SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

21STCP04028 January 31, 2023
CYNTHIA MABUS vs CULVER CITY, et al. 9:30 AM

Judge: Honorable Mary H. Strobel CSR: None
Judicial Assistant: N DiGiambattista ERM: None
Courtroom Assistant: R Monterroso Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Jeffery Weber (Telephonic) BY: Peter Sunukjian (x)

For Respondent(s): Stephen Anthony McEwen and Thomas Brown (x) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

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Petitioner's exhibit 1 (administrative record) is admitted into evidence.

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The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Petitioner Cynthia Mabus ("Petitioner") petitions for a writ of administrative mandate directing Respondents Culver City ("City") and Culver City Council ("Council"; collectively, "Respondents") to set aside the Council's decision to overturn the decision of the Public Workers Director's to remove two trees located on the city parkway located at 10729/10731 Northgate St., Culver City, CA.

Judicial Notice

Petitioner's Request for Judicial Notice ("RJN") Exhibit 1 – Granted.

Respondents' RJN Exhibit 1 – Granted.

Respondents' RJN Exhibit 2 – Denied. Council did not rely on the Urban Forest Master Plan in its decision, and this material is not part of the administrative record. Respondents have not moved to augment the record with the Urban Forest Master Plan or shown that the requirements to do so are met. (CCP § 1094.5(e).) The requirements to submit extra-record evidence under section 1094.5(e) are "stringent" and the court lacks discretion to augment the record if the requirements are not met. (Pomona Valley Hosp. Med. Ctr. v. Superior Court (1997) 55 Cal.App.4th 93, 102.) A request for judicial notice cannot be used to circumvent the rules constraining the admission of extra-record evidence. (Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 475, fn. 10.)

Background and Procedural History

Public Works Director Grants Petitioner's Request for Parkway Tree Removal

Petitioner owns a house at 10729/10731 Northgate St., Culver City, CA ("Property"), which is on a cul-de-sac. (See AR 1, 9.) On October 1, 2019, Petitioner applied to remove two ficus trees on the parkway next to the Property. (AR 1.)

City's Municipal Code ("CCMC") section 9.08.210.C sets forth the criteria the Public Works Director ("Director") must consider in determining whether to grant a tree removal application. Because it is important to this writ petition, the court quotes subdivision C in full:

C. …. In determining whether any tree in or on the parkway shall be removed or replaced, the Public Works Director shall determine whether the removal or replacement is in the best interest of the City and the public health, safety and welfare. Such determination shall be based on the criteria set forth in either Subsection C.1 or Subsection C.2 as follows:
1. If any one of the following criterion is met:
a. The tree is dead, dying, or weakened by disease, age, storm, fire or other injuries so as to pose an existing or potential danger to persons, properties, improvements or other trees; or
b. The removal is necessary for construction of a Street improvement project or other public improvement/repair work; or
c. The removal is necessary for a private improvement or development project….
2. If two or more other criteria are met:
a. The 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.
b. The tree roots are creating extensive and repeated damage to public and/or private infrastructure, including sidewalks, sewer lines, or other utility lines. A history of sewer line blockages from tree roots does not alone provide sufficient reason for tree removal, but rather suggests the need for sewer repair to stop leaks and the accompanying root intrusion that results.
c. The tree is creating a public or private nuisance.

(CMC § 9.08.210.C.)

Culver City's Urban Forester, David Talavera, examined the two ficus trees at issue and recommended that both trees be removed and replaced. For the first tree, Talavera noted a history of previous broken limbs; damage to the entire street and curb caused by the tree's roots; low scaffold limbs that were only 8 feet high and had been hit by traffic; and that illegal pruning

had created unbalanced crown canopy. (AR 3.) For the second tree, Talavera noted side walk and curb damage caused by tree roots; illegal trimming; a bark hazard condition; and roots near underground utilities and landscape area. (AR 8.) Talavera submitted photos and tree hazard evaluation forms in support of his tree removal recommendation. (AR 1-12.)

On February 4, 2020, the Director determined that the two ficus trees met the statutory standard for removal. Director wrote: "Both trees exhibit potential for major branch failure. Extensive street and sidewalk damage creating hazards and cannot be repaired without tree removal. History of previous [illegible]. Traffic damage from street (8'). Potential to impact high priority gas line." (AR 1.) At the administrative hearings, Director stated that he determined the trees should be removed based on the criteria in section 9.08.210.C.2.a and b, specifically that ficus trees are "known problem trees" and that the two trees at issue had caused extensive damage to public streets, sidewalks, and the street in this case. (AR 102, 300.)

Director gave notice of his determination and the relevant appeal procedure to nearby landowners on February 25, 2020. (AR 13.)

Appeal Procedure

In relevant part, CCMC section 9.08.210.E and F state the following appeal procedure for a Director's determination to grant a request to remove parkway trees:

E. The decision of the Public Works Director is final, unless appealed by the applicant, a member of the City Council or an interested person. Appeals shall be submitted in writing and filed with the City Clerk within 10 days after the decision date identified in the notice of decision…. An appeal shall include a general statement, specifying the basis for the appeal, shall be based on an error in fact or dispute of the findings of the decision, and must be accompanied by supporting evidence substantiating the basis for the appeal….

F. Appeals shall be heard by the City Council, which shall affirm the decision of the Public Works Director, unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings. The decision of the City Council on an appeal shall be final.

(See https://codelibrary.amlegal.com/codes/culvercity/latest/culvercity_ca/0-0-0-70191#JD_9.08.210; see also AR 14.)

Nearby Landowner Appeals the Director's Determination

On March 2, 2020, Craig Jablin, a nearby landowner, appealed the Director's determination that the two ficus trees should be removed. Jablin's appeal stated in pertinent part:

The two trees in question are beautiful, mature trees, that have recently undergone a large scale (and I am certain costly) pruning, and provide both shade and character to our portion of Culver Crest.

It is evident that the trees, over many years, have caused damage to the road surface and the sidewalk and meet the criteria in the City code for potential removal. However, there is absolutely no detail in the February 25 notice letter as to what the City plans to do as it relates to road repair, sidewalk repair, and most importantly tree replacement. Until a detailed street repair and tree replacement plan by the City is presented to residents, I am asking that the subject tree removal be indefinitely postponed.

It is my opinion that the subject trees provide an important aesthetic to the neighborhood and the replacement with mature trees would be a mandatory requirement should this removal go forward.

(AR 15.)

No additional written evidence was submitted with Jablin's appeal. (See AR 15, 44.)

Staff Report for Appeal

In a staff report for the appeal, City staff wrote that the appeal "is primarily based on the aesthetic value the trees provide to the neighborhood." (AR 29.) City staff recommended that the Council take one of the following two actions:

1. Affirm the decision of the Public Works Director to approve the applicant's request for removal of two trees located at 10729-31 Northgate Street; or
2. Overturn the decision of the Public Works Director, finding that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error in fact or disputed finding; thereby, denying applicant's request to remove the trees.

(AR 29.)

August 10, 2020, Council Hearing

On August 10, 2020, Council conducted a hearing on the appeal. Multiple written comments were submitted to the City for consideration at the hearing; all were in support of the appeal and opposed to removing the trees. (AR 54-99.) In addition, several persons appeared at the hearing and opposed removal of the trees. Petitioner was the only person in favor. (AR 115-134.) The written and oral comments raised a number of concerns about removing the trees, including their beauty, health, environmental benefits, and desirability. (AR 54-99, 115-134.) After closing the hearing, the Council deliberated, and discussed alternatives to the trees' removal. (AR 134-147.) At the conclusion, the Council voted unanimously to defer the decision on the appeal to allow the Director to evaluate alternative solutions proposed during the deliberations. (AR 145-147, 182.)

Director's Revised Approval of Tree Removal

On September 28, 2021, the Director issued his revised determination in response to the Council's direction. In his "revised approval" letter, Director stated the following:

The recommended alternative solution to removing both trees, includes removal of only one of the two trees. In addition, the Director recommends planting two new trees further from the property line of the affected property, as follows:

The large Ficus tree located at the intersection of Northgate/Galvin would remain in place; the Galvin Street Ficus tree closest to the property owner's block wall would be removed and be replaced by two 36" box Lophostemon Confertus (Brisbane Box) trees, which species are recommended in the City's Urban Forest Master Plan due to their carbon capture, large crown, deep rooting and shading characteristics (see images and characteristics of this specie on page 4 of this letter.) The proposed solution also includes substantially expanding the length and width of the Galvin Street parkway to accommodate tree root growth for the remaining Ficus tree on the corner and to provide ample room for the two replacement trees to flourish (see the draft/proposed parkway design plans on Page 5 of this letter.)

The proposed recommendation to remove only one of the trees has been agreed to by the Applicant. The proposal is contingent on City Council approval of approximately $80,000 in Capital Improvement Project funds in the 2022-2023 Fiscal Year, to reconfigure the parkway.

(AR 193-194.)

October 11, 2021, Council Hearing and Decision

On October 11, 2021, the Council held a second hearing on Jablin's appeal. The staff report described the hearing as follows:

1) Reopening of Public Hearing from August 10, 2020 Regarding an Appeal of the Public Works Director's Prior Decision to Approve the Request for Removal of Two City-Owned Parkway Trees Located at 10729-31 Northgate Street; 2) Consideration of a Revised Decision by the Public Works Director to Preserve One of the Two Trees Provided a Capital Improvement Project is Approved to Substantially Widen and Lengthen the Galvin Street Parkway; and (3) Direction to the City Manager as Deemed Appropriate. (AR 210.)

Several written comments were submitted in support of the appeal and preserving both trees. (AR 244-256.) At the hearing, several members of the public spoke in favor of the appeal. Some speakers also opined that the $80,000 revised plan of the Director was not justifiable. (AR 259-290.)

The Council then deliberated. Two councilmembers opined, at least initially, that there was no evidence that the Director had erred in his tree removal determination. (AR 294:15-295:13 [McMorrin]; AR 306:23-25 [Lee].) Other councilmembers opined that tree removal was not warranted. (AR 291-312 [Vera, Eriksson, Fisch].) After deliberation, Vice Mayor Lee moved to overturn the Director's determination. Mayor Lee did not specify in his motion whether Council was voting to overturn Director's original determination to remove both trees; his revised "alternative" determination to remove one tree; or both determinations. Mayor Fisch added to the motion "to direct the Public Works director to look at public space alterations to save the two trees," and Lee accepted that addition to the motion. (AR 316-317.) The motion passed unanimously. (AR 316-318, 364.)

Writ Proceedings

On December 10, 2021, Petitioner filed her verified petition for writ of administrative mandate challenging Council's decision. Respondents answered.

On December 5, 2022, Petitioner filed her opening brief in support of the petition. The court has received Respondents' opposition, Petitioner's reply, and the administrative record.

Standard of Review

Petitioner seeks a writ of administrative mandate pursuant to CCP section 1094.5. Under section

1094.5(b), the pertinent issues are whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).)

In cases reviewing decisions that do not affect a fundamental vested right, as in this one, the court is directed to review the record for substantial evidence supporting the administrative findings. (JKH Enterprises, Inc. v. Dept. of Industrial Relations (2006) 142 Cal.App.4th 1046, 1057; see Toigo v. Town of Ross (1998) 70 Cal.App.4th 309, 317 [land use decisions reviewed for substantial evidence].) Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board (2002) 104 Cal. App. 4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible, and of solid value. (Mohilef v. Janovici (1996) 51 Cal. App. 4th 267, 305 n. 28.) "Courts may reverse an [administrative] decision only if, based on the evidence …, a reasonable person could not reach the conclusion reached by the agency." (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, 610.)

"[A] trial court must afford a strong presumption of correctness concerning the administrative findings." (Fukuda v. City of Angels (1999) 20 Cal. 4th 805, 817; see also Evid. Code § 664.) Petitioner bears the burden of proof to demonstrate, by citation to the administrative record, that substantial evidence does not support the administrative findings. (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 32; Steele v. Los Angeles County Civil Service Commission (1958) 166 Cal. App. 2d 129, 137; see Local Rule 3.231(i)(2).) A reviewing court "will not act as counsel for either party to an appeal and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (Fox v. Erickson (1950) 99 Cal.App.2d 740, 742.) When an appellant challenges "'the sufficiency of the evidence, all material evidence on the point must be set forth and not merely [his] own evidence." (Toigo v. Town of Ross (1998) 70 Cal.App.4th 309, 317.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

Analysis

Did The Council Proceed in the Manner Required by CCMC Section 9.08.210.E and F?

Council Had Authority to Consider Jablin's Appeal

Petitioner contends that Jablin's appeal conceded the requirements for tree removal were met, and that Jablin's request for a detailed replacement plan did not fall within the scope of appeal in section 9.08.210.E. Thus, Petitioner contends that Council exceeded its authority when it accepted and considered the appeal. (Opening Brief ("OB") 15.)

As the parties agree, Council was required by law to follow the procedures set forth in its municipal code. (See Oppo. 5, fn. 3.) This rule applies regardless of whether a city is a charter city or general law city. (See West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521 [writ issued because City Council of Los Angeles, a charter city, failed to make findings required by its municipal code].)

On February 4, 2020, the Director determined that the two ficus trees should be removed based on the criteria in section 9.08.210.C.2.a and b. (AR 1, 102, 300.) Specifically, he found that ficus trees are known problem species, and that the trees "are causing extensive damage to public streets, sidewalks, and street in this case." (AR 102.)

In his appeal, Jablin did not allege an error of fact in this determination of the Director. Nor did Jablin dispute either of these two specific findings. Jablin conceded that "the trees, over many years, have caused damage to the road surface and the sidewalk and meet the criteria in the City code for potential removal." (AR 15.) Rather, Jablin appealed the Director's determination on the grounds that the subject trees "provide an important aesthetic to the neighborhood" and that City had yet to propose "a detailed street repair and tree replacement plan" to the residents. (AR 15.)

Petitioner argues that "there is no requirement anywhere in Culver City's Tree Removal Code, CCMC Sections 9.03.200 -9.08.230, that a tree removal determination include a detailed replacement plan." (OB 15.) Petitioner also argues that aesthetics were not a proper basis for appeal under section 9.08.210.C. (See OB 1:16-25, 11:19-25; Reply 3-4.) Respondents do not address Petitioner's first argument about a requirement for the Director to include a tree replacement plan. With respect to the second argument, Respondents contend that Director was permitted by the ordinance to consider the aesthetics of the trees. (Oppo. 1, 6.)

The parties raise questions of statutory construction. "To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy,

contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.) When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hull (1991) 1 Cal. 4th 266, 272.) "[I]nterpretations which render any part of a statute superfluous are to be avoided." (Young v. McCoy (2007) 147 Cal.App.4th 1078, 1083.) The court "must select the construction … with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (People v. Jenkins (1995) 10 Cal.4th 234, 246.)

Section 9.08.210.A states that the Director "shall have sole authority to cut, trim, prune, replace or remove any tree in or on any parkway in the City." Section 9.08.210.C states that the Director determines whether "any tree in or on the parkway shall be removed or replaced." If the Director determines that a tree must be removed, the Director also has discretion under the ordinance to replace the tree. However, the statute does not require the Director to include a tree replacement plan if he or she determines that a tree must be removed. Respondents develop no argument to the contrary. (See Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc. (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

Section 9.08.210.C states that the Director "shall determine whether the removal or replacement is in the best interest of the City and the public health, safety and welfare." That requirement is conditioned by the next sentence, which states that "such determination shall be based on the criteria set forth in either Subsection C.1 or Subsection C.2 as follows …." (bold italics added.) "[T]he word 'shall' in a statute is ordinarily deemed mandatory." (Tran v. County of Los Angeles (2022) 74 Cal.App.5th 154, 165.) Furthermore, specific language in a statute controls over general language that is inconsistent with it. (CCP § 1859.) Given the use of mandatory language, and express reference to "criteria" set forth in Subsections C.1 and C.2, the most reasonable interpretation of the ordinance is that the Director was required to determine whether the tree removal was in the best interest of the City and public welfare based on the criteria set forth in Subsections C.1 and C.2. The court is not persuaded by Respondents' argument that the ordinance authorized the Director or City Council to apply generic concepts of "best interest" or "public welfare" not connected to criteria set forth in Subsections C.1 and C.2. Neither of the cases cited by Respondents support an interpretation of the ordinance to incorporate generic concepts of best interests or public welfare not specified in the statutory text. (Oppo. 1, 6, citing Desmond v. County of Contra Costa (1993) 21 Cal.App.4th 330, 337- 338; Guinnane v. San Francisco City Planning Com. (1989) 209 Cal.App.3d 732, 741, 743.)

Did Council Fail to Proceed as Required by Law When it Processed the Appeal?
Petitioner does not show that Council lacked authority to consider the appeal because Jablin

allegedly did not submit written evidence. In contrast to the use of the word "shall" for other parts of the appeal procedure, the ordinance states that the appeal "must be accompanied by supporting evidence substantiating the basis for the appeal." The ordinance does not state any consequence if written evidence is not submitted with the appeal. Because the ordinance uses the word "must" and does not state any consequence for failing to submit evidence, the written evidence requirement is reasonably interpreted to be directory in nature. While the Council certainly could have considered the lack of written evidence in analyzing the appeal, Jablin's alleged failure to submit written evidence did not divest Council of authority to consider the appeal. (Tran v. County of Los Angeles (2022) 74 Cal.App.5th 154, 165-166 ["'If the failure to comply with a particular procedural step does not invalidate the action ultimately taken, ... the procedural requirement is referred to as 'directory'"].)

Based on the foregoing, Petitioner does not show that the Council failed to proceed as required by law when it set Jablin's appeal for hearing and considered the appeal.

Did Council Fail to Proceed as Required by Law When it Delayed a Decision on the Appeal and Ordered the Director to "Evaluate" Alternatives?; and Did Petitioner Invite Any Error?

Petitioner contends that section 9.08.210 "did not permit the City Council to delay its decision while it explored 'creative engineering solutions," and "Council exceeded its authority … by ordering the Director to prepare a second, alternate determination." (OB 15-16.) Respondents contend that section 9.08.210 and the City Charter place "no limits on the City Council's ability to seek alternatives to the destruction of the City's trees." Respondents point out that CCMC section 9.08.205 states that the Council, and not the Director, has the authority provided to the "Board" under the Tree Planting Act of 1931 (Cal. Sts. & High. Code §§ 22000 et seq.) (Oppo. 8.)

Respondents' reliance on the Tree Planting Act of 1931 is not persuasive. Section 22031 of that statute provides that the board "may establish rules and regulations relating to the planting, maintenance and removal of the said trees and may recommend to the city council the enactment of any ordinances the board deems necessary to protect such trees." Here, consistent with this authority, City has enacted municipal ordinances governing tree removal. Section 9.08.205 states that "[t]he Public Works Director shall have authority over the City's public right-of-way and shall be in charge of and have control over the planting, trimming, and removal of trees in parkways and other public places within the City." Section 9.08.210 sets forth the Director's authority to determine whether to approve a request to remove a parkway tree. Director's determination may be appealed to the Council, but Council's authority over the appeal is limited by section 9.08.210.E and F. Further the Municipal code itself provides that in the event of a

conflict between the City's Tree Removal ordinance and the Tree Planting Act of 1931, the ordinance prevails. (See section 9.08.230.)

A city council is bound by the appeal procedures in its municipal code. (See Jackson v. City of Pomona (1979) 100 Cal.App.3d 438, 448-452.) Here, Council was required to affirm the Director's findings unless the Council found that the appellant demonstrated, by substantial evidence, that the decision is based on an error in fact or disputed findings. (§ 9.08.210.F.) Section 9.08.210.F does not authorize the Council to order the Director to make a new determination of tree removal prior to the Council making the required findings to overturn the Director's decision.

However, there is some ambiguity in the record whether the Council, at the August 10, 2020 hearing, actually ordered the Director to make a new determination of whether to remove the trees. At the conclusion of the hearing, the Council voted unanimously to defer the decision on the appeal and "refer back to Public Works to come back with a validation of the different suggestions that has been brought up by council for alternative solutions." (AR 145-147, 182.) This motion followed advice from a city attorney that Council could "delay your decision … until you get the information back from [the Director]." (AR 146.) As summarized by Petitioner, the motion also followed various comments by Councilmembers who were in favor of "postponing" a decision and obtaining further information from Director about alternatives. (OB 9-10, citing AR 135-141.) Consistent with this discussion, minutes of the meeting state that Council voted to "delay the decision" on the appeal "until such time the Public Works Director can return to the City Council with an evaluation of alternative solutions proposed by the City Council." (AR 182.) Section 9.08.210.E and F set no time limit for Council to decide the appeal and did not preclude Council from delaying a decision until it could obtain further information from the Director about the feasibility of alternatives to destruction of the trees. To the extent Council simply delayed the hearing to obtain information from Director about the feasibility of alternatives, Petitioner does not show that Council failed to proceed as required by law.

Respondents argue that Petitioner actively participated in developing the Director's alternative plan and therefore is barred from attacking Council's decision to delay the appeal for more information from Director under the doctrine of invited error. (Oppo. 8-9.) "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error…. But the doctrine does not apply when a party, while making the appropriate objections, acquiesces in a judicial determination…. An attorney who submits to the authority of an erroneous, adverse ruling after making appropriate objections or motions, does not waive the error in the ruling by proceeding in accordance therewith and endeavoring to make the best of a bad situation for which he was not

responsible." (Mary M. v. City of Los Angeles (1991) 54 Cal.3d 202, 212-213.)

Respondent does not present a strong case for the application of the invited error doctrine here. While Petitioner participated in the subsequent actions by the Director, as argued by Petitioner, "the City Council did not raise the possibility of delay and investigation until after the public portion of the hearing was closed." (Reply 9.) While it is true Petitioner could have objected in writing after the August 10, 2020, hearing or orally at the start of the October 2021 hearing to preserve her objection for writ review, Respondent points to no action by Petitioner that induced the Council to decide to delay the decision. In any event, the court need not resolve this issue as it finds the delay to seek addition information was not error.

Based on the foregoing, Petitioner does not show that Council failed to proceed as required by law when it delayed the appeal hearing and requested information from the Director about alternatives to destroying both trees.

Did Director Revise or Revoke his Original Determination to Remove Both Trees?

Petitioner argues that Council "ordered" the Director to amend his determination, and that Director complied with that order. (OB 10.) As discussed above, Council's motion did not order Director to revise his determination, but rather to evaluate alternatives and produce a report to Council. However, to Petitioner's second point, it is unclear whether Director interpreted Council as directing him to revise his tree removal determination.

The motion stated in the minutes was quoted in the Director's revised determination. (AR 193.) As discussed, the motion only required Director to "evaluate" alternative solutions, not change his tree removal determination. Director's September 28, 2021, letter stated both that Director was "amending his determination," but also that he was "recommending" an "alternative solution to removing both trees." (AR 193-194 [bold italics added].) This letter also stated that the alternative was "contingent on City Council approval of approximately $80,000 … to reconfigure the parkway." (AR 194.) The Director's revised decision is consistent with Director maintaining his original determination to remove both trees, but also recommending as an alternative a plan to remove only one tree contingent upon Council approval of the $80,000 for the alternative plan. However, at the October 11, 2021, hearing, the Director stated that in light of the Council's request, his "recommendation has been revised to removing one tree, not two trees." (AR 296-297.) 1 Director was obligated by section 9.08.210 to make a determination, not a recommendation, of whether to approve the tree removal request.

While the Director's statements on this issue were not always clear or consistent, the court

interprets the Director's revised approval as an alternative to his original determination to remove both trees, but not as superseding his original determination to remove both trees if Council did not affirm the alternative proposal and $80,000 in funding. The court finds support for this conclusion in the language highlighted above, including that the revised approval was an "alternative" and was contingent upon funding. Since Director still found one tree needed to be removed, and conditioned saving the other tree on Council's approval of $80,000 in funding, it appears that Director intended to maintain his original determination as well if the Council did not approve the alternative plan.

Given the ambiguity in Director's "revised approval," Counsel may further address this issue at the hearing. Subject to discussion, however, the court does not find the issue to be dispositive for reasons discussed below as to the sufficiency of Council's findings.

Did Council Refuse to Rule on the Appeal of the Director's Original Determination?

Petitioner contends that Council "violated CCMC Section 9.08.210.F on October 11, 2021 when it failed to consider and affirm the original determination." (OB 16.) Respondents contend that the Council indeed "voted to overturn the original determination and save both trees." (Oppo. 9.)

The court finds ambiguity in the record as to whether Council intended to overturn Director's original determination to remove both trees; his revised determination to remove one tree, contingent on approval of $80,000 in funding; or both determinations. Vice Mayor Lee's motion and the subsequent minutes did not specify whether Council was overturing the Director's original or revised determination, or both. (AR 316-318, 364.) The court finds it unnecessary to opine further on Council's intent because, as discussed next, Council did not issue sufficient findings to satisfy CCMC section 9.08.210 and the Topanga decision.

Council Did Not Issue Findings As Required by CCMC Section 9.08.210 and Topanga

Throughout his writ briefs and in his petition, Petitioner asserts, in effect, that Council did not not make the findings required by CCMC section 9.08.210 to overturn the Director's determination to approve a tree removal request. (See e.g. OB 1-2, 10-13; Reply 10; Pet. ¶¶ 17-18) Petitioner also argues that "even if there was substantial evidence of an error in the Public Works Director's facts or findings, the city council did not comply with its obligation under Topanga to identify that evidence and explain why it supported reversal of the Public Works Director's decision." (OB 17; Reply 10.) Both arguments are persuasive.

As discussed above, section 9.08.210.F states that, on appeal, Council "shall affirm the decision

of the Public Works Director, unless the appellant demonstrates, by substantial evidence, that the decision is based on an error in fact or disputed findings." 2 Regardless of whether Council was reviewing the Director's original or revised determination, or both, Council did not make the findings required by section 9.08.210.F to overturn the Director's tree removal determination. Specifically, in the motion that was approved on October 11, 2021, and in its minutes, Council did not find "by substantial evidence, that the decision is based on an error in fact or disputed findings." (See AR 316-318, 364.) Because there are two alternative findings for overturning a Director's decision, the court cannot imply that Council made either one of these findings. Moreover, Council did not identify any error in fact or disputed findings. Accordingly, Council did not comply with its municipal code and the decision must be remanded for reconsideration. (West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-23 [remanding for findings required by municipal code].)

Council was also required to comply with the findings requirement of CCP section 1094.5 and the Topanga decision. Under CCP section 1094.5(b), an abuse of discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).) In Topanga Assn. for a Scenic Community v. County of Los Angeles, (1974) 11 Cal. 3d 506, 515, the Supreme Court held that "implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." The court explained that "among other functions, … findings enable the reviewing court to trace and examine the agency's mode of analysis.… Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency…. Moreover, properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. [Citations.] They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable." (11 Cal. 3d at 516-517 [fns. Omitted].)

"Administrative agency findings are generally permitted considerable latitude with regard to their precision, formality, and matters reasonably implied therein." (Southern Pacific Transportation Co. v. State Bd. of Equalization (1987) 191 Cal.App.3d 938, 954.) The agency's findings may "be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action." (West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-22.) However, "mere conclusory findings without reference to the record are inadequate." (Id. at 1521.) If the court "cannot discern the analytic route the city council traveled from

evidence to action," the decision does not comply with Topanga. (Ibid.)

"The nature of the statute, ordinance, or rule being applied by that agency is also relevant to the analysis of the adequacy of an administrative agency's findings." (Young v. City of Coronado (2017) 10 Cal.App.5th 408, 421.) The findings must be sufficient to allow "meaningful judicial review of the challenged administrative decisions." (Glendale Memorial Hosp. & Health Center v. Department of Mental Health (2001) 91 Cal.App.4th 129, 139.) "When the administrative agency's findings are not adequate, an appropriate remedy is to remand the matter so that proper findings can be made." (Id. at 140.)

Council's decision does not comply with Topanga. Vice Mayor Lee's motion to overturn the Director's decision did not include any findings that were voted on by the entire Council. (AR 316-317.) The minutes also do not include any findings. (AR 364.)

The transcript and minutes show two possible findings, but it is unclear if Council adopted them and neither complies with Topanga in any event. Before Lee's motion, when asked by a city attorney for clarification on his position that the decision should be overturned, Mayor Fisch stated: "The reason, others can offer, but the one that jumped out to me is that there's evidence that the wall, since being repaired, has not suffered further damage, and so it may be stabilizing based on the -- the record that's before us." The Council did not vote to adopt that statement of Mayor Fisch as a basis for the decision. Moreover, even if Council found the wall has been repaired and "may be stabilizing," that does not address the Director's finding under section 2.08.210C.2.b that the tree roots are creating extensive and repeated damage to public infrastructure, including the city street and sidewalks. (AR 102.)

Before the motion, Vice Mayor Lee also proposed the following finding: "Well, I -- I mean, it was speculation, but and, you know, I think there is a lot that we do know about sort of (indiscernible) that comes from oil extraction as well that I think, you know, could have factored into damage, you know, all around Culver City, particularly in the Crest area. So that was persuasive." (AR 316.) Council did not move to adopt this statement as a finding. Even if Council intended to, Lee admitted the evidence was speculative, and he did not explain how the possibility that oil extraction "factored into damage" established any deficiency in the Director's findings. To the extent Vice Mayor Lee's statement was adopted as a finding, it does not satisfy Topanga.

In their opposition brief, Respondents argue that Council overturned the Director's decision "based on a disputed best interest finding." (Oppo. 10:1.) However, Respondents do not cite to any such finding that was made by Council. Further, as discussed above, Council was not

authorized to overturn the decision based on a generalized finding of "best interest."

The court has considered Respondents' other arguments concerning Topanga and finds them all unpersuasive. (Oppo. 12-15.) Contrary to Respondents' assertion, the absence of findings is clearly prejudicial. For reasons discussed at length above, neither the court nor Petitioner can reasonably discern the Council's "mode of analysis," let alone the basis upon which it overturned the Director's decision under section 9.08.210.F or the evidence upon which it relied.

Because the Council did not make sufficient findings, the court will grant the petition and remand the case for reconsideration.
Remaining Contentions

In light of the court's decision that remand is required for further findings, the court need not address any other contentions made by the parties that are not analyzed above.

However, for oral argument and guidance of the parties, the court disagrees with Respondents' argument that Council has discretion under section 9.08.210.D to overturn a Director's tree removal decision by finding a lack of funding. (Oppo. 10:2-7.) As argued by Petitioner in reply, section 9.08.210.D only gives the City discretion to schedule the determined removal according to the availability of resources. (Reply 9.) This sub-provision is not reasonably interpreted to allow the City to deny an approved tree removal solely based on lack of funding. Notably, section 9.08.210.D also allows affected landowners to pay for removal themselves if the City cannot take action quickly enough. While not necessary to the court's decision, the court finds Petitioner's arguments with respect to section 9.08.210.D more persuasive.

Attorney Fees

If Petitioner's counsel seeks attorneys' fees, he must file a separate motion. (Reply 10.)

Conclusion

The petition is GRANTED. The court will issue a writ directing Council to set aside its decision dated October 11, 2021, to reconsider the case in light of the court's ruling, and to make findings that satisfy CCMC section 9.08.210.F and Topanga. (See CCP § 1094.5(f) and West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1521-23.)
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Petitioner's exhibit 1 is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of

appeal in the event of an appeal.
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Counsel for petitioner is to give notice and is to prepare, serve and lodge the proposed judgment and proposed writ. The court will hold the proposed documents ten days for objections unless approved by opposing counsel as to form.
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FOOTNOTES:

1- Parts of the first line of each page of the hearing transcripts are covered with additional text and are illegible, including at AR 296-297. While Counsel should address that issue at the hearing, the court presently has no reason to believe any of the illegible text is necessary for the court to decide the petition.
2- To the extent Respondents suggest that Council could overturn Director's decision simply by finding that there was a "disputed finding," see Oppo. 9-10, the court disagrees. To overturn a decision, the ordinance expressly requires Council to find "by substantial evidence" either that the decision was based on an error or a disputed finding.