



BRIGGS ALEXANDER

A Professional Law Corporation

By US Mail and Email

May 17, 2023

Lisa A. Vidra
Assistant City Attorney
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232

Culver City Council
Attention of City Clerk
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232

RE: *Continued Public Hearing on May 22, 2023, on Proposed Resolution on File No. 23-898*
Objections and Evidence of Cynthia Mabus

Dear Council and Ms. Vidra,

As counsel for Culver City resident Cynthia Mabus, whose original Request for Parkway Tree Removal is at issue in File No. 23-898, I present the following objections to the Proposed Resolution in File No. 23-898 set for a continued public hearing on May 22, 2023 and the enclosed evidence in support of these objections.

The evidence consists of twelve photographs of the trees and surrounding area taken by Ms. Mabus on or about May 10, 2023, along with a diagram she prepared showing the precise location and orientation of each photograph.

The objections are as follows:

1. The Resolution does not comply with the terms of the Court's order of March 15, 2023, because it is not a reconsideration of the Council's October 11, 2021, decision based on the same evidence and argument. Instead, in violation of the Court's order, it is a new consideration that includes new evidence and new arguments not present or available at the October 11, 2021 hearing. As such, approval of this Resolution would place Culver City in contempt of the Court order, needlessly subjecting it to legal fees and liability.
2. The documents made available to the public in support of this Resolution are incomplete and thus the City Council lacks authority. The Resolution cites to documents, including, but not limited to, an alleged inspection of the site by the City's Arborist on April 13, 2023, alleged determinations by the Public Works Director that the criteria required for removal under Culver City Municipal Code § 9.08.210(C)(2)(b)-(c) do not exist, and the alleged "Galvin Street Parkway Expansion" in the Fiscal Year 2022/2023 budget, that have not been made available for public consumption and review prior to this hearing.

3. The City Council's reliance upon the alleged inspection by the City's Arborist on April 13, 2023, is improper because it is a violation of Culver City Municipal Code § 9.08.210(F) and because it does not demonstrate an error in fact or disputed finding in the Public Works Director's original decision.

4. The City Council's reliance upon alleged determinations by the Public Works Director that the criteria required for removal under Culver City Municipal Code § 9.08.210(C)(2)(b)-(c) do not exist is improper because it is a violation of Culver City Municipal Code § 9.08.210(F) and because it does not demonstrate an error in fact or disputed finding in the Public Works Director's original decision.

5. The City Council's reliance upon the alleged "Galvin Street Parkway Expansion" in the Fiscal Year 2022/2023 budget is improper because it is a violation of Culver City Municipal Code § 9.08.210(F) and because it does not demonstrate an error in fact or disputed finding in the Public Works Director's original decision.

6. The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C), which states that the Public Works Director, not the City's Arborist, is the proper person to determine "whether the removal or replacement is in the best interest of the City and the public health, safety and welfare."

7. The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(a), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he tree is a known problem species or is otherwise found to be an undesirable species for its location based on tree size relative to available area for tree growth."

8. The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(b), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he tree roots are creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines."

9. The alleged inspection by the City's Arborist on April 13, 2023, does not comply with Culver City Municipal Code § 9.08.210(C)(2)(c), which states that the Public Works Director, not the City's Arborist, is the proper person to determine whether "[t]he tree is creating a public or private nuisance."

10. The alleged conclusions of the City's Arborist on April 13, 2023, are erroneous and not supported by the facts, which are that (1) there is evidence of new damage at the site; (2) the previous asphalt repairs were not successful and there is evidence that the prior damage has recurred; (3) the cracks in the concrete wall that were repaired have reappeared and visible damage to the wall is apparent; and (4) there has been additional sidewalk damage and lifting over the past two years.

11. Appellant has not satisfied Culver City Municipal Code § 9.08.210(F) by demonstrating by substantial evidence that the original decision by the Public Works Director was based on an error in fact or disputed findings.
12. Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(a) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “a known problem species or [] otherwise found to be an undesirable species for [their] location based on tree size relative to available area for tree growth.”
13. Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(b) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines.”
14. Appellant has not satisfied Culver City Municipal Code § 9.08.210(C)(2)(c) and § 9.08.210(F) by demonstrating by substantial evidence that trees at issue are not “creating a public or private nuisance.”
15. The City Council’s definition of “extensive” provided in the Resolution is improper because it is inconsistent with, and contradicts, previous definitions of the term used by the City Council in other decisions.
16. The findings in Section 1 are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.
17. The City Council’s reliance upon the findings in Section 1 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination because the findings in Section 1 are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.
18. The findings in Section 3 are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.
19. The City Council’s reliance upon the findings in Section 3 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director’s original determination because the findings in Section 3 are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or



disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

20. The finding in Section 3.A that "[t]he tree roots are not creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines" and the further findings supporting this finding are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

21. The City Council's reliance upon the finding in Section 3.A that "[t]he tree roots are not creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines" and the further findings supporting this finding is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because the findings in Section 3.A are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

22. The finding in Section 3.B that "there is no substantial evidence that either tree is creating a public or private nuisance" and the further findings supporting this finding are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed. The findings are additionally improper because the Public Works Director's original determination did not rely on the criteria set forth in Culver City Municipal Code § 9.08.210(C)(2)(c).

23. The City Council's reliance upon the finding in Section 3.B that "there is no substantial evidence that either tree is creating a public or private nuisance" and the further findings supporting this finding is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because the findings in Section 3.B are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed. The reliance is additionally improper because the Public Works Director's original determination did not rely on the criteria set forth in Culver City Municipal Code § 9.08.210(C)(2)(c).

24. The findings in Section 3.C are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

25. The City Council's reliance upon the findings in Section 3.C is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because the findings in Section 3.C are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

26. The findings in Section 3.D are improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

27. The City Council's reliance upon the findings in Section 3.C is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because the findings in Section 3.D are themselves improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because they are irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

28. The finding in Section 4 is improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because it is irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

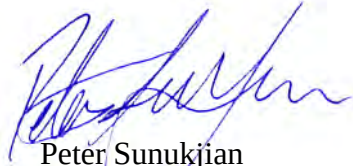
29. The City Council's reliance upon the finding in Section 4 is improper, in violation of Culver City Municipal Code § 9.08.210, and does not provide a basis for determining that there was substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because the finding in Section 4 is itself improper, in violation of Culver City Municipal Code § 9.08.210, and not substantial evidence of an error in fact or disputed findings in the Public Works Director's original determination because it is irrelevant, inaccurate, not supported by evidence, not supported by public records, and procedurally flawed.

30. The findings in Section 5 are improper and in violation of Culver City Municipal Code §§ 9.08.200 et seq.

31. The City Council's reliance upon the findings in Section 5 is improper and in violation of Culver City Municipal Code §§ 9.08.200 et seq.

Thank you for your attention to this matter.

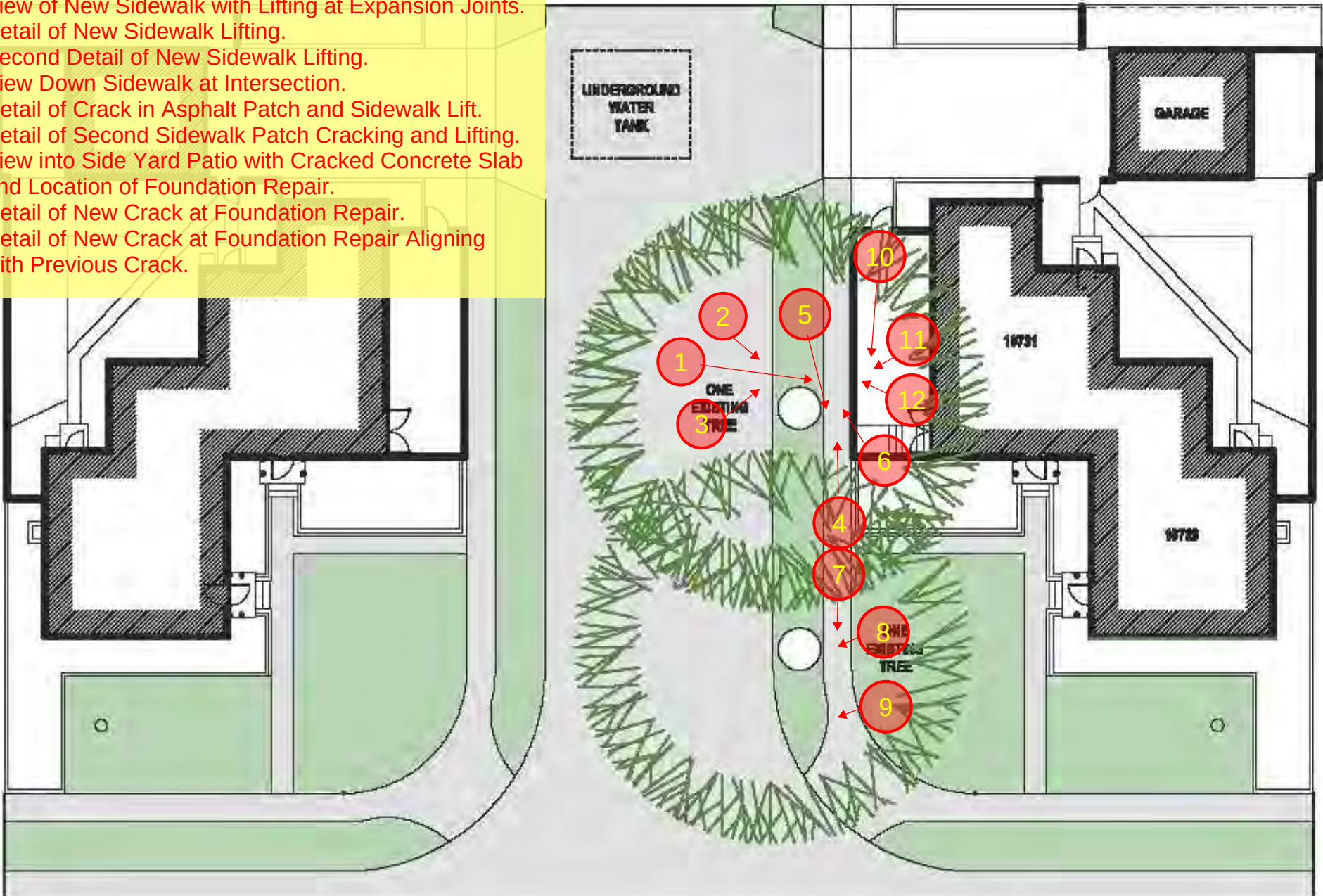
Sincerely,



Peter Sunukjian
BriggsAlexander, APLC

KEYNOTES (Relating to Associated Photos)

- 1. Largest Crack at Asphalt Patch.
- 2. Detail of largest Crack at Asphalt Patch.
- 3. Additional Crack Adjacent to Largest Crack.
- 4. View of New Sidewalk with Lifting at Expansion Joints.
- 5. Detail of New Sidewalk Lifting.
- 6. Second Detail of New Sidewalk Lifting.
- 7. View Down Sidewalk at Intersection.
- 8. Detail of Crack in Asphalt Patch and Sidewalk Lift.
- 9. Detail of Second Sidewalk Patch Cracking and Lifting.
- 10. View into Side Yard Patio with Cracked Concrete Slab and Location of Foundation Repair.
- 11. Detail of New Crack at Foundation Repair.
- 12. Detail of New Crack at Foundation Repair Aligning with Previous Crack.



Northgate + Galvin Intersection



1. Largest Crack at Asphalt Patch



2. Detail of Largest Crack at Asphalt Patch



3. Additional Crack Adjacent to Largest Crack



4. View of New Sidewalk with Lifting at Expansion Joints



5. Detail of Sidewalk Lifting



6. Second Detail of New Sidewalk Lifting



7. View Down Sidewalk Toward Northgate



8. Detail of Crack in Asphalt Patch and Sidewalk Lift



9. Detail of Second Asphalt Patch Cracking and Lifting

10. View into Sideyard Patio with Cracked Concrete Slab and Location of Foundation Repair





11. Detail of New Crack at Foundation Repair



12. Detail of New Crack at Foundation Repair Aligning With Previous Crack