",8",8"
- Black Walnut - Stump #8: 18" - Recorded Survey Diameter 30"
- Black Walnut - Stump #11: 6",5",7",5",3"- Recorded Survey Diameter 20"
- Mexican Elderberry - Stump #12: 6",10" - Recorded Survey Diameter 12"
- Black Walnut - Stump #13: 8",2"3" Recorded Survey Diameter 20"
- Black Walnut - Stump #14: 4",7",8",6",14" Recorded Survey Diameter 24"

Knowledge and intent of the owners of the property with respect to the removal

One of the factors to be considered in determining the length of withholding or revocation of building permits is the knowledge intent of the property owner in removing the protected trees or shrubs. This is not the only factor to be considered, but yet represents the crux of Appellant Crosby's appeal.

In his appeal, and at the Administrative Hearing, Appellant Crosby asserted that he hired tree professionals and instructed them in writing that no protected trees be removed. *See generally* Notice of Appeal. Notwithstanding these representations, the totality of the evidence suggest that Appellant 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.[4]

Appellant Crosby intended to clear trees to build on the property

Appellant admits that the property was not viable for building without removal of the trees on the property:

> [Q]: …according to the plans that you all had with the trees that were removed, would they need to be removed in order for you to build a residence on that lot?
> [A]: · Yeah.
> [Q]: · I mean; would you be able to build a residence without having some of those trees removed?
> [A]: I don't think it would be viable. (Transmittal No.12, Transcript of Part 2, 36:12-21; Transmittal No.13, Audio of Part 2 0:40:52-0:41:08).

These removals were "for the proposed floor area for my home", spurred by Appellant Crosby's "[being] made aware of an impending wildlife ordinance that was likely to affect [his] property and wish to proceed before restrictions were implemented on [his] lot regarding removing trees." · *See* Transmittal No.14, Exhibit 12.

Appellant Crosby hired two tree services, but made no protected tree survey or otherwise took reasonable steps to prevent protected tree and shrub removal

<u>A reasonable inference can be drawn from Appellant Crosby's repeated mention of "other protected trees"</u>

Appellant Crosby had foreknowledge of at least some protected trees on the property. Appellant Crosby understood that oaks – also admittedly protected trees – were on the property, and hired a company (either from Yelp or from receipt of a business card) for tree removal. He referred to a site map with markings from his designer (Transmittal No.15, Exhibit 21) as depicting the oak trees as the protected trees about which he was aware. Appellant also described and submitted emails dated June 23, 2023 (to the first tree service he hired) and dated July 6, 2023 (to the second tree service he hired). In the first email, Appellant Crosby writes "N.B Of course please do <u>not</u> remove the oak trees or any other protected trees on the lot." *See* Transmittal No.15, Exhibit 21 (emphasis in original). In the second email, he writes, "California Tree Design Inc. will <u>not</u> remove the

[4] The Notice of Determination appears to reference removals that took place on July 27, 2023. The Bureau does not assert protected tree removals take place other than those on June 28, 2023 and July 7, 2023.

oak trees or any other protected trees on the lot." *See* Transmittal No.16, Exhibit 23 (emphasis in original). Although apparently disputed by Appellant Crosby, a reasonable inference can be drawn that Appellant was actually aware of the existence or possibility of other protected trees on his lot in addition to oaks. If he believed oaks were the only protected trees, query why the repeated mention of both oaks "and other protected trees".

Appellant Crosby appears to rely heavily on these instructions that he gave to the tree services. But these written directives to avoid protected trees and shrubs from being removed are undermined when viewed in the totality of the evidence.

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, 0:45:45-047:40).

Additional protected tree removals took place after Appellant Crosby had actual notice of protected trees on site.

Most glaringly, by June 28, 2023, Appellant Crosby had actual notice that protected trees were on his property and may have been removed. This actual notice was captured in the videotaped interaction with neighboring residents. *See* Transmittal No. 17, At a minimum by this date, Appellant Crosby had direct knowledge of a meaningful risk of further protected tree or shrub removal and that his emailed note alone was insufficient to prevent protected tree removal. Nevertheless, on July 7, 2023, at least four Southern California Black Walnut trees were cut down to their stumps. (Transmittal No. 18, Transcript of Part 2, 47:2-48-48:14) (referring to trees marked by the Urban Forestry Division as 1, 2, 13 and 14). These correspond with the "yellow" area in Transmittal No.16, Exhibit 23. Further, these protected trees – uncut – were visible in the photographic/video graphic evidence from June 28, but removed on July 7, 2023 despite clear forewarning to Appellant Crosby by this point of protected trees on site.

[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.

The Bureau does not assert any prior violation of law with respect to removal of protected trees and shrubs.

2. Notice of Decision of the Bureau

The Bureau's Hearing Examiner deliberated the information obtained and material put forth by attendees of the Administrative Hearing. In determining the outcome of the disputed removal of protected trees without a permit, the Hearing Examiner assessed all evidence and made a decision based on a "preponderance of evidence"[6] including witness testimony and comments by all parties involved. The Bureau issued a Notice of Decision (NOD) on October 27, 2023 in accordance with the provisions set forth in LAMC Sec. 46.06 and intends to request the DBS withhold future building permits for a period of four years at 8461 West Grand View Dr. (APN No. 5556-017-004, TRACT No. 798 Lots 134 and 135). The NOD included a withholding of building permits for four (4) years.

3. Appeal

The NOD also informed that the Bureau's decision could be appealed to the Board by submitting a written appeal request to the Board within 30 days of the Bureau's letter. The property owner responded by appealing the Bureau's NOD. On November 21, 2023, Appellant Crosby was sent confirmation that the appeal was received by the Office of the Board Secretariat, Board of Public Works.

4. Recommendation/Position of the Bureau

The Bureau supports the recommendation of the Notice of Decision and requests the Board to concur with findings and recommendations therein. The fact of unpermitted protected tree removal has not – and cannot– be contested by Appellant. Nor is it anticipated that he will further contest the number, age, or size of those trees that, at a minimum, he submits were removed by his own evidence. Although Appellant Crosby concentrates on whether he had the requisite knowledge and intent to remove protected trees without a permit – which is just one of the factors considered in the determination of the length of withholding or revocation of building permits – the Bureau has submitted evidence of knowledge and intent here. Appellant Crosby was aware of protected trees on the property, the need to protect protected trees, and further had the opportunity to preserve the protected trees. Nevertheless, Appellant Crosby directed contractors to remove the subject trees or through the negligence of the contractor the subject protected trees were removed without a permit.

[6] Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

Therefore, the Bureau requests the Board of Public Works deny the property owner's appeal. The Bureau also requests that the Board of Public Works find illegal protected tree and shrub removals took place at the subject property and that Appellant Crosby held title to the property at the time of these removals. The Bureau further requests that the Board of Public Works uphold the Bureau's request for the LADBS to withhold any future permits for subject property, 8461 West Grand View Dr. (APN No. 5556-017-004, TRACT No. 798 Lots 134 and 135), for a period of four years, commencing on date the Bureau first became aware of the removal of the trees and shrubs, or from July 7, 2023 through July 7, 2027.

The hearing of this matter is scheduled for February 7, 2024.

Respectfully submitted,

for

KEITH MOZEE,
Executive Director and General Manager
Bureau of Street Services

Prepared by:
Urban Forestry Division Ext. 7-3077

KM/ATR/DM/HB/BR
S:\Board Reports\2024 board reports\8461 WEST GRAND VIEW DRIVE

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. Cosby 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 contact 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, 0:45:45-047:40).

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 it 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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Attorney for Misha Crosby and
Datura Enterprises, LLC

ITEM 8

Case No. 122610
APPEAL OF MISHA CROSBY
TO THE LOS ANGELES BOARD OF PUBLIC WORKS

Statement of Kelly Lewis to Commissioners
Regarding Historical Application of LAMC § 46.06 and
The Size of Trees Removed at 8461 Grand View Drive

My name is Kelly Lewis. I was employed with Bureau of Street Services, Urban Forestry Division from February of 1989 to August of 2019. In that 30+ years I held the job titles of Tree Surgeon, Tree Surgeon Supervisor 1, Tree Surgeon Supervisor 2 and Street Tree Superintendent 1.

I have been asked to address the Commissioners' questions about the historical application of the Protected Tree and Shrub Ordinance, LAMC § 46.06.

During my time in supervision to superintendent, 1996-2019, I know of only one case where Per LAMC § 46.06(c) was employed to deny building permits. As far as I can remember, that case was on a large commercial property where many houses were to be built. The developers had removed 20 or so very large Oak trees. The exact number I do not recall but it was many and the trees were old and large. Old meaning over 100 year and large being over 30 inches in diameter as is common in older Oak trees. I was not actively apart of that case but I do know that the BPW Commission at the time did invoke a 10 year moratorium on building permits. I do remember that the developer took the City of Los Angeles to court and the city lost the case.

This section of the Protected Tree and Shrub Ordinance was created for one reason only. Standard operating procedure and past practices of the Urban Forestry Division for illegal removal of protected trees was to attempt to force the property owners/agents to replant protected species on the property to replace the trees removed. Normally we required larger size trees to be replaced than would have been required if the offender had obtained a permit to remove through the normal process. All fees were then paid and at some point in time UFD began requiring the new trees to be bonded for 5 years, which is standard practice now. This normally happened on small lots and individually owned lots where the not-permitted tree removals were discovered, reported or witnessed. I myself worked on many of these cases and was the one investigating the site, issued the notices, and worked with upper management to resolve the violation. In most cases, the home owners removed trees or shrubs, not knowing those species were protected. Most people know about the Oak trees being protected. Even today, as I do tree consulting work, rarely does anyone know about the other 3 tree species and the 2 shrubs.

In the past, the problem was a few large developers did not care about spending more money to plant larger and possibly more mitigation trees, so there were instances where they removed all the trees without permits and then just complied with notices to replant. Therefore, this section of the Ordinance was introduced for the purpose of penalizing land developers who did not care about what they considered small amounts of money, but would be impacted majorly by a moratorium on building permits.

On the discussion about the size of the protected trees removed on the subject case before us:

As can be read in my tree report, the protected trees and shrubs on this lot that were removed were not large trees and they were not old trees for their species. 10 years is not an old tree. Trunks with 4-10 inches in diameter are not big trees. It was stated by members of the Street Services during the hearing that these were large trees about 10 years old. I can verify that only 3 of the Trees/ Shrubs were actually large enough to be considered protected. The others were likely too small to be protected. I would assert in my opinion that all the Trees and Shrubs that were removed had been cut down repeatedly over many years and are all regrowth from old stumps from a time before these even were a protected species.

In conclusion, no moratorium has ever been applied to an individual homeowner in the past because that was not the intent of the Ordinance. Many records can be found of the past practices of the Bureau of Street Services, Urban Forestry Division in violations exactly like this subject case, only requiring those property owners to replant larger protected tree species at a 4:1 ratio. In this case, the punishment that is being applied does not fit the alleged crime.

In my personal opinion, based on my years of witnessing policy being driven by politics, from what I witnessed of how the agents of Street Services were obviously not in agreement or enthusiastic with what level of enforcement they were applying, it appears to me that marching orders were given by someone very high up the political and /or management chain who has a personal connection to this particular area of the city and those of whom live there. The question that the BPW commissioners should be asking is, who requested that this section of the Protected Tree and Shrub Ordinance be applied in this case and why.

Respectfully submitted,

/s/ Kelly Lewis

Kelly Lewis
ASCA Registered Consulting Arborist #669
ISA Certified Arborist WC-4395
ISA Certified Tree Worker 1430-C
ISA Tree Risk Assessor Qualified
ACSA Tree and Plant Appraisal Qualified

ITEM 9

Bryan Ramirez <bryan.ramirez@lacity.org>

ILLEGAL REMOVAL OF PROTECTED TREES AT 8461 GRANDVIEW DR.

1 message

jane kurson <kurson@mac.com> Fri, Jul 28, 2023 at 1:30 PM
To: aura.garcia@lacity.org, teresa.villegas@lacity.org, mike.davis@lacity.org, vahid.khorsand@lacity.org, susana.reyes@lacity.org, fernando.campos@lacity.org, david.miranda@lacity.org, hector.banuelos@lacity.org, stephen.duprey@lacity.org, bryan.ramirez@lacity.org, Hydee.FeldsteinSoto@lacity.org, kevin.james@lacity.org, ted.jordan@lacity.org, dennis.kong@lacity.org, nithya.raman@lacity.org, emma.taylor@lacity.org, mehmet.berker@lacity.org, mashael.majid@lacity.org, angelenos4trees@gmail.com, trees@ncsa.la, diana@ittakesagarden.com, cmaddren@gmail.com, jhall@laurelcanyon.org, tlongcore@babcnc.org, mmann@babcnc.org, rschlesinger@babcnc.org, nminer@babcnc.org, ssavage@babcnc.org, edelman@smmc.ca.gov, info@kirkwoodbowlfoundation.org
Cc: jane kurson <kurson@mac.com>

Dear City Official,

As a resident of the Kirkwood Bowl in Laurel Canyon, I am outraged about the illegal removal of multiple protected trees on the property at 8461 Grandview Drive without required permits per the California Protected Tree Ordinance. He has basically stripped the entire lot of all vegetation.

The property owner took it upon himself to remove numerous California Black Walnut trees on this lot on June 28, 2023. He was caught, notified and asked to stop immediately. Although he did desist on that day, he returned on July 7 using a different tree removal service and defiantly removed more California Black Walnut trees. The lot is now completely barren of all vegetation, and he has not yet even applied for a building permit. The previous owner encountered many obstacles when attempting to develop this lot and so will the present owner. This was also the site of a mudslide several years ago.

As a resident of Laurel Canyon, we are requesting for any and every City official and representative to hold this individual accountable and demand strong enforcement as defined in the California Protected Tree Ordinance to include but not limited to the withholding of building permits for 10 years. Additional fines and penalties are also certainly appropriate in this case.

Our green spaces in Laurel Canyon are enjoyed by many residents and visitors every day. We are outraged that the damage done on this property, to our community and our environment cannot be repaired for many decades to come. We demand the punishment be applied to the full extent as demanded in the California Protected Tree Ordinance.

Thank you for your consideration in this case.

Jane Kurson
8221Yucca Trail

Los Angeles CA 9004(

Bryan Ramirez <bryan.ramirez@lacity.org>

ILLEGAL REMOVAL OF PROTECTED TREES AT 8461 GRANDVIEW DR.

1 message

ann song <emailasong@yahoo.com> Thu, Jul 27, 2023 at 5:28 PM

To: "aura.garcia@lacity.org" <aura.garcia@lacity.org>, "teresa.villegas@lacity.org" <teresa.villegas@lacity.org>, "mike.davis@lacity.org" <mike.davis@lacity.org>, "vahid.khorsand@lacity.org" <vahid.khorsand@lacity.org>, "susana.reyes@lacity.org" <susana.reyes@lacity.org>, "fernando.campos@lacity.org" <fernando.campos@lacity.org>, "david.miranda@lacity.org" <david.miranda@lacity.org>, "hector.banuelos@lacity.org" <hector.banuelos@lacity.org>, "stephen.duprey@lacity.org" <stephen.duprey@lacity.org>, "bryan.ramirez@lacity.org" <bryan.ramirez@lacity.org>, "Hydee.FeldsteinSoto@lacity.org" <Hydee.FeldsteinSoto@lacity.org>, "kevin.james@lacity.org" <kevin.james@lacity.org>, "ted.jordan@lacity.org" <ted.jordan@lacity.org>, "dennis.kong@lacity.org" <dennis.kong@lacity.org>, "nithya.raman@lacity.org" <nithya.raman@lacity.org>, "emma.taylor@lacity.org" <emma.taylor@lacity.org>, "mehmet.berker@lacity.org" <mehmet.berker@lacity.org>, "mashael.majid@lacity.org" <mashael.majid@lacity.org>, "angelenos4trees@gmail.com" <angelenos4trees@gmail.com>, "trees@ncsa.la" <trees@ncsa.la>, "diana@ittakesagarden.com" <diana@ittakesagarden.com>, "cmaddren@gmail.com" <cmaddren@gmail.com>, "jhall@laurelcanyon.org" <jhall@laurelcanyon.org>, "tlongcore@babcnc.org" <tlongcore@babcnc.org>, "mmann@babcnc.org" <mmann@babcnc.org>, "rschlesinger@babcnc.org" <rschlesinger@babcnc.org>, "nminer@babcnc.org" <nminer@babcnc.org>, "ssavage@babcnc.org" <ssavage@babcnc.org>, "edelman@smmc.ca.gov" <edelman@smmc.ca.gov>, "info@kirkwoodbowlfoundation.org" <info@kirkwoodbowlfoundation.org>

Dear City Official,

As a resident of the Kirkwood Bowl in Laurel Canyon, I am outraged about the illegal removal of multiple protected trees on the property at 8461 Grandview Drive without required permits per the California Protected Tree Ordinance. He has basically stripped the entire lot of all vegetation.

The property owner took it upon himself to remove numerous California Black Walnut trees on this lot on June 28, 2023. He was caught, notified and asked to stop immediately. Although he did desist on that day, he returned on July 7 using a different tree removal service and defiantly removed more California Black Walnut trees. The lot is now completely barren of all vegetation, and he has not yet even applied for a building permit. The previous owner encountered many obstacles when attempting to develop this lot and so will the present owner. This was also the site of a mudslide several years ago.

As a resident of Laurel Canyon, and the neighbor who owns the property next door, we are requesting for any and every City official and representative to hold this individual accountable and demand strong enforcement as defined in the California Protected Tree Ordinance to include but not limited to the withholding of building permits for 10 years. Additional fines and penalties are also certainly appropriate in this case.

Our green spaces in Laurel Canyon are enjoyed by many residents and visitors every day. We are outraged that the damage done on this property, to our community and our environment cannot be repaired for many decades to come. We demand the punishment be applied to the full extent as demanded in the California Protected Tree Ordinance.

And as the property owner next door, I am aghast and very concerned that he removed the trees in such a manner, without proper permits and more importantly with such a blatant disregard to the warning and disregard in proceeding in a proper manner. I take this disregard and utter disrespect as a signal and indication of how he may proceed in like manner as he tries to build on the property.

Thank you for your consideration in this case.

Ann Song
Owner of 8451 Grand View Drive
LA, CA 90046

ITEM 10

From: **David Monroe** d.monroe.law@gmail.com
Subject: Notice Letter to You Concerning False and Defamatory Statements You Have Benn Given About Mr. Misha Crosby
Date: October 5, 2023 at 12:06 PM
To: aura.garcia@lacity.org, teresa.villegas@lacity.org, mike.davis@lacity.org, vahid.khorsand@lacity.org, susana.reyes@lacity.org, fernando.campos@lacity.org, david.miranda@lacity.org, hector.banuelos@lacity.org, stephen.duprey@lacity.org, Bryan Ramirez bryan.ramirez@lacity.org, Hydee.FeldsteinSoto@lacity.org, kevin.james@lacity.org, ted.jordan@lacity.org, dennis.kong@lacity.org , nithya.raman@lacity.org, emma.taylor@lacity.org, mehmet.berker@lacity.org, mashael.majid@lacity.org
Bcc: Misha Crosby mishacrosby@yahoo.co.uk

Dear Los Angeles City Officials:

I am writing to alert you to the fact that each of you on this email have been given false and defamatory information about Mr. Misha Crosby in July of this year. Each of you were sent at least 14 emails that falsely accuse Mr. Crosby of intentionally and purposefully removing protected trees from his residential lot in Laurel Canyon without a permit. You may remember receiving the emails attached as Exhibit 16. The emails also contain other false statements, such as that Mr. Crosby's lot is now "barren of all vegetation," and imply that there are no protected trees left on the lot; both of which are false.

I am an attorney presenting Mr. Misha Crosby. I write to let you know these accusations are completely false, and to advise you of the true facts. Mr. Crosby and I only learned of the existence of these emails last week, on September 27, 2023, at a Bureau of Street Services hearing before a hearing officer pursuant to LAMC § 46.06, when for the first time we were provided copies. Mr. Crosby was not cc'd on any of these emails. None of the writers of these emails ever contacted or questioned Mr. Crosby about the matter. Rather, they have repeated false allegations, and have sent these emails to Members of the Board of Public Works, as well officials in the Bureau of Street Services and others, in a transparent attempt to "poison the well" and defame Mr. Crosby's character and conduct, without the benefit of a fair hearing.

So far, this wrongful scheme seems to have worked. Mr. Bryan Ramirez and Mr. Stephen Duprey of the Bureau of Street Services, who were also recipients of these emails, recommended to the hearing officer last week that Mr. Crosby be denied a building permit for seven (7) years. If the hearing officer so decides, an appeal of that decision would be before some of you; who may have already formed an opinion about this matter, based on the false information you have been given about Mr. Crosby.

We are contacting you as soon as possible to try to limit the damage that has been done, and alert you to the true facts, in hopes you can reopen your mind, and that Mr. Crosby's reputation and character have not been permanently damaged by this unlawful and defamatory conduct.

Please see my attached letter, which goes into more detail about how this wrongful scheme has been carried out.

The fact is Mr. Crosby hired two tree cutter contractors last summer to remove trees on part of his small lot, where he hopes to build a home for himself. Mr. Crosby knew he needed a permit to have any protected trees cut. He met with both contractors on the property and asked them to tell him if there were any protected trees in the area he wanted cleared. Mr. Crosby was aware of some protected trees on the lot, specifically some large oak trees, which his building plans work around and preserve. Both contractors told him there were not any protected trees among they were going to cut. Mr. Crosby believed they knew what they were saying.

What is more, and what you were not told, Mr. Crosby put in writing to both contractors NOT to cut any protected trees; and these writings are attached to this email in Exhibits A and B. And yet, in spite of all this, both contractors cut some protected black walnuts, much to Mr. Crosby's dismay. From two to five protected black walnuts were cut down by these contractors.

I hope you will take the time to look at my attached letter and exhibits, which explains our side of the story in detail. Mr. Crosby had no intent to remove protected trees. Statements to the contrary are false. He is more than happy to plant replacement trees on his lot, and has so advised the hearing officer.

In the meantime, I request that you preserve all evidence of any communications you have received or made to others about this matter.

I also suggest that it is appropriate for the City to launch an investigation into how this has occurred. To me, this is despicable conduct, apparently orchestrated by Mr. Jamie Hall, an attorney who knows what the proper protocol should be here, and I consider his efforts to undermine my client's right to a fair hearing are both unethical and illegal.

I sincerely hope you will be able to view this matter objectively going forward. I am also aware of human nature, and it is sometimes difficult, if not impossible, to restore someone's reputation once disparaging and inflammatory accusations have been made.

I remain open to provide you any additional information, and entertain any questions or comments you may have. Please

feel free to contact me, and please advise me of what action, if any, you take in this regard.

In service,

David Monroe
Attorney for Mr. Misha Crosby

David L. Monroe
ABLE & MONROE, P.C.
9010 Rosewood Avenue
West Hollywood, CA 90048
d.monroe.law@gmail.com
415-559-6829

Notice Letter to
CIty Of...23.pdf

Exhibit A -
Crosby...r 1.pdf

Exhibit B - Email
and Co...py.pdf

Exhibit C - Email
from J...ity.pdf

Exhibit 16.pdf

Sullivan Equity Partners, LLC v. City of L.A.

Court of Appeal of California, Second Appellate District, Division Four

July 19, 2022, Opinion Filed

B305063

Reporter
2022 Cal. App. Unpub. LEXIS 4439 *; 2022 WL 2815451

SULLIVAN EQUITY PARTNERS, LLC, Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Appellant.

Prior History: [*1] APPEAL from a judgment of the Superior Court of Los Angeles County, No. BS169541, Mary Strobel, Judge.

Disposition: Reversed in part; affirmed in part.

Core Terms

bias, removal, email, permits, revoke, administrative hearing, sycamore, site, unpermitted, ***tree removal***, neighbor, trial court, properties, grading permit, building permit, adjudicator, cause of action, inspection, revocation, council member, declaration, pre-hearing, probability, proceedings, deposition, responded, arborist, measures, Bureau, oak

Counsel: Jeffer, Mangels, Butler & Mitchell, Benjamin M. Reznik, Matthew D. Hinks and Seena Max Samimi for Plaintiff and Appellant Sullivan Equity Partners, LLC.

Michael N. Feuer, City Attorney, Terry P. Kaufmann, Assistant City Attorney, Charles D. Sewell and Patrick Hagan, Deputy City Attorneys for Appellant City of Los Angeles.

Judges: COLLINS, J.; WILLHITE, ACTING P. J., CURREY, J. concurred.

Opinion by: COLLINS, J.

Opinion

Appellant City of Los Angeles (the City) issued a permit allowing respondent, developer Sullivan Equity Partners, LLC (Sullivan), to remove 56 protected trees from two lots as part of the construction of two residences on the lots. It is undisputed that Sullivan also removed three protected trees that it was not permitted to remove; Sullivan contended it did so accidentally, while the property's neighbors claimed otherwise. After the City's Bureau of Street Services (BSS) learned of the removal, it held an administrative hearing and revoked Sullivan's building and grading permits for five years pursuant to a municipal ordinance authorizing such action. Sullivan filed [*2] an administrative appeal to the City's ***Board of Public Works*** (BPW). Following a second administrative hearing, the five-member BPW voted unanimously to uphold the BSS decision.

Having exhausted administrative review, Sullivan filed a federal lawsuit. After that lawsuit was stayed, Sullivan filed the instant action, a petition for writ of mandate and inverse condemnation. Sullivan alleged that the City violated Sullivan's due process rights by failing to provide an unbiased administrative process. The trial court agreed, finding an unacceptable probability of bias by City officials during the administrative proceedings. The court thus issued a writ pursuant to *Code of Civil Procedure section 1094.5*[1] directing the City to set aside the administrative decision and sanction revoking Sullivan's permits.

The City appealed, arguing that Sullivan failed to establish any due process violation. We conclude that the trial court erred in finding sufficient evidence of bias to overcome the presumption of impartiality afforded to administrative decisionmakers. We therefore reverse the trial court's order issuing an administrative writ.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Sullivan also filed a cross-appeal challenging the trial court's dismissal of Sullivan's second cause **[*3]** of action regarding the City's revocation of its grading permits. The trial court found that this issue was moot. Because we hold that the City's decision to revoke Sullivan's building permits may stand, Sullivan acknowledges that it can no longer proceed with its original development project, and has not shown an entitlement for the grading permits for that project. Thus, we affirm the dismissal of Sullivan's second cause of action.

FACTUAL AND PROCEDURAL HISTORY

I. *Protected Tree Ordinance*

The City's Protected Tree Ordinance (Los Angeles Municipal Code (LAMC), § 46.00 et. seq.) requires a property owner seeking to relocate or remove a protected tree to obtain a permit from the BPW. (*Id.*, § 46.02.) The ordinance includes as "protected trees" four indigenous tree species—oak, Southern California black walnut, western sycamore, and California bay—and protects trees measuring four inches or more in cumulative diameter, four and a half feet above the ground level at the base of the tree. (*Id.*, § 46.01.)

The permit application "shall indicate, in a manner acceptable to the ***Board of Public Works***, by number on a plot plan, the location of each protected tree or shrub, and shall identify each protected tree **[*4]** . . . proposed to be retained, relocated or removed." (LAMC, § 46.02.) The BPW may approve removal of a protected tree if, among other things, it determines that "[i]t is necessary to remove the protected tree . . . because its continued existence at the location prevents the reasonable development of the subject property." (*Id.*, § 46.02, subd. (b).) The BPW may also impose conditions upon the issuance of a ***tree removal*** permit, including requiring replacement trees to be planted. (*Id.*, § 46.02, subd. (c).)

When a protected tree is removed without the required permit, LAMC section 46.06 authorizes the BSS to request that the Superintendent of Building revoke any building permits issued for that property for which construction has not commenced and to withhold the issuance of building permits for up to ten years. Prior to invoking this section, the BSS is required to give notice to the property owner and to hold a hearing, at which the owner may submit "any evidence it deems relevant." (*Id.*, § 46.06, subd. (b).) In making its determination, the BSS "shall consider the following factors: the number of trees . . . removed or relocated; the size and age of the trees . . . removed or relocated; the knowledge and intent of the owners of the property with respect to the removal **[*5]** or relocation; and prior violations of law with respect to removal or relocation of protected trees." (*Id.*, § 46.06, subd. (c).)

The property owner may appeal the BSS determination to the BPW. (LAMC, § 46.06, subd. (d).)

II. *The Properties and Trees at Issue*

Sullivan is a real estate development company that owns the two properties at issue, consisting of about 12 acres of vacant and unimproved land on Old Ranch Road in the Brentwood community of Los Angeles. Sullivan sought to construct two large single-family homes on the properties, with a single, shared driveway.

A. *Tree report and permit*

In 2012, Sullivan's arboricultural consultant, Robert Wallace, performed a tree study of the properties. Wallace's protected tree report (PTR) reported that the properties contained 117 protected trees, including 104 California live oaks and two sycamores. The PTR further stated that the planned development required the removal of 56 protected trees, including 51 oaks and one sycamore. The PTR identified each protected tree by number, by location on a tree map, in a labeled photograph, and in a chart that included the tree species, size, and physical condition. The PTR also identified nine of the remaining protected trees that would be impacted **[*6]** by the construction and discussed plans for protecting and monitoring those trees during construction activities. The PTR included lists of the protected trees to be removed and the trees to be preserved, identified by number and species letter (for example, sycamore tree number 5 was listed as "5s").

In December 2012, Sullivan applied to the BSS, Urban Forestry Division, for a permit to remove 56 protected trees from the properties. On February 1, 2013, the BSS submitted a letter to the BPW recommending approval of the requested ***tree removal*** permit. The letter, submitted by BSS Director, Nazario Sauceda, stated that the proposed residences would each be 10,000 square feet or larger and their construction would require "massive grading" to the properties. A BSS arborist inspected the site in October 2012 and agreed with the assessment of the PTR that removal of the 56 trees was necessary "to allow reasonable property development" pursuant to LAMC section 46.02. The letter noted that Sullivan would be required to plant specified replacement trees onsite.

The BPW heard the permit request at a meeting in February 2013. Ron Lorenzen presented the matter on behalf of BSS.

He told the BPW that it was "disturbing" **[*7]** that half of the protected trees would be removed, but that BSS was "very thorough" in looking at the site and consulting with the arborist, and because of the extent of grading necessary, there was "no way" to do the project without impacting that number of trees. The BPW voted to approve the permit.

B. ***Tree Removals***

Sullivan hired Ricardo Gonzalez[2] to remove the trees, and provided him with the permit and tree site map. On September 29, 2014, Gonzalez and his crew cut down 55 of the 56 trees permitted for removal. It is undisputed that they also cut down the following three protected trees that were not permitted for removal: (1) tree number 5, a California sycamore located near the front of the property, measuring 26 inches in diameter, 80 feet tall, and 50 foot canopy spread; (2) tree number 29, a California live oak, measuring four inches in diameter, 20 feet tall; and (3) tree number 30, a California live oak located in close proximity to tree number 29, with a double trunk measuring 12 and 10 inches in diameter, standing 35 feet tall. According to the 2012 tree report, all three trees were rated "excellent" in health, aesthetics and conformity, and balance. Gonzalez left several **[*8]** trees that had been permitted for removal, including tree number 6, a California live oak located near tree number 5 at the front of the property.[3] Tree number 6 measured 22 inches in diameter, stood 35 feet tall, with a 30-foot spread. The PTR indicated its removal was necessary for the project's main driveway construction.

III. ***Administrative Review***

A. ***Investigation***

Following the ***tree removals***, neighbors complained to Sullivan and to BSS, and requested an investigation into whether Sullivan had complied with its permit. The City took no action until December 2015,[4] when BSS arborists inspected the properties and determined that Sullivan had removed protected tree numbers 5, 29 and 30 without a permit. On December 17, 2015, BSS issued a Notice of Administrative Hearing to Sullivan, setting a hearing regarding the illegal removal of protected trees and BSS's "intent to act" pursuant to LAMC section 46.06. The hearing was continued at Sullivan's request to February 12, 2016.

B. ***Pre-hearing submissions***

Prior to the BSS hearing, Sullivan submitted a letter brief, declarations, and documentary evidence. Sullivan argued that harsh sanctions were not warranted, because it only removed three unpermitted trees, only **[*9]** one of those trees was larger and older (number 5), the evidence showed it did so accidentally, and it had committed no prior violations. Sullivan also offered to implement additional mitigation efforts, including providing one or two replacement trees "of substantial size and age (e.g. 10-20 years)" to replace tree number 5. Sullivan stated that it was "committed to future compliance" by hiring an arborist to be on site during "any future ***tree removal*** or similar activities."

Sullivan submitted a declaration from arborist Wallace, who stated that he performed a follow-up site visit on January 8, 2016. Wallace confirmed that tree number 6 was permitted to be removed but remained on the property, and was located right next to removed tree number 5. He stated that the two were "similar in trunk size," with tree number 6 measuring 22 inches in diameter and opined that "the removal of trees # 5, #29, and #30 was likely an inadvertent mistake, especially considering the number and location of trees on the subject property, and the number of trees properly cut down (55) compared to the incorrect number (3) of tree[s] cut down." Sam Shakib and Sean Namvar, Sullivan owners, also submitted declarations **[*10]** stating that they did not intend to remove unpermitted trees and were not aware it had occurred until they received the notice of hearing from BSS in December 2015. Both owners also stated that the unpermitted removals did not benefit the project. Nathan Ahdoot, a Sullivan employee, also provided a declaration stating that he had been present on the site when the trees were removed on September 29, 2014. Ahdoot met with Gonzalez that morning

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[2] We note that as some points in the record, the contractor's last name is spelled "Gonzales" rather than "Gonzalez." We adopt the latter spelling, as it is used more frequently throughout the record, and it appears to comport with his own signature on his declaration.

[3] There is some inconsistency in the record regarding the number of permitted trees removed. In Sullivan's initial submission to the BSS, arborist Wallace stated that 55 permitted trees were removed, consistent with the BSS's subsequent finding that Sullivan removed 58 trees total, including 55 permitted and three unpermitted. However, in Sullivan's appeal submission to the BPW, Sullivan asserted that it had removed 55 trees total, including three unpermitted, and left four permitted trees standing, relying on the declaration of arborist Applegate. Regardless of the total number, it is undisputed that three unpermitted trees were removed and at least one permitted tree (number 6) was left standing.

[4] In the meantime, development of the properties had been halted due to purported violations of the *Clean Water Act* and alteration of an adjoining streambed.

at the property, and confirmed that Gonzalez had copies of the tree report and removal permit. Ahdoot also averred that the removals "provide[d] no benefit" to Sullivan.

Several community members submitted letters to BSS, asking the bureau to revoke Sullivan's building permits and withhold further permits for 10 years. In addition, the Sullivan Canyon Property Owners' Association (the neighbor group) submitted documents, including a report from another arborist, Jan Scow. Scow estimated that tree number 5 was 50 to 75 years old, tree number 29 was 15 to 20 years old, and tree number 30 was 50 to 75 years old. He also opined that "there is no reason to believe that the developer complied with any protection measures for the subject trees," noting **[*11]** the instructions from the PTR that required the trees to be protected by fencing and monitored by the arborist.

C. *BSS hearing*

Lorenzen, BSS assistant director, served as the hearing officer for the February 12, 2016 hearing. The hearing was also attended by Greg Spots and Tim Tyson of BSS, as well as a deputy city attorney. Also attending were counsel and representatives for Sullivan, neighbors, representatives for several environmental and community organizations, and a representative from Los Angeles City Council member Mike Bonin's office.

Lorenzen began the hearing by explaining that its purpose was to "state the facts and to look at all of those facts." He cited the four factors pursuant to LAMC section 46.06 and stated that they "are the only four factors that can be used in any determination by this bureau. This bureau has not made any predetermined — predetermination of anything we're gonna do in regards to this case, none whatsoever. We're here today to determine, specifically, what has occurred, relative to the issuance of that permit."

Counsel for Sullivan acknowledged the timeline of events provided by BSS and admitted that Sullivan had cut down tree numbers 5, 29, and 30 without a permit. **[*12]** Citing the PTR, he argued that the number of trees was insignificant, constituting about five percent of the number permitted for removal. He also argued that the removals were "inadvertent," but not a "massive mistake," noting, "It's not like we cut down 100 and had a permit for 50." He contended that the evidence showed the removals were accidental, citing Sullivan's procedures in tagging each tree to be removed, as well as the owners' statements that the removals did not benefit Sullivan but would involve additional cost, as Sullivan now "had to pay for work that wasn't accomplishing what [it] wanted done." Additionally, he stated that Sullivan had "invested [illegible]" and that the BSS [illegible] of [illegible]. Bonin [illegible] "fundamentally unfair" to revoke its permits based on the accidental removal of three trees. He also echoed Sullivan's prior offer of additional remediation.

Gonzalez, Wallace, and one of the owners testified on Sullivan's behalf, echoing the information provided in their declarations. Arborist Wallace testified that the site was "a difficult site" and he could "totally understand why . . . there could have been a mistake. Because they're just going by tags on the trees." He **[*13]** opined that if "somebody wasn't very familiar with the color coding on the map and so forth, I can see how confusion could happen[ ]." He noted the proximity of tree number 5 to number 6 at the front of the property and stated that he could easily see how the former was cut down instead of the latter. Wallace stated that during his site visit after the trees were cut, he observed that Gonzalez had "carefully and prudently staked each and every tree that was cut, put a red ribbon on it and then actually took the tag off the tree [when cut] and put it on the stake," which "told me that they were diligent about what they were doing. And that there was nothing underhanded or nobody's trying to hide anything. It was — it was, obviously, a mistake."

Gideon Kracov, counsel for the neighbor group, gave a PowerPoint presentation urging the BSS to revoke Sullivan's permits. He argued that Sullivan had intentionally cut down the three trees, noting that Wallace had not been present at the time. He also pointed to the age and size of the sycamore, which was the tallest tree on the property by far, according to Wallace's PTR. Lorenzen asked Wallace what he thought about the age of the trees. Wallace **[*14]** opined that the sycamore (tree number 5) was "easily" 75 to 80 years old, tree number 29 was five to six years old and tree number 30 was about 10 years old.

Some neighbors and community members also spoke at the hearing, including the chairman of the Brentwood community council. He reported that the council had adopted a resolution urging the BSS to enact the recommended sanctions, because once "a 75-year-old tree is down, it's down forever" and a strong sanction would discourage future violations. He noted that the sycamore was "right in the front, center," of the property and argued its removal "was not done out of ignorance." Another community member noted the significant loss of the sycamore to the ecology of the area. A representative from council member Bonin's office argued that the project had caused "unalterable damage," and reported that Bonin was "absolutely livid" when he learned of the ***tree removals***. She noted that the trees removed were identified in Sullivan's own tree report as ones that would be protected. She also argued that, "as far as I understand it," the removal of tree number 5 "would help make the project easier [illegible]

done. Additionally, he stated that Sullivan had "invested millions of dollars in this project" and it would be to accomplish," and urged the BSS on behalf of **[*15]** Bonin to revoke Sullivan's permits for the maximum time allowable.

In rebuttal, counsel for Sullivan argued that it would be "draconian" to revoke the permits given the amount of money invested and the small number of unpermitted trees removed. Wallace also rebutted the neighbors' claim that protective measures such as fencing were required during ***tree removal***, noting that those measures were meant to be put in place afterward, in order to protect the remaining trees during construction.

D. ***BSS determination***

The BSS issued its written determination on March 14, 2016, in a letter signed by BSS Director Sauceda. BSS detailed the facts regarding the issuance of the ***tree removal*** permit in 2013, the ***tree removal*** in 2014, and its inspection in December 2015 that confirmed the unpermitted removal of tree numbers 5, 29, and 30. BSS stated that it then held the February 2016 administrative hearing "to hear testimony relative to" the unpermitted ***tree removals***. At the hearing, "it was determined and agreed to by [Sullivan] that the three unpermitted protected trees had in fact been removed." The BSS stated that it "reviewed all facts relative to the case as presented at the February 12, 2016 administrative **[*16]** hearing," in order to consider the requisite factors provided by LAMC section 46.06.

Citing the PTR and Wallace's testimony at the hearing, the BSS found that tree number 5 was at least 70 years old, tree number 29 was approximately 10 years old, and tree number 30 was approximately 30 years old, and all three trees were in excellent condition. Further, the decision found that "[i]f not the most significant of the property's trees, tree number 5 was certainly one of the largest. Also, tree number 5 was situated very prominently at the front of the project and in fact provided a landmark upon arrival at the property." The decision noted that the evidence from Sullivan, including testimony by its owners, Wallace, and Gonzalez, showed "that the PTR did accurately reflect the trees the project proposed for removal. [Sullivan] and their team described their rigorous plan to ensure the correct trees were removed. . . . Further, [Sullivan] and their team indicated all onsite ***tree removal*** personnel were made aware of the process."

The BSS then made the following findings: First, regarding the number of ***tree removals***, the BSS found that the "removal of one California Sycamore on the subject properties is significant **[*17]** both to the California Sycamore population and the woodland in total." The removal of the two California live oak trees was "less than significant" relative to the oak. Second, regarding tree age and size, the BSS found that tree number 5 (the sycamore) was "in excellent condition, large in size, and at least seventy years of age and potentially much older." As such, it "would have been expected to live much longer" and "its loss is very significant to the subject property. In addition, given the location of the tree at the front" of the property, "its removal is especially relevant to the adjoining public right of way." The loss of tree number 29, a young and small tree, was "less significant." The loss of tree number 30, a "young adult tree, approximately thirty years of age and with a significant spread," was "significant to the subject property," as it "would have been expected to live much longer" due to its "health, age and condition."

Third, the BSS found that it was "clear from the evidence" that Sullivan had knowledge that the three trees were not proposed for removal **[*18]** and that Sullivan admitted the "project had implemented a comprehensive process to ensure that only those trees permitted to be removed would in reality be removed." The BSS incorrectly noted that "no California Sycamore trees were included in the PTR for removal."[5] The BSS also found that the sycamore "species is distinct in appearance, growth habits, and foliage relative to the tree adjacent to it, tree number 6," an oak. The BSS concluded that the three unpermitted trees "were not removed by accident but intentionally to provide better access to the property or in some other fashion enable easier development." As for the fourth factor, BSS noted earlier in the decision that there was no evidence that Sullivan had previously been found in violation of section 46.00.

Accordingly, pursuant to LAMC section 46.06, the BSS determined that it would "request in writing that the Department of Building and Safety revoke any existing building permits and withhold the issuance of future building permits on both properties for a period of five (5) years." The decision also informed Sullivan of its right to appeal and directed it to contact Sauceda or Lorenzen with any questions.

E. ***Appeal to BPW***

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[5] In its appeal to the BPW, Sullivan stated that the properties contained two sycamores, tree number 5, which was not permitted for removal, and tree number 46, a smaller tree, which was permitted to be removed. In fact, it appears the properties had *three* protected sycamores, which Sullivan noted to the trial court during the hearing on the writ. Tree numbers 20 and 46, both smaller sycamores, were permitted for removal, while tree number 5 was not. The 2012 PTR is inconsistent on this point, stating multiple times that there were

tree population on the properties, but was "significant relative to the holistic woodland on the properties."

is inconsistent on this point, stating multiple times that there were two sycamores, one of which required removal, but identifying tree numbers 5, 20, and 46 as sycamores in its tree list.

1. ***Pre-hearing submissions [*19]***

Sullivan appealed the BSS decision to the BPW on April 12, 2016. It asserted that the BSS decision was "not fair or based upon the facts, and is instead, punitive." Specifically, Sullivan argued that the removal of the three trees was insignificant and accidental, that revoking its permits would not mitigate the tree loss, and that the punishment was "driven by the loud demands of neighboring property owners."

Citing documents received from the City in response to a Public Records Act request,[6] Sullivan argued that there had been "extensive communications between the [Urban Forestry Division of the BSS], various City officials, and the Project opponents." Sullivan argued that discussions by Lorenzen and James with neighbors and their counsel regarding the property "provided the project opponents months of pre-hearing information relevant to the February 12, 2016 hearing, while withholding that same information from [Sullivan]. This entire aspect of the process violates constitutional due process considerations and makes it clear that [Sullivan] was denied fundamental fairness in several ways."

Sullivan also contended that the BSS decision "ignored virtually all of the evidence." Sullivan **[*20]** stated that it had conducted further investigation following the BSS hearing, which supported the conclusion that the removals occurred in error. In support of this contention, Sullivan submitted the declaration of another arborist, Gregory Applegate, whom Sullivan retained because Wallace was unavailable. Applegate opined that the removal of the trees was unintentional, based on the difficulty in correctly identifying trees on the "jungle-like" property, the likely confusion from the trees being marked with three sets of tags for different purposes over the years, and the fact that only three trees were removed by mistake, while four trees permitted for removal were not removed. Applegate stated that he discussed with Gonzalez in April 2016 the procedures Gonzalez used to mark the trees for removal. Applegate opined that "a good effort was being expended to cut only the correct trees. But, given the presence of three different sets of tree tags, even I found it difficult to tell which trees were tagged for which permit." Applegate also disagreed with the BSS finding that the unpermitted removal of tree number 5 was significant to the properties, contending that the permitted removal **[*21]** of tree number 6 would have resulted in "significant impacts to tree number 5," thus likely causing the latter's eventual demise.[7] He also disagreed with the BSS finding that it was easy to tell the difference between tree species.

Sullivan also submitted a declaration from Larry Gray, a civil engineering expert, who had been involved in the planning process for the project since 2001. Gray opined that the project design was incompatible with the hillside ordinance adopted by the City after the project had been approved, in support of Sullivan's argument that any revocation of permits would permanently shutter the project. Gray disagreed with the BSS conclusion that tree number 5 was removed intentionally to provide better access to the site or enable easier development, noting tree number 6 impeded access but was not removed. He therefore concluded that there was no benefit to removing tree number 5 but leaving tree number 6.[8]

Contractor Gonzalez also submitted a declaration, providing additional details regarding the ***tree removal***. He stated that prior to proceeding with the job, he made sure Sullivan had a valid permit to cut down the trees. He also walked the site a few days before **[*22]** the removals and reviewed the tree map, which included numbers corresponding to each tree to be cut down and preserved. He also had a copy of the list from the tree cutting permit, which identified which tree numbers would be cut down.[9]

Gonzalez stated that he and his assistant walked the entire site. Gonzalez called out the number of each tree from its tag, then his assistant reviewed the list and told him whether that tree was designated as one to be cut. Gonzalez then marked the trees to be cut with pink tape. On September 29, 2014, he arrived with his brother and an assistant, and they began cutting the trees marked with pink tape. After cutting a tree, Gonzalez would place a stake into the ground next to the stump, and move the tree tag and pink tape from the tree onto the stake.

As with the BSS review, multiple neighbors and community members submitted letters supporting revocation of Sullivan's permits. The neighbor group also submitted additional materials to the BPW. In a letter from the president of the

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[7] We note that in the 2012 tree report, Wallace stated that the impact to tree numbers 5 and 30 from the planned construction would be "minor."

[8] We note that Sullivan has not claimed that it intends to permanently leave standing the four trees (including tree number 6) that were permitted for removal but were not removed in September 2014. Indeed, Sullivan has presented evidence that removal of tree number 6 was necessary for construction of the driveway for the residences.

[6] We discuss these emails in further detail below, together with additional discovery Sullivan received after the BPW hearing.

[9] From the evidence presented by Sullivan, it appears that Gonzalez had a copy of the tree list from the PTR, which identified the trees to be removed by number and first letter of species type.

neighbor group, who was also an architect, he argued that the removal of tree number 5 was done intentionally by Sullivan "in order to provide site access to the heavy equipment **[*23]** which it delivered to the site October 1, 2014." The letter enclosed and discussed photos purporting to show how the location of tree number 5 would make a route around it nearly impossible. It also discussed how Sullivan removed the stump and accessed the site with heavy equipment via the cleared pathway.

The neighbor group also submitted a second report from arborist Scow, responding to Sullivan's submission and declaration. Based on a site visit in May 2016, Scow opined that, with the removal of tree number 5, "there is much easier access to the site from the street than there would have been if the tree was not removed." He noted obstacles to accessing the site on either side of tree number 5, whereas the slope immediately behind the tree was "relatively flat when compared to the alternatives on either side." He also disagreed with Applegate's opinion regarding the ease of a mistake, noting that the tree tags were "clearly distinguishable from each other."

In addition, the neighbor group submitted the declaration of their own construction expert, who opined that the project was substantially facilitated by the removal of tree number 5. He also stated that for such a "large and environmentally **[*24]** sensitive raw land clearing project[,] it is extraordinary that the preventive measures did not include the active onsite participation of the consulting Project Arborist."

The BSS submitted a recommendation report to the BPW prior to the hearing, recommending that the board deny Sullivan's appeal. The report was signed by Lorenzen, on behalf of Sauceda. In the report, the BSS stated that it had "determined an administrative hearing should be held with [Sullivan] prior to making its decision" whether to invoke section 46.06. The report stated that, following the hearing, the BSS "deliberated the information obtained from site investigation and material put forth by attendees of the Administrative Hearing. The Bureau decided to invoke LAMC Sec. 46.06 and therefore request the DBS revoke existing building permits and withhold future building permits for a period of five years." The report also set forth the BSS's finding that Sullivan "was fully aware of the Protected Trees on the parcels owned by them, the need to protect the Protected Trees, and further had the opportunity to preserve the Protected Trees. Nevertheless, [Sullivan] willfully directed the contractor to remove the subject trees or through the negligence **[*25]** of [Sullivan's] contractor the subject

2. ***BPW appeal hearing***

The BPW held its hearing on Sullivan's appeal on June 24, 2016. The hearing was presided over by BPW president Kevin James and attended by the other four board members, Monica Rodriguez, Heather Repenning, Michael Davis, and Joel Jacinto.[10]

At the start of the hearing, James explained that first, Lorenzen would speak on behalf of the BSS, to "provide a bit of background, as well as summarizing his letter of determination." Lorenzen stated that he was going to briefly give a "summary of the issues," on behalf of the BSS. Lorenzen discussed Sullivan's application for the ***tree removal*** permit and noted that the BSS reviewed the PTR, visited the site, and "actually, with what we had been supplied at that time . . .validated the report." The BSS approved the removal of 56 trees and issued the permit. Lorenzen stated that the BSS was not involved with the project again until December 2015, when it reinspected the location and determined that three unpermitted trees were removed.

Lorenzen recounted that the BSS held its administrative **[*26]** hearing, after which, the bureau "reviewed all the materials that it had received during that hearing. . . . And at the end of that review, we made a determination that, in fact, these trees had been removed without a permit. That the removal of those trees had been known by the Applicant. That the number and size of trees that were removed was significant." Lorenzen noted that the sycamore was "probably in excess of 70 years old," and "one of the largest trees, if not the largest," on the property, and was also "located at the very front of this property. It's the first tree you see when you approach this property." He also stated that all three trees were "healthy and vital and in good condition." Lorenzen reported his conclusion that Sullivan "had knowledge of these trees not being on the permit. In fact, during the hearing, they . . . actually told us that the process through which they went to make sure this did not happen." Lorenzen recounted the process used by Sullivan and reported that, despite those procedures, tree number 5 was removed instead of tree number 6, a coast live oak "in very close proximity," which Sullivan claimed was a mistake. According to Lorenzen, the BSS **[*27]** "reviewed — and we did extensive discussions about this was if — even for a non-tree person to mistake a large California Sycamore from a Coast Live Oak is a big mistake. These trees, their form is completely different. The Sycamore was a very tall, more colander [*sic*] tree and the Coast Live Oak was not nearly as

the negligence [**25] of [Sullivan's] contractor the subject trees were removed. Therefore, the Bureau requests the ***Board of Public Works*** deny [Sullivan's] appeal."

coriander [*sic*] tree and the Coast Live Oak was not nearly as

[10] None of these board members was on the board when it approved Sullivan's permit in 2014.

tall and more of a spreading structure." As such, "we came to the finding that, in fact, given all of the things they had done to make sure this did not happen, and the fact that this tree is — these trees are wildly (inaudible) in form, that this didn't happen by accident. That somebody would have had to make the decision to take that California Sycamore down instead of the tree which was left."

Lorenzen also reported the BSS findings that the removed trees "were significant to the property because of their size and location." He acknowledged that the number illegally removed relative to the total number was not hugely significant, but that the sycamore was significant, as there was only one other sycamore on the property. Lorenzen also stated that "perhaps the largest reason" that the bureau was recommending a five-year penalty, was "the fact that the Bureau truly believes **[*28]** that [Sullivan] knew what they were doing. So there was actually intent to take down the wrong tree, which, in fact, they did."

Following Lorenzen's presentation, council member Bonin spoke, stating that he wanted to "vigorously support" the BSS determination. He argued that Sullivan's claim of mistake was "bogus and not credible." Numerous members of the public also spoke, all in support of revoking the permits.

Sullivan's counsel gave a lengthy presentation including a PowerPoint presentation, again arguing that the trees were cut by mistake and that the penalty was "unfair and extreme." He emphasized that a small percentage of trees were removed without a permit, that two of the three trees (numbers 29 and 30) were not significant in size or age, and that tree numbers 5 and 30 "were both going to be damaged anyway" because of the necessary construction nearby.

Sullivan presented testimony from Gonzalez, Applegate, and Gray, consistent with their declarations. Gonzalez testified that he did not remove the three unpermitted trees intentionally. He blamed the procedure he used with his assistant to mark the trees for the mistake. Gray testified that he had been involved with the property **[*29]** for about 30 years and could see "absolutely no reason why the tree should have been cut down other than a mistake." He disputed that it would have assisted getting construction equipment onto the site. One of the owners testified, reiterating the large amount of money and effort spent on the project and apologizing for the "unintentional" ***tree removals***.

Attorney Kracov argued on behalf of the neighbor group. He removing tree number 5 facilitated that entry. Commissioner Repenning asked Sullivan's counsel to respond to the photos presented by Kracov and the claim that removal of tree number 5 provided easier access for the equipment to the site. Sullivan's counsel cited to Gray's testimony that the company had been able to access the site several years earlier with equipment without removing trees.

President James asked Kracov to respond to Sullivan's argument that three of the four factors **[*30]** were not supported. Kracov asserted that the findings of BSS staff "are fully supportable." James also asked about the fact that the CEQA documents identified 25 protected trees, while the 2014 PTR identified 56.[11] Kracov argued that the BPW should look at the totality of the circumstances, including Sullivan's "pattern and practice of . . . blowing through their permits," including CEQA, the water board, and the tree permit, as relevant to intent. In response to a question from Commissioner Repenning regarding the water issues, Sullivan's counsel acknowledged that it did not have all required erosion control mechanisms in place and that it was still working on resolving one certification issue.

In addition to testimony from witnesses and arguments by counsel for both Sullivan and the neighbor group, Commissioners Repenning, Davis, and Jacinto, as well as President James, asked multiple questions of witnesses and the attorneys throughout the hearing. Sullivan was then permitted to present a rebuttal argument. At one point, Sullivan's counsel asserted again that there "was nothing to be gained by taking out" tree number 5. James responded, "Not if you're caught."

At the conclusion of argument, **[*31]** James thanked Sullivan's counsel and experts, and stated: "I'm just going to put this out in the open and on the table — I don't think it's any surprise — maybe to somebody, but it shouldn't be — where I stand on this. [¶] So before I entertain further comments, I had a couple questions just so I can get myself kind of clear on the direction I think I want to try and go myself." Turning to Kracov and deputy city attorney Jordan, he continued, "if I wanted to affirm the action of Mr. Lorenzen and deny the appeal, there are some things that — that need to be determined in this hearing. And from your perspective, I'd like to know what you think those things are." James first questioned Jordan regarding whether the BPW needed to make findings that construction had commenced and/or that permit revocation would deprive Sullivan of

noted that during the prior CEQA process for the property in 2007 and 2011, Sullivan had stated that 25 to 27 protected trees would be removed, rather than the 56 requested in 2014 for the removal permit. He also argued that Sullivan needed to get its heavy construction equipment onto the property and

[11] Sullivan's counsel later stated that he was not sure the reason for the difference in numbers. During the hearing on the writ before the trial court, Sullivan's counsel asserted that the CEQA documents were prepared for a "different project" on the properties.

economically beneficial use of property. Next, he stated "we have to make a finding of intentional conduct. I can't get away from ... to me, from where I sat and I — I know [Sullivan's counsel] is aware of this — there are e-mails in the record from myself to Mr. Lorenzen, from Mr. Kracov to me, requesting the inspection of . . . the property to determine whether **[*32]** or not the permits have been followed. [¶] And I'm just going to tell my colleagues right now it is no surprise to me — I was not surprised in the least to find out that . . . number one, that the permit had been violated and that they took down trees that were not permitted. No surprise; and number two, that they took down a tree that was significant or at least arguably significant on the property . . . That's before the inspection even took place. And that's because of the pattern of contact [*sic*] that we've seen related to this project." James cited to the fact "that they came to our predecessors with any environmental document for 25 trees and came for a permit for 56." He continued that "it flies in the face of . . . anything reasonable to think that that tree, that prominent, in that key location was, 'Oh, darn it. It was an accident and we didn't find out until they told us.' [¶] I . . . don't buy it. And it was predictable, unfortunately."

James also discussed the conclusion of the BSS report. It found that given the measures Sullivan had in place, "to ensure you [Sullivan] were doing the right thing, indicates that it clearly wasn't an accident," which he found was a "completely **[*33]** reasonable" conclusion. Regarding the number of trees removed, James also noted the "percentage of canopy that was removed here" from tree number 5 and agreed that the BSS "is still within its legal authority to . . . make the determination that it did." James also stated that "we can't just walk away with a mitigation" because of the message it would send to encourage others to violate the law where, even if they were caught, they would just have to "pay some mitigation money to City Plants or plant a few trees." Instead, he cited "all the challenges that we have where we are trying to . . . preserve first, grow second — an urban canopy in the second largest city in America." James indicated he would "entertain any more questions or comments" but moved to affirm the position of the BSS, which was seconded by Commissioner Rodriguez.

Commissioner Davis stated that he did not know if Sullivan "intended to do it or if it was a mistake," but he was concerned about the community and the trees that could not be replaced. He concluded that the trees were "negligently" removed, but believed that Sullivan had to "assume the significance" of revoking the permits and did "not take this lightly." She reported that she had "discussions with our staff, with our legal counsel, with the council office. I had discussions with representatives of the developer and with representatives of the community. I keep coming back to the first conversation I had about this issue, which was with Ron Lorenzen. Ron Lorenzen is someone that I have the utmost respect for. He's someone who has been doing this for so many years for the city. I know he cares deeply about our urban forest and he just — he's a true professional, and I know he didn't take his recommendation lightly in this either. And so I said to him, you know, 'Ron, what — what's going on here?' And he told me about this sycamore and he said, 'Heather, there's no way they could have taken that out accidentally.' And so that's what I feel because . . . I take your advice very, very seriously. And seeing what we've seen, it's also what I feel." Repenning continued that it "gives me no joy to say that I support our staff's recommendation **[*35]** today," and that she would usually prefer to see mitigation, but "I don't think that that's the right course of action for us here today. I think that today we need to send a signal about what it means to work with us. . . . I don't believe that rules have been followed in the development of this project."

The BPW unanimously voted to deny the appeal and adopted the BSS's recommendation report on June 24, 2016. On August 10, 2016, the BPW formally requested that the Department of Building and Safety revoke any building permits issued for the properties and withhold issuance of future building permits for the properties for five years, ending September 29, 2019.

IV. *Writ Proceedings*

A. *Pleadings*

Sullivan filed a complaint against the City in federal district court in September 2016, alleging causes of action for violation of due process, violation of the excessive fines clause, violation of the *equal protection clause*, slander of title, a state law petition for writ of mandate, and declaratory relief. The City moved to dismiss the complaint. The district court denied the motion as to Sullivan's due process, writ of mandate, and declaratory relief claims, but granted dismissal of the other three claims. In April **[*36]** 2017, the court granted the City's motion to abstain, staying the remaining

removed, but believed that Sullivan had to "assume the responsibility for the actions of the subcontractors that they hire[d]." **[*34]** He therefore stated that he would support the motion to affirm the BSS's decision.

Commissioner Repenning stated that she recognized "the

granted the City's motion to abstain, staying the remaining claims to allow Sullivan to bring a claim for an administrative writ in state court.

On May 9, 2017, Sullivan filed a verified petition for writ of administrative mandamus in state court. Shortly thereafter,

Sullivan filed a first amended verified petition for writ of mandate and complaint, the operative petition. Sullivan alleged that the City's decision to revoke its permits "was made without providing a fair hearing to [Sullivan] and is not supported by findings sufficient to support the decision or substantial evidence in the record." In particular, Sullivan alleged that after its contractor mistakenly removed three unpermitted trees, the City convened a "staged show trial before a kangaroo court . . . where the outcome was pre-ordained." Sullivan further alleged that Lorenzen and James, who presided over the two administrative hearings, "had led and conducted the investigation into the ***tree removal***, had previously announced they were committed to invoking the drastic remedies supplied by [LAMC section 46.06] before the hearings took place, and were personally embroiled in the controversy and politically motivated and pressured **[*37]** to deprive [Sullivan] of its property rights."

In its first cause of action, Sullivan sought a writ of mandate pursuant to *section 1094.5* directing the City to set aside the penalty imposed under LAMC section 46.06 and to reinstate Sullivan's building permits. Sullivan also alleged a second cause of action for writ of mandate pursuant to *section 1085*, alleging that the City improperly revoked its grading permits along with its building permits in excess of its authority under LAMC section 46.06. Finally, Sullivan alleged a third cause of action for inverse condemnation.

B. ***Discovery***

Sullivan propounded written discovery on the City, to which the City objected as inappropriate for a writ proceeding. Sullivan moved to compel further responses to its written discovery and sought leave to take seven depositions. The court denied the motion as overbroad without prejudice.

Sullivan filed a second motion for leave to take discovery, seeking to depose James and Lorenzen and to serve document requests. Sullivan also filed a motion to augment the record with 209 documents it had received from the City in response to Public Records Act requests. After a hearing on both motions, the court denied Sullivan's motion to serve document demands. The court also denied **[*38]** Sullivan's request to depose James and Lorenzen on eight broad categories, but permitted narrow questioning on certain specific emails.

Sullivan deposed Lorenzen and James in late 2018. Sullivan then filed a motion to compel further deposition testimony from James and a motion to augment the administrative record with the full deposition transcripts and additional documents.

The court denied Sullivan's request to take an additional deposition of James or to compel responses to questions he was instructed not to answer. The court granted Sullivan's request to augment the record with a few excerpts from the deposition transcripts for Lorenzen and James. Sullivan conceded that the exhibits it sought to add to the record had also been included in its prior motion to augment, which the court had denied.[12] The court denied augmentation as to these exhibits. The court also awarded sanctions **[*39]** to the City.

C. ***Briefing and summary of relevant documents***

The parties filed merits briefs and requests for judicial notice. Sullivan relied heavily on emails produced by the City in response to Public Records Act requests. Sullivan received some of the emails before the BPW appeal hearing, but did not receive others until after that hearing. It also relied on the deposition testimony from Lorenzen regarding those emails. We summarize this evidence, which was either part of the administrative record before the BPW or in the augmented administrative record before the trial court.

On September 22, 2015, attorney Kracov emailed James, requesting on behalf of the neighbor group that the BPW inspect the properties to ensure Sullivan was in compliance with its permit and was not removing unpermitted trees. James responded, copying Lorenzen, Greg Good (Director of Infrastructure for the mayor's office), Ted Jordan (deputy city attorney), and another city employee, stating that he had

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[12] Despite the trial court's repeated denial of Sullivan's request to augment the record with hundreds of pages of emails, Sullivan discusses and cites to these emails at length in its respondent's brief on appeal. Sullivan acknowledges that these emails are not part of the administrative record, but contends that they are cited "to give this Court the full picture of the evidence before the Trial Court." These documents were rejected by the trial court and were not part of the administrative record; we therefore do not consider them. Moreover, although Sullivan contends in a footnote that "the trial court erred" by refusing to augment the record with these documents

The court granted Sullivan's motion to augment the record as to seven email chains (totaling 12 pages of emails), finding that those documents had been produced by the City after the BPW hearing and could have some relevance to Sullivan's bias claim. The court denied the remainder of the motion to augment.

court erred by refusing to augment the record with these documents, it has failed to make any showing of error. (See, e.g., *In re Marriage of Falcone & Fyke (2012) 203 Cal.App.4th 964, 1004, 138 Cal.Rptr.3d 44* ["appellate court can treat as waived or meritless any issue that, although raised in the briefs, is not supported by pertinent or cognizable legal argument or proper citation of authority"].) Thus, Sullivan's inclusion of these documents was improper and unhelpful to our consideration of the relevant facts on appeal.

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spoken with the BSS and Lorenzen had "agreed to set the process in motion for the inspection." Lorenzen responded to the group that he would "let you know once the inspection has been performed."

On December 3, 2015, **[*40]** James emailed Lorenzen asking for the "status" of the site inspection, noting that "Gideon [Kracov] has been pinging me about it." Lorenzen responded, "I will ensure that staff gets to the location on Monday and reports back." There followed a series of emails between Friday, December 4 and Monday, December 7, 2015, involving Kracov, James, Lorenzen, and Sara Nichols (a member of the neighbor group. On December 4, Kracov sent Lorenzen the tree map and removal permit for the properties and queried, "was more than one sycamore removed? Permit said just one." The following day, Lorenzen responded to the group, "Will inspect on Monday and let all know." Kracov responded on December 7, reporting that the sycamore, tree number 5 on the map, "was not permitted to be cut."

Lorenzen emailed James on December 8, 2015 with the results of the inspection, confirmed that there were 117 protected trees on the properties, 56 of which were permitted for removal, that tree number 6 had been permitted but not removed, and that Sullivan had removed three unpermitted trees. Lorenzen stated that the City had three options in response: (1) "Require extreme replacement for the three unpermitted removals (ie **[*41]** full inch/inch replace)"; (2) criminal charges regarding the unpermitted removals, which Lorenzen reported in the past meant "a max fine of $1000/illegal removal"; or (3) "Invoke LAMC Sec 46.06 and void all existing permits and not issue any permits for a period up to ten years." Lorenzen continued, "I will be happy to communicate with [Kracov] (but not discuss options for now). Let me know if you would like to discuss." James emailed in response, "Let's discuss this today, before you speak to [Kracov]. Thank you for having this done."

James forwarded Lorenzen's December 8, 2015 email to Greg Good at the mayor's office the same day. Good responded, "Again, this is amazing — and you have several options. What are you thinking at this point?"

On December 10, 2015, Kracov emailed Chad Molnar, chief of staff for council member Bonin, stating that "BPW just did tree inspection. Developer cut down 3 protected trees removal. Molnar also stated that Bonin "has been worried about this project for some time, and particularly worried that the owners were removing protected trees without a permit. Could you give me a call when you get a chance to discuss? We're interested in knowing if it is true that the inspector found unpermitted protected ***tree removals***, and if so then what the enforcement action will be?" Lorenzen responded with his contact information and that he "look[ed] forward to discussing." The following day, Molnar emailed Lorenzen, "Thanks for the call yesterday, it was very helpful. I wanted to give you a heads up that I briefed CM Bonin, and he believes strongly that at this point we need to revoke all permits, given the violation. [¶] We can discuss more once you've had a chance to meet with your team, but I wanted to make sure to let you know what [Bonin] wants to do." Lorenzen responded, "Understood. I am in agreement[.] Will keep you abreast."

In the admitted excerpts of his 2018 deposition, Lorenzen discussed these December 10, 2015 emails with Molnar. He testified that he did have a phone call with **[*43]** Molnar as referenced in the email. Lorenzen testified that he and Molnar discussed the BSS's options in response to the ***tree removals***, but he did not specifically recall what they said. Lorenzen explained that when he wrote to Molnar that he was "in agreement," he meant agreement about "the options available." He testified that he was agreeing "to all of the things we had discussed, not specifically what they were stating [that Bonin wanted to revoke permits]. No decision had been made." Lorenzen testified that he did not recall other details of his call or whether he and Molnar had any other conversations.

Molnar emailed James on December 15, 2015 to give a "heads up that an Urban Forestry inspector confirmed last week" that three unpermitted trees were removed from the property. Molnar continued, "the unpermitted removal of those protected trees now allows the city to enforce against the applicant, including revoking all existing building and construction permits for the project, and banning the applicant from applying for permits for 10 years. Councilmember Bonin feels strongly that we need to quickly move ahead with revoking those permits. We've been in touch with Ron Lorenzen, **[*44]** and he is working through the process with the City Attorney. [¶] [Bonin] mentioned that you wanted to help with this as well, so he wanted to make sure I gave you the heads up on what's happening. [¶] It is our hope that we

including a huge sycamore without permits. The penalty for this is harsh if the City does something about it. . . . My clients want the City to step up against this bad activity!" Kracov forwarded that email to James the same day, stating "Fyi."

A few hours later, Molnar emailed **[*42]** Lorenzen that some constituents reported that the inspection revealed unpermitted [illegible] can quickly move forward with revoking the permits, before the applicant causes any more damage."

Lorenzen emailed James on June 16, 2016, prior to the June 24 BPW hearing, attaching the BSS recommendation. The email states: "I wrote this as simply and straightforward as possible."

Danny Tran

In his 2018 deposition, James testified that he did not speak to Molnar about enforcement options other than in the email produced. He also denied speaking directly with Bonin on the issue other than on the record at the BPW hearing. James testified that he never indicated a preference for an enforcement option in any conversations with Kracov or Good (from the mayor's office). He stated that the "only time I discussed in detail the tree cutting of the sycamore tree with anybody was in the public hearing [before the BPW]." James also stated that he did not discuss with Kracov or others outside of that hearing that he thought the tree cutting was intentional, and that he came the conclusion **[*45]** that it was not accidental during the hearing.

D. ***Decision***

Following a hearing, the court issued its written decision on August 12, 2019. he court first considered the level of due process applicable to the administrative hearings, concluding Sullivan was entitled to "notice and an opportunity to be heard before neutral decisionmakers" but not to cross-examination or pre-hearing discovery. The court found that Sullivan was not denied notice or the opportunity to be heard. The court rejected the City's argument that Sullivan had failed to raise the issue of bias during the administrative proceedings, finding that Sullivan had adequately claimed bias or, as to some arguments, was excused from doing so because it could not have raised it at that time.

Turning to the substantive bias issue, the court examined Sullivan's contentions that Lorenzen and James "were personally embroiled in the matter," that they were biased, and that they "had conflicting roles as prosecutor and judge." The court noted that Sullivan was required to show "an unacceptable probability of actual bias" by those with "actual decisionmaking power." While a decisionmaker who had become "personally 'embroiled' in the controversy" **[*46]** would meet that standard, the court rejected Sullivan's contention that Lorenzen or James had become personally embroiled due to public and political pressure surrounding the ***tree removals***. The court found that Sullivan had submitted "no evidence" that Lorenzen or James had a personal financial stake in the matter or harbored personal animosity toward Sullivan, or that the public pressure "was such to cause an court rejected the City's argument that any bias by Lorenzen was irrelevant because he did not render the final decision against Sullivan. The court found that Lorenzen did not simply initiate the proceedings or investigate the removals, he also served as the adjudicator over the BSS hearing, thus any bias by Lorenzen as the BSS hearing officer was relevant.

Given Lorenzen's role both "as an investigator, **[*47]** and a decision-maker adjudicating the matter and the Bureau level," the court found it "problematic" that Lorenzen engaged in discussions with Molnar (of council member Bonin's office) as part of the BSS investigation. In particular, the court noted that Lorenzen's statement that he was "in agreement" could "plausibly be read to commit tentatively to a general sanction (permit revocation)," or could "plausibly be read as agreeing that further discussion was needed." The court also found it "significant that James participated in the investigatory process leading to the BSS decision, then sat on the appellate panel determining whether that decision should be upheld." The court cited James' email discussions with Lorenzen, Bonin's office, and Kracov during the investigatory process, as well as James' comment during the BPW hearing that "I don't think it's any surprise . . . where I stand on this," as "arguably suggest[ing] that he had, prior to the hearing, formed an opinion on the case and in fact communicated it to other persons."

Additionally, the court found that evidence of pre-hearing communications between Lorenzen, James, and commissioner Repenning raised concerns. Noting that **[*48]** Lorenzen and James communicated frequently during the investigation process and that Lorenzen forwarded the BSS report directly to James prior to the BPW hearing, the court found that this evidence suggested Lorenzen "viewed his decisions as subject to approval by James." The court also pointed to the statement by Repenning at the BPW hearing that she was relying on her prior discussion with Lorenzen, as it suggested that Repenning was "relying not on the BSS report or its findings, but on a private conversation with Lorenzen." The court found these communications between Lorenzen and Repenning were "significant" because it meant that Lorenzen had made the initial decision on behalf of the BSS and then advised Repenning, one of the appellate decision makers, about the facts underlying that decision.

unacceptable probability of bias."

Next, the court examined Sullivan's claim that Lorenzen and James had conflicting roles in the investigation and adjudication of the unpermitted ***tree removals***. The court noted that combining investigative and adjudicative functions, alone, was not a denial of due process, nor would prehearing statements or opinions necessarily disqualify an official. The court found that the "significant property interest involved — a ban on building permits for the property for 5 years — causes the court to more closely scrutinize the procedures involved that it would in a typical land use permit or denial hearing." As such, the court concluded that "[u]nder the facts of this case, in order to satisfy due process or fair hearing requirements . . . a **[*49]** greater separation between the investigative and adjudicatory functions was required.

Lorenzen, investigator and adjudicator, made at least one statement showing some pre-judgment of the matter. He was in frequent contact with James, who sat on the Board deciding the appeal of the BSS decision. James thus had a role in both the investigation and the appeal." The court cited James' statements at the hearing, "suggesting pre-judgment," as well as Repenning's statements, which showed that "Lorenzen had ex parte communication with at least one other Board member (besides James) which heavily influenced the Board member's decision. As a whole, these facts show an unacceptable probability of bias in the decision-making process, depriving [Sullivan] of a fair trial." The court concluded that it would issue a writ directing the City to set aside the administrative decision and sanction, but would not, as Sullivan requested, order the City to reinstate Sullivan's permits.

On August 20, 2019, the court amended its decision to add a finding on the second cause of action regarding grading permits. The court found that the "City's revocation of grading permits flowed from the administrative decision **[*50]** under the PTO. . . . The court's reasoning for the *Section 1094.5* writ disposes of the second cause of action for writ of ordinary mandate and render's petitioner's remaining contentions for the second cause of action moot. The writ directing City to set aside the administrative decision and sanction, includes setting aside the revocation of the grading permits. The writ will not direct reinstatement of the grading permits for the reasons discussed above." Sullivan subsequently dismissed without prejudice its third cause of action for inverse condemnation.

The court entered judgment granting peremptory writ of mandate on January 23, 2020. The writ of mandate ordered the City to "set aside, vacate and annul" the March 14, 2016 BSS decision and the June 24, 2016 BPW decision, including the revocation of any and all permits issued regarding the properties. The court ordered the matter remanded for further proceedings, allowing the City to hold a further hearing, but not requiring it.

The City timely appealed. Sullivan subsequently filed a cross-appeal from the judgment regarding the court's dismissal of its grading permit claim.

In addition, Sullivan contends that Lorenzen and James had overlapping roles throughout the investigation and adjudication, rendering them incapable of providing the fair hearing required. The City counters that Sullivan forfeited its bias arguments and that any bias by Lorenzen is irrelevant because the scope of our review is limited to the fairness of the BPW appeal hearing. On the merits, the City contends that Sullivan failed to provide concrete evidence of bias, and thus the trial court erred in concluding that the administrative process was unfair. We disagree with the City as to the scope of our review. However, we agree with the City that there is insufficient evidence of bias to establish a violation of due process.

I. *Legal Principles*

"A trial court may issue a writ of administrative mandate where an agency has (1) acted in excess of its jurisdiction, (2) deprived the petitioner of a fair hearing, or (3) committed **[*52]** a prejudicial abuse of discretion." (*Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152, 1169, 56 Cal. Rptr. 2d 223 (Clark)*, citing *§ 1094.5, subd. (b)*.) At issue here is Sullivan's claim that the City failed to provide a fair administrative hearing before revoking its building permits.

"When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal . . . in which the judge or other decision maker is free of bias for or against a party." (*Morongo Band of Mission Indians v. State Water Resources Control Bd. (2009) 45 Cal.4th 731, 737, 88 Cal. Rptr. 3d 610, 199 P.3d 1142* (*Morongo*); see also *Haas v. County of San Bernardino (2002) 27 Cal.4th 1017, 1025, 119 Cal. Rptr. 2d 341, 45 P.3d 280 (Haas)* ["'When due process requires a hearing, the adjudicator must be impartial.'"].) "Unless they have a financial interest in the outcome [citation], adjudicators are presumed to be impartial." (*Morongo, supra, 45 Cal.4th at p. 737*, citing *Withrow v. Larkin (1975) 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712*).

The "standard of impartiality required at an administrative hearing is less exacting than that required in judicial proceedings." (*Nasha v. City of Los Angeles (2004) 125*

DISCUSSION

Sullivan contends that the City failed to provide a fair administrative **[*51]** hearing before revoking its building permits. It argues that administrative decisionmakers Lorenzen and James were personally biased against the project due to political pressure, and that they both committed to revoke Sullivan's permits prior to the hearing process. In process of capable decision makers." (*Gai v. City of Selma, supra*, 68 Cal.App.4th at p. 233.)

Accordingly, **[*53]** in order to prevail on a claim of bias violating fair administrative hearing requirements, the petitioner must establish "'an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims.'" (*BreakZone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205, 1236, 97 Cal. Rptr. 2d 467* (*BreakZone*); see also *Nasha, supra, 125 Cal.App.4th 470, 483*.) "A party seeking to show bias or prejudice on the part of an administrative decision maker is required to prove the same 'with concrete facts: "'[b]ias and prejudice are never implied and must be established by clear averments.'"'" (*Nasha, supra, 125 Cal.App.4th at p. 483*, quoting *BreakZone, supra, 81 Cal.App.4th at p. 1237*.)[13]

Moreover, "'[b]y itself, the combination of investigative, prosecutorial, and adjudicatory functions within a single administrative agency does not create an unacceptable risk of bias and thus does not violate the due process rights of individuals who are subjected to agency prosecutions.'" (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education (2013) 57 Cal.4th 197, 221, 159 Cal. Rptr. 3d 358, 303 P.3d 1140*.) As our Supreme Court explained: "To prove a due process violation based on overlapping functions thus requires something more than proof that an administrative agency has investigated and accused, and will now adjudicate. '[T]he burden of establishing a disqualifying interest rests on the party making the assertion.' [Citation.] That party must lay a 'specific foundation' for suspecting prejudice **[*54]** that would render an agency unable to consider fairly the evidence presented at the adjudicative hearing [citation]; it must come forward with 'specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias' [citations]." (*Ibid.*) "While the 'degree or kind of interest . . . sufficient to disqualify a judge from sitting "cannot be defined with precision"' [citation], due process violations generally are confined to 'the exceptional case presenting extreme facts' [citation]." (*Id. at p. 219*.)

Whether Sullivan received a fair administrative hearing is a

Cal.App.4th 470, 483, 22 Cal. Rptr. 3d 772 (*Nasha*), quoting *Gai v. City of Selma (1998) 68 Cal.App.4th 213, 219, 79 Cal. Rptr. 2d 910*; see also *Haas, supra, 27 Cal.4th at p. 1027* ["due process allows more flexibility in administrative process than judicial process"].) "Administrative decision makers are drawn from the community at large. . . . Holding them to the same standard as judges, without a showing of actual bias or the probability of actual bias, may discourage persons willing to serve and may deprive the administrative "foundational matters of fact" if "supported by substantial evidence. However, the ultimate questions, whether the agency's decision was . . . unlawful or procedurally unfair, are essentially questions of law. With respect to these questions the trial and appellate courts perform essentially the same function, and the conclusions of the trial court are not conclusive on appeal.'" (*Clark, supra, 48 Cal.App.4th at p. 1169*, quoting *Rosenblit v. Superior Court (1991) 231 Cal.App.3d 1434, 1443, 282 Cal. Rptr. 819*; see also *Petrovich Development Company, LLC v. City of Sacramento (2020) 48 Cal.App.5th 963, 972-973, 262 Cal. Rptr. 3d 331* (*Petrovich*).)

Sullivan contends, without citation to authority, that application of this standard means that "the **[*55]** question of whether the City's hearing was tainted with an unacceptable probability of bias is a question of fact." We disagree. As detailed in the cases above, whether there was an unacceptable probability of bias by the decisionmakers is the standard by which the court decides the ultimate question of the fairness of the hearing; application of this standard is thus a question of law for our de novo review, not a foundational factual question as Sullivan suggests.

II. *Analysis*

A. *Forfeiture*

As an initial matter, we reject the City's contention that Sullivan forfeited its bias objections by failing to sufficiently raise the issue in its administrative appeal before the BPW. The trial court found that Sullivan had raised a bias argument in its appeal materials submitted to the BPW. Further, to the extent it did not, the court found Sullivan was excused from doing so because it did not receive all of the relevant emails from the City until after the BPW appeal hearing, nor could it have previously cited statements made by board members during the hearing.

We agree. "When a litigant suspects bias on the part of a member of an administrative hearing body, the issue must be

Whether Sullivan received a fair administrative hearing is a legal question we review de novo. (*Nasha, supra*, 125 Cal.App.4th at p. 482; *Clark, supra, 48 Cal.App.4th at p. 1169*.) We affirm the trial court's findings on any bias. Moreover, as the trial court noted, during the writ proceedings Sullivan relied heavily on evidence of purported bias that it could not have discovered prior to the BPW hearing, including emails subsequently produced by the City and statements made by James and Repenning during the hearing. Thus, we find no error in the trial court's conclusion that to the extent Sullivan raised additional bias arguments, it could not have diligently done so earlier. (See *id. at p. 1084* [noting that if appellants "did not learn of the facts underlying their claim of bias until after the hearing, they might have been justified in waiting until the trial court proceedings to raise the issue"].)

[13] Sullivan argues that we must also consider the extent of the property interest at issue, and that its interest was significant given the expenses and time incurred and the severity of the penalty imposed. We do not disagree. However, as Sullivan has acknowledged, the standard it must meet to establish bias remains the same.

B. *Relevance of bias at the BSS level*

We also disagree with **[*57]** the City's contention that any alleged bias by Lorenzen as the initial decisionmaker is irrelevant to our determination. Instead, the City asserts that the scope of an administrative writ extends only to the fairness of the *final* administrative decision—here, the BPW appeal. The trial court disagreed, citing *Haas, supra, 27 Cal.4th 1017*, which considered whether independent review can remedy an allegation of bias in an initial administrative hearing. In *Haas*, the court considered a county's practice of selecting and paying temporary administrative hearing officers on an ad hoc basis. The plaintiff asserted that this practice gave the hearing officers an impermissible financial interest in the outcome of their cases, because the officers' prospects for obtaining future ad hoc appointments depended solely on the county's goodwill. (*Ibid.*) The court noted that in cases involving an adjudicator's financial interest, as distinct from other claims of bias, the litigant claiming bias did not have to overcome the "presumption of honesty and integrity" typically afforded the administrative adjudicators. (*Id. at p. 1026*.) Applying this stricter standard for pecuniary interest claims, the court concluded that the county's practice raised **[*58]** an impermissible risk of bias. (*Ibid.*)

The *Haas* court also considered the county's argument that "any possibility of bias on the part of a hearing officer is cured when the Board independently reviews the raised in the first **[*56]** instance at the hearing. [Citations.]" (*Attard v. Board of Supervisors of Contra Costa County (2017) 14 Cal.App.5th 1066, 1083, 223 Cal. Rptr. 3d 521*.) Here, in its submission for the BPW appeal, Sullivan outlined the emails it obtained from the City in response to its records requests, including several involving Lorenzen and James, and argued that the City showed "blatant favoritism" toward project opponents, resulting in unfair administrative proceedings and a violation of Sullivan's due process rights. This was sufficient to preserve Sullivan's arguments regarding *409 U.S. at pp. 61-62*, italics omitted.)

The City argues that *Haas* is inapplicable because the court's holdings were limited to due process claims "based on allegations of systemic, pecuniary bias." We find *Haas* squarely on point and therefore binding. While the Supreme Court distinguished the standard for finding an unfair hearing based on pecuniary bias, it made no such distinction when holding that the bias of a lower-level administrative adjudicator could not be cured by a fair hearing on appeal. Indeed, the *Haas* court noted that this **[*59]** conclusion had been followed "in cases involving administrative tribunals," citing *Hackethal v. California Medical Assn. (1982) 138 Cal.App.3d 435, 187 Cal. Rptr. 811*. (*Haas, supra, 27 Cal.4th at p. 1034*.) *Hackenthal* involved a claim of bias arising from overlapping administrative functions, similar to the claims made here. (*Hackethal v. California Medical Assn., supra*, 138 Cal.App.3d at pp. 445-446.)

Nor does the City's cited authority hold otherwise. The City relies on *Pomona Valley Hospital Medical Center v. Superior Court (1997) 55 Cal.App.4th 93, 107, 63 Cal. Rptr. 2d 743*, and *Cole v. Los Angeles Community College Dist. (1977) 68 Cal.App.3d 785, 791-792, 137 Cal. Rptr. 588*, both of which found that alleged bias of an accuser, or an individual who initiated administrative action, was not relevant to the fairness of an administrative hearing. But neither case considered the relevance of purported bias by the *hearing officer* at an initial administrative hearing. (See, e.g., *Pomona Valley Hospital Medical Center v. Superior Court, supra*, 55 Cal.App.4th at p. 107 [noting that the purportedly biased individual was not a hearing officer at either level of administrative review, thus, evidence of his motive in initiating the proceedings was irrelevant].) Here, by contrast, Lorenzen was the adjudicator at the BSS hearing. Thus, to the extent his purported bias rendered that hearing unfair, it is not insulated from our review by the fact that Sullivan received an administrative appeal.

C. *Sullivan's fair hearing claim*

administrative record and decides whether to accept or reject the officer's recommendation. The short answer to the contention is that no court has relied on this argument to uphold a decision reached by an adjudicator found to have suffered from a constitutionally significant risk of bias. Indeed, several courts have expressly rejected the argument." (*Haas, supra, 27 Cal.4th at p. 1034*, citing *Ward v. Village of Monroeville (1972) 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267* (*Ward*).) The court concluded that the "[p]etitioner is entitled to a neutral and detached judge in the first instance." (*Haas, supra, 27 Cal.4th at p. 1034*, quoting *Ward, supra,* "come forward with 'specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias.'" (*Today's Fresh Start, supra, 57 Cal.4th at p. 221*.). We therefore reverse the trial court's order issuing an administrative writ.

1. *Personal embroilment*

Personal embroilment in a dispute will void the administrative decision. (*Clark, supra, 48 Cal.App.4th at p. 1170*, quoting *Applebaum v. Board of Directors (1980) 104 Cal.App.3d 648, 657-658, 163 Cal. Rptr. 831*.) In *Clark*, for example, the court found the property owners were denied a fair administrative hearing because one of the council members was a neighbor who displayed "personal animosity" toward the owners and whose own residence would be impacted by the proposed building project. (*Clark, supra, 48 Cal.App.4th at pp. 1172-1173*.) Here, Sullivan claimed that Lorenzen and James had a personal stake in **[*61]** the decision because of the public outcry over the development and the City's initial decision to issue the tree permit. The court rejected this argument, finding no evidence that Lorenzen or James had a personal financial stake in the matter, harbored personal animosity toward Sullivan, or that the public pressure "was such to cause an unacceptable probability of bias." Sullivan ignores the trial court's findings of fact and simply reasserts the argument that Lorenzen and James played "personal roles in the underlying controversy" that were "too significant to be constitutionally acceptable."

We find that substantial evidence supports the trial court's factual finding that neither Lorenzen nor James held a financial stake, harbored personal animosity, or held any other personal interest in the project. Further, Sullivan cites no authority supporting its contention that public pressure over the project (absent some personal interest) would disqualify Lorenzen or James from acting as impartial adjudicators. Thus, we conclude that Sullivan failed to establish personal embroilment by any decisionmaker here.

Sullivan contends that it did not receive a fair hearing from the BSS or on appeal to the BPW. Specifically, it argues that Lorenzen and James were **[*60]** "personally embroiled" in the controversy, they pre-committed to the decision to revoke Sullivan's permits prior to the hearings, and they "maintained conflicting roles as investigators, prosecutors, and judges." The City asserts that the purported evidence of bias presented by Sullivan, and relied upon by the trial court, is vague, speculative, and cannot overcome the presumption of impartiality afforded to administrative decisionmakers. We agree with the City that Sullivan failed to meet its burden to factual background which bears on a decision nor prehearing expressions of opinions on the result disqualifies an administrative body from acting on a matter before it"].) Whether those statements cross the line into impermissible advocacy by the decision maker depends on the specific circumstances.

In *Petrovich, supra, 48 Cal.App.5th at p. 974*, a developer alleged bias by a city council member who voted to deny its conditional use permit to build a gas station. The court found that the evidence that the council member was also a member of the neighborhood association opposing the project, as well as a prehearing statement he made opposing the gas station, was insufficient to establish bias. (*Ibid.*) However, the court concluded that the council member "crossed the line into advocacy against the project" when he "took affirmative steps to assist opponents of the gas station conditional use permit and organized the opposition at the hearing." (*Id. at pp. 974-975*.) The court cited **[*63]** evidence that prior to the hearing, the council member was "counting—if not securing—votes on the City Council against the gas station," and communicating "an 'update' on that score" to the mayor. (*Ibid.*) The court also found it significant that the council member had prepared "talking points" that amounted to a presentation against the gas station, many of which appeared in a presentation prepared "for the mayor to use at the hearing," and coached the project's main opponent on how to prosecute the appeal. (*Ibid.*) Under these circumstances, the court concluded that the council member had made a prehearing commitment to a particular result and should have recused himself from voting. (*Id. at p. 975*; see also *Nasha, supra, 125 Cal.App.4th at p. 483* [finding unacceptable probability of bias by planning commissioner who authored a pre-hearing article attacking the project].)

Here, at the BSS level, the court found "problematic" Lorenzen's December 2015 email to Molnar of council member Bonin's office. In that email, Lorenzen stated he was "in agreement," in response to Molnar's email discussing Bonin's opinion that "we need to revoke all permits for the project." Sullivan argues that, "standing alone," this email was

2. *Precommitment to a result*

Next we turn to Sullivan's contention that Lorenzen **[*62]** and James committed to revoking the permits prior to the administrative hearings. Prehearing statements or opinions regarding the subject matter of an administrative hearing do not necessarily disqualify a decision maker. (See *City of Fairfield v. Superior Court (1975) 14 Cal.3d 768, 782, 122 Cal. Rptr. 543, 537 P.2d 375*; *Clark, supra, 48 Cal.App.4th at p. 1170*, quoting *Applebaum v. Board of Directors, supra*, 104 Cal.App.3d at pp. 657-658 ["neither prior knowledge of the attempts to cast these findings as supporting bias fall short. We defer to the trial court's factual findings interpreting this evidence. Based on those findings, we conclude the emails cannot establish bias where they could "plausibly be read as agreeing that further discussion was needed."

Putting aside the email exchange with Molnar, we find insufficient evidence to support Sullivan's claim that Lorenzen committed to revoking its permits prior to the BSS hearing. The early emails among Lorenzen, James, and **[*65]** Kracov demonstrate that the City began its investigation after the neighbor group alleged that trees had been removed without a permit, and the subsequent emails confirm that the inspection revealed the removal of three unpermitted trees. None of these facts were in dispute, and they do not establish any commitment by Lorenzen or James to revoke Sullivan's permits as punishment for the ***tree removals***. Indeed, Lorenzen's email to James with the results of the investigation lays out multiple options and does not suggest any preferred outcome. Both testified at their depositions that they had not made any decision prior to the administrative hearings. Moreover, despite the pressure from the community and other city officials to impose the maximum penalty of 10 years, the BSS decided to revoke Sullivan's permits for only five years.[14]

Similarly, we find insufficient evidence that James prejudged the case prior to the BPW appeal hearing. The court cited James's remarks during the BPW hearing, particularly his statement that "I don't think it's any surprise — maybe to somebody, but it shouldn't be — where I stand on this." The court found that these remarks "may show pre-judgment on the part **[*66]** of James," and "arguably suggests that he had, prior to the hearing, formed an opinion on the case and in fact communicated it to other persons." We are not persuaded that the court's finding that James's remarks *might* show prejudgment is sufficient to establish the concrete evidence of bias required to overcome the presumption of impartiality. Moreover, we note that these remarks came at the end of the lengthy BPW hearing, during which James (along with sufficient evidence **[*64]** of precommitment by Lorenzen to establish an unacceptable probability of bias. But the trial court did not find as much; instead, it found that Lorenzen's email "could plausibly be read to commit tentatively to a general sanction (permit revocation)," or it could "plausibly be read as agreeing that further discussion was needed," and further noted that in his deposition, Lorenzen "denied that he was agreeing to any specific sanction or had made a decision." As such, the trial court did not make the factual finding that Lorenzen's subsequent explanation in his deposition lacked credibility, nor did the court find that the email definitively established precommitment. Sullivan's failed to present sufficient evidence that he had committed to revoking its permits prior to hearing the evidence at the BPW hearing, or had endeavored to influence any other board members to do the same.

3. *Overlapping roles*

We also agree with the City that the overlapping administrative roles inhabited by Lorenzen and James were permissible and that Sullivan failed to produce evidence of bias arising from those roles. Absent concrete evidence of precommitment, an overlap in administrative roles may be sufficient to **[*67]** establish bias where a decisionmaker is "in the position of reviewing his or her own decision" (*Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 92, 133 Cal. Rptr. 2d 234* (*Nightlife*.)

In *Nightlife*, for example, the court held that the due process rights of a permit applicant were violated when an attorney represented a city in connection with a business permit denial and also advised the hearing officer on the administrative appeal from that denial. As such, the attorney was in a position to advise on legal rulings and evidentiary objections in the adversarial appeal of an initial decision he had helped obtain. (*Nightlife, supra*, 108 Cal.App.4th at pp. 84-85; see also *Golden Day Schools, Inc. v. State Dept. of Education (2000) 83 Cal.App.4th 695, 710, 99 Cal. Rptr. 2d 917* [due process violation where the same person who initiated the refusal to renew a government contract sat on the appellate panel that reviewed that administrative action, and thus "was in the position of judging the correctness of his own decision"].)

By contrast, "'[t]he mere fact that the decision-maker or its staff is a more active participant in the factfinding process . . . will not render an administrative procedure unconstitutional.'" (*Nightlife, supra, 108 Cal.App.4th at p. 94*, quoting *Howitt v. Superior Court (1992) 3 Cal.App.4th 1575, 1581, 5 Cal. Rptr. 2d 196*.) Here, the evidence that Lorenzen was the principal

several other board members) had actively engaged both Sullivan and the neighbor group with questions and comments. Whether or not James had formed an opinion regarding the appropriate outcome, we conclude that Sullivan

[14] Sullivan contends that the number of years is irrelevant, because any revocation would doom the project under new hillside building ordinances. We disagree—at a minimum, Sullivan would be able to begin any revised project five years earlier than under the maximum penalty. Further, we agree with the City that the imposition of a five-year revocation is relevant to at least partially rebut the suggestion that Lorenzen and James made their decisions in response to political pressure.

investigator into the ***tree removals*** prior to the BSS hearing and that James was the board member tasked with overseeing the BSS investigation is insufficient **[*68]** to establish their inability to fairly adjudicate the issue. The trial court found that Lorenzen's email communications with James providing status updates about the case and the results of the investigation "*suggest* Lorenzen was looking to James to endorse his upcoming decision" (emphasis added). In addition, the court noted that "[i]f James directed the BSS outcome, he would impermissibly be sitting in judgment of his own decision." However, the court also found that Sullivan "presented no direct evidence James told Lorenzen what decision he should reach." Given the lack of concrete

evidence that James in fact directed the BSS's decision, together with Lorenzen's discussion of the BSS decision as one made among members of the BSS following the first hearing, we conclude the trial court erred in determining that James was unable to fairly adjudicate the BPW appeal because of his role during the investigation and BSS hearing.

We are similarly unpersuaded by Sullivan's argument that Lorenzen improperly advised the BPW in connection with the BPW appeal. The copy of the BSS report Lorenzen emailed to James prior to the BPW hearing reflected the BSS's findings and did not indicate any suggestion **[*69]** for how the BPW should proceed. The trial court also expressed concern with the statements made by Repenning during the BPW hearing, finding that those statements "indicate[] that she based her decision in Petitioner's appeal on discussions with 'representatives of the developer and representatives of the community' and Lorenzen." We find those statements insufficient to establish bias by Repenning, in view of her statement that she spoke with all sides of the dispute; moreover, the information she reported receiving from Lorenzen regarding his belief that Sullivan intentionally removed tree number 5 was the same information Lorenzen provided on behalf of the BSS at the start of the BPW appeal hearing.

Sullivan also contends that this court's recent decision in *California DUI Lawyers Association v. California Department of Motor Vehicles (2022) 77 Cal.App.5th 517, 292 Cal. Rptr. 3d 608 (CDLA)* applies here. In *CDLA*, we considered a fairness challenge to the administrative hearings conducted by the Department of Motor Vehicles (DMV) regarding suspension of a driver's license after the driver has been arrested for driving under the influence. The DMV admitted that at these hearings, it required the hearing officer to act both as advocate for the DMV and as trier of fact. (*Id. at p. 527*.) Under those circumstances, we concluded that **[*70]** the "hearing structure violates the California and federal due process rights of drivers by combining the case. As the trial court found, Lorenzen's role was as an investigator and a "decision-maker adjudicating the matter at the Bureau level." Substantial evidence supports that factual determination and we will not disturb it on appeal. Moreover, we find no evidence that Lorenzen also acted as an advocate on behalf of the City during that hearing, nor was he procedurally required to do so, as was the DMV fact-finder in *CDLA*. Similarly, the trial court found that James "participated in the investigatory process leading to the BSS decision, then sat on the appellate panel determining whether that decision should be upheld." Sullivan's contention that James acted as an advocate during the BPW hearing because he questioned the **[*71]** presenters is not supported by any authority. We find that Sullivan has failed to establish that either Lorenzen or James crossed the line into advocacy for the decisions they were also tasked to adjudicate.

In sum, we conclude that Sullivan failed to present "specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias" that would meet the standard of the exceptional case involving a constitutionally unacceptable risk of bias. (*Morongo, supra, 45 Cal.4th at p. 741*.) We therefore reverse the trial court's order granting Sullivan's writ petition.

III. *Cross-Appeal*

Sullivan's second cause of action sought a writ of mandamus under *section 1085* to compel the City to reinstate its grading permits for the properties. Sullivan alleged that even if the City was justified in revoking its building permits pursuant to LAMC section 46.06, that statute did not authorize the City to revoke Sullivan's grading permits. The trial court found that the "City's revocation of grading permits flowed from the administrative decision" under LAMC section 46.06 and further, that Sullivan's contentions regarding its second cause of action were moot once the court issued the administrative writ overturning the revocation of all of **[*72]** Sullivan's

advocacy and adjudicatory roles into a single DMV employee." (*Id. at p. 530*.) "The irreconcilable conflict between advocating for the agency on one hand, and being an impartial decisionmaker on the other, presents a '"particular combination of circumstances creating an unacceptable risk of bias."'" (*Id. at p. 532*, quoting *Today's Fresh Start, supra, 57 Cal.4th at p. 221*; *Morongo, supra, 45 Cal.4th 731, 741*.)[15]

We disagree with Sullivan that *CDLA* is analogous to this

[15] *CDLA* was decided after the parties had completed their briefing in this appeal. At our request, the parties submitted supplemental briefs regarding the applicability of *CDLA* to this case.

permits. Sullivan cross-appealed from the trial court's dismissal of its second cause of action, arguing that the City lacked the authority to revoke its grading permits.

"A writ of mandate 'may be issued by any court ... to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. . . .' (*Code Civ. Proc., § 1085, subd. (a)*.) The petitioner must demonstrate the public official or entity had a ministerial duty to perform, and the petitioner had a clear and beneficial right to performance." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health (2011) 197 Cal.App.4th 693, 700, 128 Cal. Rptr. 3d 292*.)

In reviewing a quasi-legislative decision by an administrative agency, "'"[t]he authority of the court is limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair."' [Citations.]" (*Abatti v. Imperial Irrigation District (2020) 52 Cal.App.5th 236, 250, 266 Cal. Rptr. 3d 26*.) "The appellate court reviews the trial court's decision de novo under the same standard." (*Ibid.*, quoting *California Bldg. Industry Ass'n v. San Joaquin Valley Air Pollution Control Dist. (2009) 178 Cal.App.4th 120, 130, 100 Cal. Rptr. 3d 204*; see also *City of Arcadia v. State Water Resources Control Board (2006) 135 Cal.App.4th 1392, 1409, 38 Cal. Rptr. 3d 373* [review is de novo, "except where the trial court made foundational factual findings, which are binding on appeal if supported by substantial evidence"].)

Sullivan contends that the plain language of LAMC section 46.06 grants authority to the City to revoke building permits **[*73]** but not grading permits. The City responds that because it had authority under that statute to revoke Sullivan's building permits, it could also revoke the associated grading permits. Citing LAMC section 91.7005.1,[16] the City contends that Sullivan could not conduct any grading without building permits.

We find no error in the trial court's conclusion that the City's revocation of grading permits necessarily flowed from the revocation of Sullivan's building permits. Sullivan argues that it is entitled to reinstatement of its original grading permits so that it can "pursue its desired project as it was originally permitted." However, in light of our decision affirming the City's revocation of Sullivan's building permits under LAMC section 46.06, Sullivan has acknowledged that it can no longer pursue the original project under current regulations. Sullivan has not shown that it would be entitled to the same grading permits for a redesigned development project. We therefore affirm the trial court's dismissal of Sullivan's second cause of action.

We concur:

WILLHITE, ACTING P. J.

CURREY, J.

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DISPOSITION

The judgment is reversed with respect to Sullivan's first cause of action for writ of administrative mandate under *section 1094.5*. The judgment is affirmed as to Sullivan's second cause of **[*74]** action for writ of mandate under *section 1085*. The City is entitled to its costs on appeal.

COLLINS, J.

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[16] LAMC section 91.7005.1 provides: "No person shall conduct any grading operation for other than building site development in hillside areas."

Danny Tran