REHEARING REQUEST FOR APPEAL NO. 21-084

Kasey Asberry, Appellant(s) seeks a rehearing of **Appeal No**. **21-084** which was decided on **November 10, 2021.** This request for rehearing will be considered by the Board of Appeals on Wednesday, **December 8, 2021**, at 5:00 p.m. **and will be held via Zoom video platform.**

Pursuant to Article V, § 9 of the Rules of the Board of Appeals, the **response** to the written request for rehearing must be submitted by the opposing party and/or Department no later than **10 days from the date of filing, on or before December 2, 2021** and must not exceed six (6) double-spaced pages in length, with unlimited exhibits. The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and kasberry@humanorigins.org.

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from each side will be allowed. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Four votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decision of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

Requestor

Signature: Sent via email

Print Name: Kasey Asberry

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GARDENS

Kasey Rios Asberry
245 Hyde St
San Francisco CA 94102- **3323**
415-83-8570

President Darryl Honda, DPW Board of Appeals
c/o Clerk, Alec Longaway
alec.longaway@sfgov.org
1650 Mission St. Suite 304 SF CA 94103

Nov 17, 2021 re: Appeals 21-080 – 21-085

Dear President Honda & Commissioners,

I write you as a resident of the Tenderloin and as an environmental & cultural worker for thirty-seven years in San Francisco; as an appellant in two separate DPW efforts to remove all the mature trees around the Main Library, three years apart. I write on behalf of the expanded Library Grove Working Group.

This letter urges you to halt the felling of any Library Grove trees to allow you to reconsider Part A of your pending ruling of November 10, 2021. It was evident that you authentically sought a compromise through your ruling. However, it was based upon an inaccurate memory of DPW representative Mr. Buck from the original proceedings of the Library Grove Working Group (in which Mr. Buck was a signatory) produced a consensus-driven plan to conserve all of the Library Grove while an offset grove was established. In January and February 2020, I presented documentation to the BOA as the Library Grove Working Group's ongoing process' last acts before the pandemic. On November 10, 2021, Mr. Buck was allowed to dispute the veracity of the Working Group's documents after our rebuttal without giving appellants a chance to respond and re-acquaint everyone with the details of an adaptive management plan we spent eighteen months of combined resident volunteer hours and City workers time to effect, at your body's direction. Though it was unintentional and understandable, the Library Grove Management Plan[1] and your own previous rulings[2] were not given full consideration on November 10, 2021.

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[1] Library Grove Management Plan & Addendum, available at: https://drive.google.com/file/d/19LPliw4m4wb0zbAPA2LsV-I79RZcme_w/view?usp=sharing

[2] Board of Appeals Hearing, 7A&B, 100 Larkin Street - Appealing the Issuance of a Public Works Order, September 18, 2019; recording available at: https://www.youtube.com/watch?v=I8wqKzF4POU

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Understanding that, though just and appropriate, this reconsideration we call for would be an unusual action on the part of the BOA we place it in the context of:

- the unprecedented mismanagement and misalignment documented in the SF BLA report[3].
- the dangerous deficit of forest city-wide (13% and falling) and in the Tenderloin in extremis (3-4% and falling)
- the declared climate crisis in San Francisco, which could be addressed in significant measure if our Forest management were aligned with the SF Env Climate Action Plan
- passage of CA AB 1000, which immediately requires re-alignment of city priorities to account for legacy environmental injustices, especially relevant in the Tenderloin – Mid-Market area
- decisions with respect to trees occur on the 50-year scale, outliving all of us for good or ill

We urge you to instruct DPW to secure the egress surrounding the Library (as they will do anyway to safely conserve half the trees as currently directed) while we all take a month to bring the hard-won consensus for the Library Grove adaptive management plan back into focus.

We support your call to the BOS to correct the lack of cohesive action on behalf of our Forest and our neighborhoods in Part B of your ruling. We thank you in advance for the courage, stamina and imagination that will be required to bring our policy infrastructure into alignment with our City's environmental values. We continue to offer our help with this worthwhile effort, not because it is easy but because it is necessary.

Kasey Rios Asberry
Resident of the Tenderloin;
Mid-Market Coalition, Tenderloin Peoples' Congress, SF Tree Roundtable and the Library Grove Working Group;
Co-Chair of SF Planning's Environmental Justice Working Group;
Executive Director of Demonstration Gardens @ SF Federal Plaza

Cc: Julie Rosenberg, Supervisor Haney, Supervisor Peskin, Supervisor Walton, Supervisor Mar, Supervisor Preston, Supervisor Mandelman;

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[3] SF Budget and Legal Analyst Performance Audit available at:
https://sfbos.org/sites/default/files/061421_PA_of_DPW_Street_Resurfacing_Prog_%26_StreetTreeSF%20Prog.pdf

Tree Roundtable, Mid-Market Coalition, Tenderloin Peoples' Congress, SF Sierra Club Executive Committee, 350 Bay Area

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

SAN FRANCISCO PUBLIC WORKS

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Mayor

Alaric Degrafinried
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Date: December 2, 2021

To: Julie Rosenberg, Executive Director, Board of Appeals

Kasey Rios Asberry, Appellant

From: Chris Buck, Urban Forester
San Francisco Public Works, Bureau of Urban Forestry

RE: Rehearing request for Appeal No. 21-084 (Public Works Order No. 205288)

100 Larkin St. / Main Library

Dear Commissioners,

The Bureau of Urban Forestry respectfully requests that the Commissioners deny the rehearing request filed by Kasey Rios Asberry, regarding Appeal No. 21-084, decided on November 10, 2021. The hearing was regarding the removal and replacement of ficus trees adjacent to the Main Library at 100 Larkin St. as part of Public Works Order No. 205288, issued on August 9, 2021.

Our Bureau has reviewed the rehearing request provided by the appellant and we do not believe it meets the criteria set forth by The Board. The hearing was recently held on November 10th, and no new information has been provided in the rehearing request.

The draft document referred to as the "Library Grove Management Plan" was provided in the appellant's brief prior to the hearing, which means this information was reviewed and considered during the November 10th, 2021 appeal hearing. There were four (4) additional appellants regarding the subject tree removal and

replacement, substantial public comment, and opportunities for robust questioning of staff by The Board.

The previous application to remove the ficus trees was withdrawn by the Main Library, not Public Works, on June 16, 2020, and representatives from the library stated at that time that they did not have the resources to move forward with the additional proposed mitigations due to impacts from the pandemic -- aspects that were being considered as part of the draft Library Grove Management Plan. Unfortunately, the working group at that time had not been able to finalize some key elements, such as the timing of the removals and the replacement species ("Significant points still to be resolved." P.14 Library Grove Management Plan and Addendum).

While Public Works has been monitoring the ficus trees since the library withdrew their permit to remove the trees, the root crown failure in May of the ficus tree at the main entrance on Grove St. changed the narrative. Public Works stated in 2018 in a public hearing and in the resulting hearing decision that the trees were potentially susceptible to lower trunk failures in the area of their root crowns. However, our Department was willing to monitor their condition, based on the large amount of public comment and community support that was expressed to retain as many of the ficus trees as possible. A large part of the discussion was focused on potential stem/branch failures. We believe this was a reasonable course of action at the time, as there had been no history of lower trunk failures at this site.

At the November 10, 2021 appeal hearing our Department stated that our preference is to remove all of the ficus trees adjacent to the library on the Hyde St. and Grove St. frontages, in light of these public safety concerns. Public Works staff was asked repeatedly during the hearing to offer up a

compromise to removing all seventeen (17) ficus trees. As a way towards discussing a possible compromise, our Department was asked what the near compromise had been in early 2020, regarding the number of trees to be removed. The Public Works brief that was filed in February, 2020 with Library support, agreed to the removal of eight (8) of the ficus trees.

In the draft "Library Grove Management Plan" document, the appellant states that the compromise nearly reached, was for the removal of seven (7) ficus trees, with twelve (12) to remain. Because two of the ficus trees recently removed are part of the eight (8) proposed removals, the Board decision on November 10, 2021 will result in the removal of six (6) of the ficus trees, with the remaining eleven (10) ficus trees to be pruned. If any removals are sought in the future, a new tree removal notification process is required, per San Francisco's Urban Forestry Ordinance, Article 16 of the Public Works Code. We will also replant at the library and nearby sites within the Civic Center and the Tenderloin on a 2 to 1 ratio, for the current trees approved for removal, and for future removal of any remaining ficus trees on Hyde and Grove.

Following is a list of the individual trees on each frontage and the actions that were approved at the November 10, 20201 appeal hearing.

Grove St. frontage:

Tree 1 (127637) Prune

Tree 2 (127638) Remove

Tree 3 (127639) Remove

Tree 4 (127640) Remove. Already removed due to failure on 5/29/21, at main entrance.

Tree 5 (127641) Prune

Tree 6 (127642) Prune

Tree 7 (127643) Prune

Tree 8 (127644) Prune

Tree 9 (127645) Prune

Tree 10 (127646) Remove

Hyde St. frontage

Tree 1 (127628) Prune (tree removed on emergency basis on 9/7/21)

Tree 2 (127629) Prune

Tree 3 (127630) Remove

Tree 4 (127631) Remove

Tree 5 (127632) Remove

Tree 6 (127633) Prune

Tree 7 (127634) Prune

Tree 8 (127635) Prune

Tree 9 (127636) Remove. Tree already removed as emergency on 6/10/21

On page two of the request for rehearing, the appellant lists additional contexts for the appeal and we believe these five issues are why San Franciscans value street trees and have mandated their protection, along with a robust process of public review and scrutiny when even a single tree is proposed for removal.

In June of this year, the Board of Supervisor's Budget and Legislative Analyst (BLA) completed their Performance Audit of our StreetTreeSF Program and provided their findings to the Public Safety and Neighborhood Services Committee of the Board of Supervisors. These findings and the discussions

they generated took place on October 14th and November 19th, at the BOS Committee hearing, titled "San Francisco Urban Canopy and Street Tree Maintenance Plan Updates" (Agenda item 211018).

The audit of our tree program, typical of programs with substantial annual budget allocations, produced six key findings and recommendations. Our Department disagrees with the appellant's characterization of the BLA report as documenting "unprecedented mismanagement and misalignment." Public Works welcomed the audit over a year ago and the findings will strengthen our program. The video of these meetings can be located on the SFGOV TV website (sfgovtv.org), and by selecting the Board of Supervisors, Public Safety and Neighborhood Services Committee, agenda of November 19th, 2021. We truly appreciate the public support that was expressed in those meetings, and the support expressed by the members of the Board of Supervisors Committee.

https://sanfrancisco.granicus.com/ViewPublisher.php?view_id=178.

Our Department encourages the public to watch the BOS Committee meeting, as it provides the most up to date information about the state of San Francisco's Urban Forest, and the efforts being taken by elected officials to address the funding of the Planting plan.

The funding of the Planting Plan is critical to addressing these larger contextual concerns expressed by the appellant and members of the public, and planting trees in vulnerable communities with the least amount of existing tree cover is a key tenet of the Urban Forest Plan. This Plan can be found on our website (Part I. Street Trees):

https://www.sfpublicworks.org/services/urban-forest-plan.

The Performance Audit of the Department of Public Works' StreetTreeSF Program can be found at the following link:

https://sfbos.org/sites/default/files/061421_PA_of_DPW_Street_Resurfacing_Prog_%26_StreetTreeSF%20Prog.pdf

Our Department respectfully requests that you deny the request for a rehearing by Kasey Rios Asberry. We do not believe there is new information to consider that would impact the outcome of the Appeal.

Respectfully,

Chris Buck

Urban Forester

Bureau of Urban Forestry

San Francisco Public Works

DOCUMENTS SUBMITTED FOR THE HEARING ON NOVEMBER 10, 2021 CAN BE FOUND AT THE FOLLOWING LINK:
https://sfgov.org/bdappeal/sites/default/files/Item%207A%2C%207B%2C%207C%2C%20and%20D%207%20Appeal%20Nos.%2021-081%2021-082%2021-083%2021-084%20and%2021-085%20%20100%20Larkin%20Street%20%28Grove%20%26%20Hyde%20Street%20frontages%29.pdf