



City of Culver City

Staff Report

File #: 23-968, Version: 1

Item #: PH-1

CC - PUBLIC HEARING: (1) Set Aside the City Council's Decision of October 11, 2021 Upholding the Appeal of the Public Works Director's Decision to Approve a Request for Removal of Two City-Owned Ficus Trees Located in the Galvin Street Parkway Adjacent to 10729-31 Northgate Street as Ordered on March 15, 2023 by the Los Angeles County Superior Court; (2) Reconsider the Appeal of the Public Works Director's Decision to Approve a Request to Remove Two City-Owned Ficus Trees Located in the Galvin Street Parkway Adjacent to 10729-31 Northgate Street as Ordered by the Court; and (3) Uphold the Appeal by Adopting a Resolution Containing Findings to Support Preservation of Both Trees.

Meeting Date: May 22, 2023

Contact Person/Dept.: Joe Susca, Public Works Department-Administration
Christina Burrows/ City Attorney's Office

Phone Number: (310) 253-5662
(310) 253-5636

Fiscal Impact: Yes No **General Fund:** Yes No

Attachments: Yes No

Commission Action Required: Yes No

Public Notification: (E-Mail) Meetings and Agendas - City Council (05/18/2023); The Applicant and the Appellant (05/08/2023 and 05/15/2023)

Department Approval: Yanni Demitri, Public Works Director/City Engineer (05/17/2023)

RECOMMENDATION

Staff recommends the City Council set aside and reconsider the Council's decision of October 11, 2021 upholding the appeal of the retired Public Works Director's decision to approve the request to remove the trees located at 10729-31 Northgate Street and either:

1. Affirm the decision of the retired Public Works Director to approve the Applicant's request for removal of two trees located at 10729-31 Northgate Street, and direct staff to prepare a Resolution with findings memorializing that decision for approval at a subsequent Council meeting;

or

2. Grant the appeal and overturn the decision of the retired Public Works Director, and adopt a Resolution adopting findings that substantial evidence supports the conclusion that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error or disputed findings, thereby denying the Applicant's request to remove the trees;

or

3. Provide other direction to staff, as deemed appropriate.

PROCEDURE

The May 8, 2023 Public Hearing was continued to the May 22, 2023 City Council meeting. The delay was to provide time for City staff to visit the Applicant's property to inspect their claims that property damage has recurred and, per the Applicant's request, provide the Applicant additional time to review the materials presented by staff for the May 8th hearing.

1. Mayor calls on staff for a brief staff report and City Council poses questions to staff as desired.
2. Mayor seeks a motion to open the public hearing, providing the appellant the first opportunity to speak, followed by applicant, followed by the general public.
3. Mayor seeks a motion to close the public hearing after all testimony has been presented.
4. City Council discusses the matter and arrives at its decision.

BACKGROUND/DISCUSSION

The staff report for the May 8, 2023 Public Hearing, which provides further information, is included with this report as Attachment 1. The remainder of this report is focused on information that is not contained in the May 8th report.

In addition, the staff reports for the prior public hearings held on August 10, 2020 and October 11, 2021 are included with this report as Attachments 2 and 3, respectively. Finally, the meeting videos for each of the prior public hearings are available at the following links:

- August 10, 2020 meeting video:
<https://culver-city.granicus.com/player/clip/1800?>
- October 11, 2021 meeting video:
<https://culver-city.granicus.com/player/clip/2222?>
- May 8, 2023 meeting video:
<https://culver-city.granicus.com/player/clip/2673?>

Applicant Property Damage Inspection:

On May 8, 2023, prior to the City Council meeting, the Applicant's attorney submitted correspondence to the City, making a number of objections to the proposed Resolution, and setting forth the Applicant's arguments in favor of denying the Appeal (Attachment 4). During the May 8th public hearing, City staff provided an oral response to the arguments in the correspondence. In addition, City staff has included a written response to the Applicant's objections and arguments consistent with the comments placed in the record during the May 8th hearing (Attachment 5).

The Applicant's correspondence included the following assertion: *"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."*

Based on the allegation of new damage, the City Council continued the public hearing to allow time for the Applicant to review the City's findings further, and also to allow time for City staff to visit the Applicant's property to view the alleged new damage that potentially could be viewed from Applicant's vantage point on the private property and not from the public right-of-way. (City staff's April 13, 2023 inspection referenced in the May 8th staff report was performed from the public right-of-way). At the May 8th meeting, Applicant's attorney consented to the site inspection and was asked to contact the City's Public Works Director to facilitate the staff site visit.

The City Attorney's office contacted Applicant's attorneys several times to coordinate scheduling the staff visit to the site; however, for unknown reasons the attorneys did not assist in facilitating a site visit. In order to comply with City Council's direction, City staff visited the Applicant's property on May 16, 2023 with the objective to determine if any new damage, as asserted by Applicant's attorney at the May 8th hearing, was visible from the public right-of-way and to take additional photographs (Attachment 6). Ms. Mabus herself was at the property when staff visited, and she invited staff onto her property and allowed staff to photograph the work previously performed on the private property side of the wall. Upon re-inspection of the wall, staff confirmed that there is no evidence of new cracking damage on the wall.

Ms. Mabus also expressed concern to staff about cracking in her patio floor and foundation. It should be noted that Ms. Mabus did not assert these damages in her initial Request to remove the trees (although she mentioned them in her comments to City Council at the August 10, 2020 hearing), and the retired Public Works Director's decision granting the Request was not based on (nor did it mention) such damage. Nor did Ms. Mabus or her attorney mention or claim these damages during the October 2021 hearing, and their written presentation focused solely on the damage to the public street and sidewalk, and the cinder block wall, and did not mention the patio floor or the building foundation.

Ms. Mabus showed staff a crack in the pavement of her patio floor that was not repaired (Attachment 6 - May 16, 2023 Inspection Photographs). She also showed staff a photograph of foundation work

performed on the property prior to the 2019 application to remove the trees. Staff requested documentation from Applicant's attorney regarding the foundation work; however, as of the date of publication of this report, nothing has been received. Ms. Mabus provided no information or evidence as to how long the crack in the patio pavement has been in existence. Although Ms. Mabus expressed concern about future damage to her property, especially from the tree roots closest to the wall, she provided staff with no evidence that the cracking was new or had repeated or grown larger or worse over time.

After inspecting the patio cracking and the photographs provided by Ms. Mabus, it is staff's conclusion that such damage, even if caused by the roots (for which Ms. Mabus has provided no evidence), is neither "extensive" nor "repeated" or ongoing, as required by CCMC 9.08.210.C for removal of the trees as explained in the May 8, 2023 staff report.

On the public right-of-way side, staff observed the following:

1. The concrete wall repair was successful, and no cracks exist on the public facing or private property sides of the wall.
2. The City's prior roadway work, which was comprised of adding asphalt to the roadway to fill cracks, appears to remain unchanged and undisturbed; however, where that asphalt meets the concrete gutter, it has raised up slightly, though it is not extensive.

As mentioned above, the approved *Galvin Street Parkway Expansion* capital project will remove the sidewalk adjacent to both trees along the Galvin Street facing side of the property and replace it with grass, thus eliminating any concern regarding damage to the sidewalk in the future.

Applicant's Objections:

On May 17, 2023, Applicant's attorney submitted renewed objections to the City's proposed Resolution presented on May 8th (Attachment 7). Applicant also attached photos to the May 17 submittal as evidence of what the Applicant asserts as new damage. Staff has reviewed the Applicant's May 17th renewed objections and photographs, and can report that the submittal and photographs do not rebut or change staff's conclusions. The photographs do not show new cracking or root damage.

To be clear, the only repair previously performed by staff was the asphalt on the sidewalk, and an asphalt patch on the street. Both of those are visible in photos provided by staff. The Applicant's May 17 photos show no new cracks or damage in those previous repairs.

No previous repairs were made to the concrete curbs and gutters. Thus, the Applicant's photos of the concrete curb and gutter do not show that damage was "repeated" or ongoing. Moreover, staff has always planned that the cracks in the curb, gutter and street would be eliminated as part of the CIP project.

Attachment 8 includes photographs staff took of the original repairs in 2021. In staff's opinion, these photographs, when compared to the photographs submitted by the Applicant on May 17, demonstrate that none of the cracks shown in the Applicant's May 17th photo submittal constitutes

“extensive” new or “repeated” damage as required for the trees’ removal under Section 9.08.210.C.2.

Resolution:

In compliance with the Court’s ruling, staff has prepared, and recommends the proposed Resolution (Attachment 9) for the City Council’s consideration. The Resolution has been updated to address the Applicant’s objections submitted on May 8, 2023 and the subsequent inspection on May 16th. Attached as exhibits to the Resolution (in addition to the attachments to this staff report) are the Applicant’s initial tree removal Request (Exhibit 1), the Appeal of the Public Works Director’s decision (Exhibit 2), and the Los Angeles Superior Court’s ruling on the petition for writ of mandate filed by Applicant (Exhibit 3). The Court’s ruling requires the City Council to set aside its October 11, 2021 decision upholding the Appeal, and to reconsider the Appeal consistent with the Court’s ruling. The Court’s ruling does not limit the Council’s discretion or require the Council to decide the Appeal in any particular way.

If the City Council decides to uphold the Appeal and preserve both trees in conjunction with completion of the capital project described above, the attached Resolution contains language by which the City Council may satisfy the Court’s ruling. By adopting the Resolution, the City Council will both set aside the Council’s October 11, 2021 decision, and adopt written findings to satisfy CCMC section 9.08.210.F. If the City Council decides to adopt the attached Resolution, staff will proceed to implement CIP PS-022 *Galvin Street Parkway Expansion* project to widen and lengthen the Galvin Street parkway and to remove its adjacent sidewalk.

If this City Council makes different findings affirming the decision of the retired Public Works Director to approve the Applicant’s request for removal of the trees, staff will return to City Council at the June 12th meeting with a proposed Resolution consistent with City Council’s decision.

FISCAL ANALYSIS

There is no fiscal impact in conducting this public hearing.

The cost to complete the \$100,000 capital project to expand the parkway is included in the Adopted Budget for Fiscal Year 2022/2023 in CIP PS-022 *Galvin Street Parkway Expansion*.

ATTACHMENTS

1. 2023-05-22 ATT1 May 8, 2023 Staff Report
2. 2023-05-22 ATT2 August 10, 2020 Staff Report
3. 2023-05-22 ATT3 October 11, 2021 Staff Report
4. 2023-05-22 ATT4 May 8, 2023 email correspondence from Applicant’s Attorney
5. 2023-05-22 ATT5 City staff response to May 8, 2023 email correspondence from Applicant’s Attorney
6. 2023-05-22 ATT6 May 16, 2023 Inspection Photographs

7. 2023-05-22 ATT7 May 17, 2023 correspondence from Applicant's Attorney
8. 2023-05-22 ATT8 Staff photos of original repairs from 2021
9. 2023-05-22 ATT9 Proposed Resolution

MOTION

That the City Council:

Set aside and reconsider the Council's decision of October 11, 2021 upholding the appeal of the retired Public Works Director's decision to approve the request to remove the trees located at 10729-31 Northgate Street and **either**:

1. Affirm the decision of the retired Public Works Director to approve the Applicant's request for removal of two trees located at 10729-31 Northgate Street, and direct staff to prepare a Resolution with findings memorializing that decision for approval at a subsequent Council meeting;

or

2. Grant the appeal and overturn the decision of the retired Public Works Director, and adopt a Resolution adopting findings that substantial evidence supports the conclusion that the decision to approve the request to remove the trees located at 10729-31 Northgate Street was based on an error or disputed findings, thereby, denying the Applicant's request to remove the trees;

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3. Provide other direction to staff, as deemed appropriate.