CITY OF OAKLAND

APPLICANT: East Bay Zoological Society
APPELLANT: Save Knowland Park Coalition (hereinafter referred to as "SKP")
LOCATION: Oakland Zoo (hereinafter referred to as the "OZ") 9777 Golf Links Road, Oakland, CA 94605
Tree Permit Appeal: T15-00049
Parcel No.: 048 565500300

HEARING DATE August 18, 2015

PARTIES PRESENT
Joel Golub, Hearing Officer
Darin Ranelletti, Deputy Director, Bureau of Planning, Public Works Department, City of Oakland (hereinafter referred to as "COO")
Robert Zahn, Senior Forester, Tree Services Division, Public Works Department, COO
Save Knowland Park Coalition by Karen Asbelle, Maryam Shansab, Caroline Kim, Elise Bernstein, Gwen Foster, Tom Ciesznski, Beth Wurzburg, (hereinafter referred to as "Appellants")
Jim Martin, Environmental Collaborative, for the Oakland Zoo (hereinafter referred to as "OZ")

Below is a partial list of documents submitted prior to the Hearing. Additional documents were submitted at the hearing but not listed below.

1. Letter with attachments from Nik Dehejia, Chief Financial Officer, OZ to Brooke Levin, Director, Public Works Department, COO and Hearing Officer dated August 17, 2015
2. Letter with attachments from Karen Asbelle and Beth Wurzburg to Robert Zahn dated August 17, 2015
3. Undated email from Robert Zahn to Karen Asbelle
4. Email from Kirk Flaten to Nik Dehejia dated August 14, 2015
5. Letter from Gay Luster to Karen Asbelle and Nik Dehejia dated August 12, 2015
6. Staff Report dated August 12, 2015
7. Letter from Nik Dehejia to Robert Zahn dated August 11, 2015
8. Notice of Public Hearing Appeal of Tree Permit dated August 7, 2015
9. Letter from Claudia Cappio, Assistant City Administrator, COO to SKP dated August 4, 2015
10. Letter from Robert Zahn to SKP dated July 31, 2015
11. "Appeals-City Owned Tree Removal Permits", dated July 28, 2015 submitted by SKP
    "Appeals-City Owned Tree Removal Permits", with attachments submitted by SKP on August 7, 2015

12. Tree Permit Approval and Decision, (hereinafter referred to as "TPAD") Public Works Department, COO approved July 21, 2015
13. Letter from Nik Dehejia to Gay Luster and Robert Zahn, dated July 13, 2015
14. Letter with attachments from Nik Dehejia to Ranelletti dated July 13, 2015
15. Tree Permit Application (hereinafter referred to as "TPA") dated May 11, 2015
16. Undated Photos of tree tagging
17. Letter from Nik Dehejia to Robert Zahn dated May 8, 2015
18. Memorandum from Jim Martin to Darin Ranelletti, dated May 7, 2015
19. Oakland Zoo, California Trails Project, Tree Protection and Tree Removal Plan, dated May 6, 2015
20. City Council Revised 1998 Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP) pgs 14-21
21. TPAD approval dated April 28, 2011
22. Oakland Zoo in Knowland Park Master Plan, pgs 22, 24, 25 Appendix A Amendment to Oakland Zoo Master Plan, Environmental Topics Requiring Updated Discussion, Diagrams, 3.3-46, 3.3-53, 3.3-54 Tree Mitigation/Replacement and Planting drawing Subsequent Mitigated Negative Declaration/Addendum 2011

DECISION

Issues

1. Was there substantial evidence to support the TPAD by the Public Works Department dated July 21, 2015?
2. Was there an Abuse of Discretion in deciding the TPAD by the Public Works Department dated July 21, 2015?
3. Was there reversible error in deciding the TPAD by the Public Works Department dated July 21, 2015?

Facts

On or about May 8, 2015, the OZ submitted a TPA to the Tree Services Division, Public Works Department to remove fifty-seven (57) protected trees and preserve or protect an additional four hundred and twenty-four (424) trees in connection with the previously approved 2011 Master Plan. On or about May 27, 2015 public notices were sent to property owners and posted at the OZ site regarding the TPA. Numerous public comments were received in response to the notice, including the Appellants. On July 21, 2015, the Tree Services Division, Public Works Department approved the TPA and issued a TPAD. On July 28, 2015, an appeal was filed by SKP by Karen Asbelle contesting the TPAD. On August 7, 2015, Appellants re-filed an annotated Appeal. The Appellants and the OZ submitted further written comments including a response to the Public Works Department Staff Report dated August 12, 2015. At the appeal hearing on August 18, 2015 the parties, community members and people interested in the

TPAD, the OZ and the community were provided the opportunity to raise issues, make comments, submit photos, present information orally and in written form.

Discussion

After the parties were given an opportunity to present their cases I re-reviewed and considered all of the evidence, documentation, public comments and the Oakland Municipal Code.

The annotated Appeal submitted on August 7, 2015 was considered as timely filed and considered in the determination of the issues in this case.

The Appeal specified the below eight (8) items. The Staff Report responded to these eight (8) items and added items nine (9) and ten (10), which were raised in the Appeal but not specifically enumerated on the first page of SKP letter dated July 28, 2015:

1. "Tree Reviewer approved the permit despite critical errors and omissions in the application."
2. "Tree Reviewer approved a nearly 400% increase in the number of protected trees to be exposed to significant impacts-far above those in the Zoo's approved environmental document."
3. "Tree Reviewer's decision statement violates Protected Tree Ordinance by not prohibiting the Zoo from using an expired 2011 permit to conduct tree work for a perimeter fence."
4. "Tree removal permit was approved with critical tree care information missing (e.g. specific precautionary measures for Sudden Oak Death and other contagious disease clearly prescribed for public review)"
5. "Tree Reviewer has made a change in the application, with no explanation or opportunity for public review."
6. "Tree Reviewer has issued the permit, even when all building permits for this site alteration are not approved."
7. "Tree Reviewer has rejected redesign of the project to avoid loss of protected Oaks and other native trees, and is not requiring even minimal redesign of the project that could avoid the loss of protected Oaks and other native trees."
8. "Tree Permit approved that fails to follow Protected Tree Ordinance to fully notice interested parties and the public of removal."
9. The Tree Removal Permit Findings are Not Adequate and Do Not Support issuance of the Tree Permit.
10. Permit fee Clarification needed.

The Public Works Department Staff Report dated August 12, 2015 addressed each point in the SKP Appeal and items nine (9) and ten (10) with a comprehensive and insightful analysis. It refuted each item but did concede that a permit fee should not be charged and returned the same to Appellants.

Appellants Appeal failed to consider and/or overlook crucial facts and circumstances and that was enumerated in the Staff Report. The Appellants asked for reliability, accuracy and accountability by the Tree Services Division, COO in the discharge of granting of the TPA and issuance of the TPAD. The TPAD was a comprehensive and thorough review of the TPA with great attention to detail. The TPAD did rectify Scribner's errors, harmless errors, minor transposition of numbers and the misidentification of trees. The Tree Services Division discharged their responsibilities in a professional and comprehensive manner and rendered a decision. The TPAD did not demonstrate a pattern or practice of missed identification of trees or disregard for the preservation of the trees rather a dedication to preserve the OZ environment for its intended purposes while moving forward with the construction process. The analysis, findings and conclusions reached by the Staff Report dated August 12, 2015 are persuasive and the conclusions are adopted by this hearing.

The TPAD corrected minor errors in the TPA. There were no substantial changes, critical errors, significant environmental impacts or omissions. There was overwhelming evidence to support the TPAD, much higher than the substantial evidence standard.

Findings

1. There was substantial evidence to support the TPAD issued by the Tree Services Division, Public Works Department dated July 21, 2015.
2. There was no Abuse of Discretion in deciding the TPAD issued by the Tree Services Division, Public Works Department dated July 21, 2015.
3. There were no reversible errors in deciding the TPAD issued by the Tree Services Division, Public Works Department dated July 21, 2015.
4. The analysis, findings, conclusions and conditions of approval contained in the TPAD dated July 21, 2015 are adopted as the findings, conclusions and conditions of approval of this hearing.
5. The findings and conclusions contained in the Staff Report dated August 21, 2015 are adopted as the findings and conclusions of this hearing.
6. The Permit Fee for this appeal was not expressly authorized in the Master Fee Schedule. Since the Permit Fee check submitted by SKP was never negotiated and was returned by the COO this issue is moot.

Order

Therefore the Appeal dated July 28, 2015 by SKP is denied and the TPAD dated July 21, 2015 is upheld.

Dated: September 10, 2015

/s/ Joel Golub
Joel Golub
Hearing Officer